

Gambling review and reform

Towards a new regulatory framework

Dr James Noyes
Jake Shepherd

SMF

**Social Market
Foundation**

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CONTENTS

ACKNOWLEDGEMENTS.....	4
ABOUT THE AUTHORS	4
EXECUTIVE SUMMARY.....	5
SUMMARY OF RECOMMENDATIONS.....	7
INTRODUCTION	10
CHAPTER 1 - GAMBLING LICENCES	14
CHAPTER 2 - GAMBLING CONTENT	27
CHAPTER 3 - GAMBLING AFFORDABILITY	38
CHAPTER 4 - GAMBLING TAXATION	50
CHAPTER 5 - A NEW REGULATORY FRAMEWORK.....	59
ENDNOTES	70

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EXECUTIVE SUMMARY

This report puts forward a series of policy recommendations ahead of the Government's anticipated review of the 2005 Gambling Act. It builds on the body of evidence contained in recent reports published by the House of Lords Select Committee Inquiry, the National Audit Office, the Public Accounts Committee and the All-Party Parliamentary Group for Gambling Related Harm. It assesses some of the key regulatory and legislative features of gambling policy from 2005 to the present day. And it proposes a new framework for reform.

The Government has described the need to bring an "analogue Act" into line with the "digital age." Much of the debate around gambling reform centres on the fact that online gambling – increasing both in popularity and profitability – is not subject to the same controls as equivalent land-based content. For this reason, the authors of this report focus primarily on the question of online gambling.

The report examines five main topics:

1. Gambling licences
2. Gambling content
3. Gambling affordability
4. Gambling tax
5. The regulatory framework for gambling

1 - Gambling licences

The authors argue that the integrity of British gambling licences – and by extension, the integrity of the licensing objectives enshrined in the 2005 Gambling Act – has been eroded by a combination of regulatory failure and industry malpractice. The result is that public confidence in the licensing objectives (that gambling should be fair, free of crime and that it should not harm vulnerable people) is in decline.

The report makes recommendations for how confidence and credibility in British gambling licences can be regained. Specifically, it proposes the introduction of a mandatory kitemark for all licensed operators; it calls for an end to the so-called 'white label' scheme; and it highlights the need for a transparent system of regulatory sanctions, in line with best practice in other sectors.

2 - Gambling content

The report advocates the introduction of a system of controls for remote gambling, based around limits on the stake and speed of play. For online slot content, the report acknowledges the regulatory reality of stake limits within a now-established spectrum of possibility of between £1 and £5. For online non-slot content, the report accepts that similar limits would make that content commercially non-viable, and the authors advocate limits to game design instead.

3 - Gambling affordability

The report puts forward a working definition and model of multi-operator affordability based on an analysis of income and living standards. Based on their analysis of this data, the authors recommend the introduction of a 'soft cap' limit of £100 per month on net deposits.

This cap reflects the reality of what the majority of gamblers already spend, accommodates a ‘socially acceptable’ threshold of leisure spending, and ensures that gambling spend does not exceed poverty thresholds for lower income households. The report proposes that the new Gambling Ombudsman should be placed in charge of the operator data needed to implement this affordability process.

4 - Gambling tax

The report recommends that Government should, as part of its wider review of gambling legislation, conduct a review of all gambling taxation since the 2014 Gambling (Licensing and Advertising) Act. Government should make an assessment of potential changes to gambling duty in relation to the onshore ‘footprint’ of operators, defined in terms of a minimum threshold of capital, human, social, legal and digital presence in the UK.

The report advocates a system of inbuilt incentives – most likely in the form of tax rebates on any future increased rates of Remote Gaming Duty and Betting Duty – for companies which have established a sufficient amount of their activities onshore.

5 - The regulatory framework for gambling

This report recommends a change to the way in which Government organises its departmental oversight of gambling. The authors argue that the existing tripartite arrangement should be replaced with a new cross-departmental ‘Gambling Quartet’ consisting of: a Gambling Licensing Authority (to replace the Gambling Commission), under the sponsorship of the Ministry of Justice; a new Gambling Ombudsman, under the sponsorship of the Department for Business, Energy and Industrial Strategy; the funding and commissioning of Research, Education and Treatment channelled via a statutory levy through the NHS and UK Research Councils, under the sponsorship of the Department of Health and Social Care; and the oversight of advertising, the Lottery, and sporting and cultural events relating to gambling retained under the sponsorship of the Department for Digital, Culture, Media and Sport.

The recommendations in this report are designed to complement those of the House of Lords Select Committee Inquiry and the All-Party Parliamentary Group for Gambling Related Harm, so that Government has a full range of options ahead of its anticipated review of the 2005 Gambling Act.

This report is designed to be a practical roadmap of first principles for the reform of gambling regulation and the industry. It encourages collaboration between government departments, fairness in the market, and a culture of corporate and social responsibility among operators active in Britain today.

SUMMARY OF RECOMMENDATIONS

In this report, we make the following list of recommendations to Government in advance of the forthcoming Gambling Act Review:

- **The introduction of a British gambling “kitemark”.** A British gambling licence should be a hallmark of fairness, quality and integrity. We recommend that the definition and assessment of industry standards should be controlled by the regulator, with a kitemark given to any operator which has been granted a licence and abides by LCCP. This kitemark should be as clearly visible on an operator website as the Red Tractor is on food packaging. All members of the Betting and Gaming Council should be expected to carry this kitemark. In the case of an operator breaching LCCP, the kitemark should be withdrawn.
- **The end of the white label scheme.** If integrity is to be brought back to the British gambling licence, there can be no more room for grey areas. This means no more room for grey markets. One of the main drivers of the grey market is the continued existence of white labels. We echo calls for a total overhaul of the remote licensing system and recommend that the existing white label scheme should be scrapped, with all existing white label operators made to apply to the regulator to be licence-holders in their own right, subject to their suitability.
- **The introduction of Personal Functional Licences (PFLs) in the remote sector.** We recommend that PFLs should be introduced to the remote sector, in particular for key account managers and VIP managers, with a burden of responsibility for adhering to LCCP placed on this role. This would mean that when LCCP is breached, the remote sector PFL-holder would risk having their licence revoked. We believe that this would enable a more targeted and efficient process of licence revocation to be introduced to the regulator’s system of sanctions.
- **The introduction of a transparent system of Gambling Commission sanctions.** We recommend that the only way to instil confidence in the sanctions system is to ensure the introduction of a clear, predictable and transparent structure of regulatory sanctions not dissimilar to the systems used by other public agencies such as the Health and Safety Executive and the Financial Conduct Authority. This structure of sanctions should be clearly presented and explained in a sliding scale that ranges from warnings over minor infringements to licence revocation for the most serious breaches.
- **A new categorisation of gambling content.** We recommend that the Government should work with the regulator to establish a new category for remote gambling content. This category should, like those of B, C and D gaming content, be subject to regular review by the regulator and should be broad enough to encompass a full range of new online content, from slots and casino games to social gaming, video gaming and other types of emerging product.
- **The introduction of limits online.** Current regulation is based on the principle of a regulatory pyramid which stipulates that the more harmful the content, the less accessible it should be, with tighter controls on limits to stake and speed. Remote gambling is among the most accessible of all gambling content, yet there are no limits to the stakes or the speed of remote games. We recommend that the new categorisation of gambling content, outlined above, should include a review of online stake limits. Limits to online slots should be assessed within the parameters

of £1 to £5, while the question of online non-slots should be assessed according to the relationship between speed, frequency and nature of the content.

- **A review of the evidence base on gambling-related harm.** We welcome both the Lords Inquiry recommendation to reinstate a prevalence survey of gambling-related harm and the forthcoming Public Health England review of the evidence base. We recommend to Government that the Gambling Act Review should include an assessment of the evidence base for gambling-related harm, with a view to establishing an index of harm on which future regulatory interventions can be based.
- **The introduction of a multi-operator affordability model.** Gambling is only affordable when it does not impede other financial commitments that a household must fulfil in order to achieve a socially acceptable standard of living. We recommend that a model of affordability is established by Government, based on Minimum Income Standards (MIS). This should be defined as the minimum amount of money that families need to have in order to participate in social and cultural activities, while at the same time sitting below the threshold that would push some families into poverty.
- **The introduction of weekly ‘soft cap’ thresholds on net deposits.** We recommend that a ‘soft cap’ limit of £100 per month (or £23 per week) on net deposits should be applied to all customer spending. Expenditure of up to £23 per week is more than what the majority of gamblers spend, while also being a threshold that ensures (according to our analysis of income and living standards) that gambling activities do not amount to serious financial harm.
- **Placing the new Gambling Ombudsman in charge of affordability.** A working model of gambling affordability depends on access to operator data. We recommend that the most suitable third-party depository for remote operator affordability data should be the new Gambling Ombudsman. This Ombudsman would be a public agency with statutory authority and would provide a formal, independent point of liaison between remote gambling operators, credit agencies and banks in order to maintain customer data ‘under one roof’. This would also ensure that the Ombudsman already has full access to the information needed to make an independent assessment of potential customer complaints.
- **A review of gambling taxation.** We recommend that the Government should, as part of its wider review into gambling legislation, conduct a review of all gambling taxation since 2014 – as was originally pledged by HMRC at the introduction of the Gambling (Licensing and Advertising) Act. This review should assess potential changes to Remote Gaming Duty and Betting Duty in the context of any fiscal consolidation following the COVID-19 pandemic. It should also assess the relationship between operators being based onshore and benefits to the Treasury.
- **The introduction of a minimum ‘onshore footprint’ threshold for remote operators.** We recommend that remote gambling tax should be determined by a principle of minimum onshore ‘footprinting’ thresholds according to an operator’s capital, human, social, legal and digital presence in the UK. We advocate a system of inbuilt incentives – most likely in the form of tax rebates on any future increased rates of Remote Gaming Duty and Betting Duty – for those companies which have established a sufficient threshold of their activities onshore.

- **A review of the 2014 Gambling (Licensing and Advertising) Act.** We recommend that the 2014 Gambling (Licensing and Advertising) Act should be reassessed as part of the forthcoming Government review of gambling legislation. We believe that an entirely new approach to taxation should be enshrined in future gambling legislation, and that an emphasis be placed on the territorial location of gambling companies, as well as their commitment to corporate social responsibility.
- **The end of the tripartite arrangement.** We recommend that the current tripartite arrangement of the Gambling Commission, ABSG and GambleAware – a legacy of the 2005 Gambling Act that is clearly no longer fit for purpose – should be scrapped. This would mean a radical change also to the way in which Government organises its departmental oversight of gambling reform: replacing the current system whereby the Department for Digital, Culture, Media and Sport has sole responsibility for gambling legislation and regulation, to introduce a new cross-departmental approach which allows a range of expertise and agencies to collaborate together.
- **The introduction of new Government ‘Gambling Quartet’.** We recommend that the current tripartite arrangement should be replaced with a new cross-departmental “Gambling Quartet” consisting of: a Gambling Licensing Authority (to replace the Gambling Commission) under the sponsorship of the Ministry of Justice; a newly-created Gambling Ombudsman under the sponsorship of the Department for Business, Energy and Industrial Strategy; the funding and commissioning of RET channelled via a statutory levy through the NHS and UK Research Councils, under the sponsorship of the Department of Health and Social Care; and the oversight of advertising, the Lottery, and sporting and cultural events relating to gambling retained under the sponsorship of the Department for Digital, Culture, Media and Sport.

INTRODUCTION

The question of gambling reform has become a familiar feature in both the media and in political debate today. It is a question with a human cost – one defined by numerous stories of debt, despair, family breakdown and even suicide – and touches on a wide range of complex and controversial policy issues. These include concerns about industry practice, regulatory failure, public health, addiction, harm, crime, the normalisation of gambling in sport and the proliferation of gambling products on our high streets and in our homes.

A coalition of cross-party parliamentarians has driven forward the case for reform in recent years. This coalition includes an influential All-Party Parliamentary Group for Gambling Related Harm led by the Deputy Leader of Welsh Labour, the former Leader of the Conservative Party and Secretary of State for Work and Pensions, the former Chair of the House of Commons Culture, Media and Sport Select Committee, the former Deputy Leader of the Labour Party, one of the Prime Minister's main trade envoys, and prominent members of the House of Lords.

Perhaps most notably, this coalition also includes the former Sports Minister, Tracey Crouch, who resigned from her post in 2018 because of the controversy over stake limits to so-called Fixed Odds Betting Terminals and who remains one of the most important and popular voices in the debate.

Many of these parliamentarians have been involved in the recent release of a number of major reports on the question of gambling. These reports include the APPG Inquiry's report on online gambling harm, the House of Lords Select Committee Inquiry on the social and economic impact of the gambling industry, the Labour Party's review of problem gambling and the Public Accounts Committee's report on gambling regulation. There has also been a report on gambling regulation published by the National Audit Office.

In other words, the question of gambling reform has become an issue of significant political and public importance. Our report aims to contribute meaningfully to this debate, and help expand both the evidence base and body of ideas for reform.

According to the latest NHS Digital Health Survey figures, using both PGSI and DSM-IV screens, the number of problem gamblers is stable since 2016 (at around 0.6%), although this still represents 300,000 people who require levels of specialist care that far exceed the current provision of services. Among the general population, Gambling Commission statistics show that 82% of people think there are too many opportunities for gambling and 73% think that gambling is dangerous for family life. Crucially, only 29% of people think that gambling is conducted fairly and can be trusted, and a "significant increase" of people think that gambling is associated with crime¹ – despite the fact that keeping gambling fair and free of crime are meant to be two of the core objectives of the Commission, as set out in the 2005 Gambling Act.

These figures are echoed by the Lords Inquiry, which states that "half the adults in this country gamble at least once a month. A third of a million of them are problem gamblers. Although they are fewer than 1% of the adult population, they contribute an astonishing 25% of the profits of the gambling industry; and the 4% of adults who are at low or medium risk of becoming problem gamblers contribute a further 35%." The Lords conclude that while "the gambling companies have no incentive to drive customers to financial ruin... they have every incentive to keep them gambling, even when problems are looming. The greater the problem, the higher the profit,"² indicating an inbuilt relationship between

profit and harm which has led Claire Murdoch, the NHS National Mental Health Director, to speak of the “increasingly clear and worrying links between gambling and mental ill health.”³

In response to these calls for reform, the Government has committed to a review of the 2005 Gambling Act, describing it as an “analogue law in a digital age”. This commitment has been reinforced by Matt Hancock, Secretary of State for Health and Social Care, who has pledged to review the Act as part of a wider drive by Government to combat addiction.

Specifically, the Government has indicated that a review would make recommendations on the following:

- Loot boxes;
- Prize and stake limits;
- The misuse of credit card payments (although this question has now been resolved by the regulator following action from DCMS);
- Putting the voluntary levy on a statutory footing; and
- New ways of raising revenue for problem gambling support.

Reviews of gambling legislation are nothing new. The 2005 Gambling Act drew on the recommendations of the Gambling Review Report authored by Sir Alan Budd, former chief economic advisor to the Treasury and founding member of the Bank of England’s Monetary Policy Committee. Budd was assisted in this review by a range of experts, including the philosopher Jonathan Wolff, the behavioural psychologist Jeffrey Gray, the sports journalist Mihir Bose and the economist Phillipa Marks.

The Budd Review sought to establish a balance between the liberalisation of gambling as a legitimate leisure activity and the protection of people from harm. In the words of the Lords Inquiry, “until the Gambling Act 2005, public policy decreed that while Parliament did not want to ban gambling, it would do nothing to stimulate it. All that changed with the radical Budd Report of 2001 which laid out a blueprint for the liberalisation of gambling, promoting consumer freedoms to choose in a wider competitive gambling market.” The Lords claim that since this “radical” shift, the regulation of gambling has been “wholly reactive” while “gambling operators have made hay exploiting the laissez faire regime”⁴ – a view with which we are in broad agreement.

The former academic advisor to the Lords Inquiry, Rebecca Cassidy, has written at length about the paradigm change which took place in 2005, describing it as a cultural shift from an activity that once was treated as socially taboo, with links to crime, to “a leisure activity, the equivalent of going bowling or to the cinema.” Echoing the words of the then-Culture Secretary, Tessa Jowell, in 2002, Cassidy refers to gambling’s “New Deal” as an attempt to “transform gambling in the UK from an activity that was tolerated, to a business to be encouraged... on the same basis as any other legitimate leisure industry.” This transformation was captured in the change to departmental oversight by Government: previously considered by the Home Office as “a potential source of crime”, the 2005 Act placed gambling as a leisure activity under Tony Blair’s newly-created Department for Culture, Media and Sport.⁵

We concur with Cassidy’s assessment that the 2005 Act represented a shift which fundamentally altered the relationship between the politics, economics and cultural practice of gambling, and that the legacy of this shift has subsequently played out in the regulatory failings identified by so many parliamentarians and journalists today.

However, we are reluctant to ascribe total responsibility for these failings to Sir Alan Budd's report. It is important to remember that all reports are a product of their age. In the case of the Budd Review, it was written within a specific regulatory context exactly 20 years ago: that is, during the early days of New Labour's attempted fusion of deregulation and regeneration, and the debate over so-called 'super casinos' in struggling seaside towns like Blackpool. Budd's 'liberalising' agenda was designed to achieve a balance between permission and protection. The report explicitly stated that "[we] do not believe that there is a public desire for unrestricted access to gambling", instead reiterating "our view that there should be a cautious approach to relaxing the controls on gambling."⁶

In fact, we would argue that Budd's attempt at striking a careful balance was turned into a Pandora's Box by those who were tasked to translate it into regulatory reality. Since its inception, the Gambling Commission has applied a 'light touch' approach to regulation: a case of too much permission, and too little protection. Chapter 1 of this report examines the ramifications of that light touch approach in detail.

The result is that we have been left with a mess: still saddled with the regulatory legacy of a political context from twenty years ago, it is inevitable that the consequence will be poor public policy today. We see this play out in the inherent tension at the heart of the Commission's statutory role as set out by the 2005 Gambling Act, which demands that the regulator both permits and prevents the same products at the same time. Faced with such a paradox, permission will always prevail – for fear that the alternative is accusations of prohibition.

The legacy of the 2005 Act has therefore not just been regulatory failure and poor public policy. It has also been the creation of an unnecessary and entirely artificial crusade by those who lay claim to gambling as a libertarian cause of economic agency against the spectre of a nanny state.

For this reason, we believe that when the Government comes to review the 2005 Gambling Act, it needs to go further than a mere examination of loot boxes, stake limits and levies, and should use the review as an opportunity to interrogate the political, economic and cultural context of gambling in the 21st Century: a rapidly-evolving world of smartphones, social media, data analytics and offshore tax evasion.

This is what Government ought to mean when it refers to bringing "an analogue act" into line with "the digital age". The forthcoming review requires a fundamental rethinking of the relationship between gambling and technological change – by this, we mean the relationship between machines, human behaviour and capital. We examine some of these questions in Chapter 2 of this report.

As such, the reader will understand why our report focuses almost entirely on questions of remote gambling. This is not to say that the Government review should disregard other issues concerning land-based venues such as casinos, bingo halls and betting shops. These sectors also need an appropriate level of scrutiny in any changes to future legislation. But the reality of the regulatory context facing us today is this: remote gambling is on the rise, yet remains outside the same controls applied to its land-based equivalents.

Building on these themes, then, our report examines questions of market conditions (licences, taxation and regulation), content (product design, limits and affordability) and regulatory oversight (the relationship between market, regulator and government). At the

heart of this report, we make the case for what we call a “fair market”, based on the premise of licence integrity.

This report outlines a series of first principles for further review by the Government, each with a set of proposed technical and policy recommendations. While many of the reports that have been published this year have provided important reiterations of an existing policy agenda – namely, repeated calls for a statutory levy, a ban on advertising, and the creation of an ombudsman – we have aimed to push the policy debate further: by putting together alternative options for the current licensing arrangements (Chapter 1), by proposing a definition and working model of affordability (Chapter 3) and by outlining a review of remote gambling taxation (Chapter 4).

In Chapter 5, we conclude by setting out a radical overhaul of the way in which Government approaches the question of gambling reform. We call for an end to the existing regulatory framework and recommend its replacement with a new ‘Gambling Quartet’ which would work across public agencies and government departments.

This would help provide an opportunity for better regulation, more fairness in the market and, most importantly, would help ensure that fewer people are subjected to the pain of gambling-related harm in the future.

CHAPTER 1 - GAMBLING LICENCES

Overview

A British gambling licence should be considered a privilege, not a right. It should be a hallmark of fairness, quality and integrity with which consumers can have the confidence to engage in the market without fear of exploitation or malpractice. A culture of uncompromising standards should be enshrined at every level of the licence, from its ownership and corporate structures to its commercial conduct, advertising and content. In short: the integrity of the market depends on the integrity of its licences.

Theoretically, these standards are already captured in the three licensing objectives laid out in the first page of the 2005 Gambling Act. They are the objectives of:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- ensuring that gambling is conducted in a fair and open way; and
- protecting children and other vulnerable persons from being harmed or exploited by gambling.⁷

In other words, operators which allow gambling to be a source of crime or disorder, which do not conduct their operations in a fair and open way, or which do not protect vulnerable people from being harmed should, theoretically, be denied the privilege of operating in the British market.

The Gambling Commission is the regulator which has responsibility for ensuring that these objectives are upheld. It does this by assessing licence holders, gambling products and facilities to ensure compliance and, when this is not met, it has a responsibility to enforce compliance on the operators through different types of sanctions.

This responsibility includes assessing “regulatory risk groups” in the granting of a licence, specifically:

- The suitability of a licence holder, including management integrity and business integrity (financial circumstances, governance and structure);
- The type of gambling product, facility and market scope; and
- The location and operating environment.

The Commission stipulates that “a significant part of this relates to the assessment of suitability. The assessment of suitability is a key element of the Commission’s licensing process and continues, after a licence has been granted, in the Commission’s compliance processes”.⁸

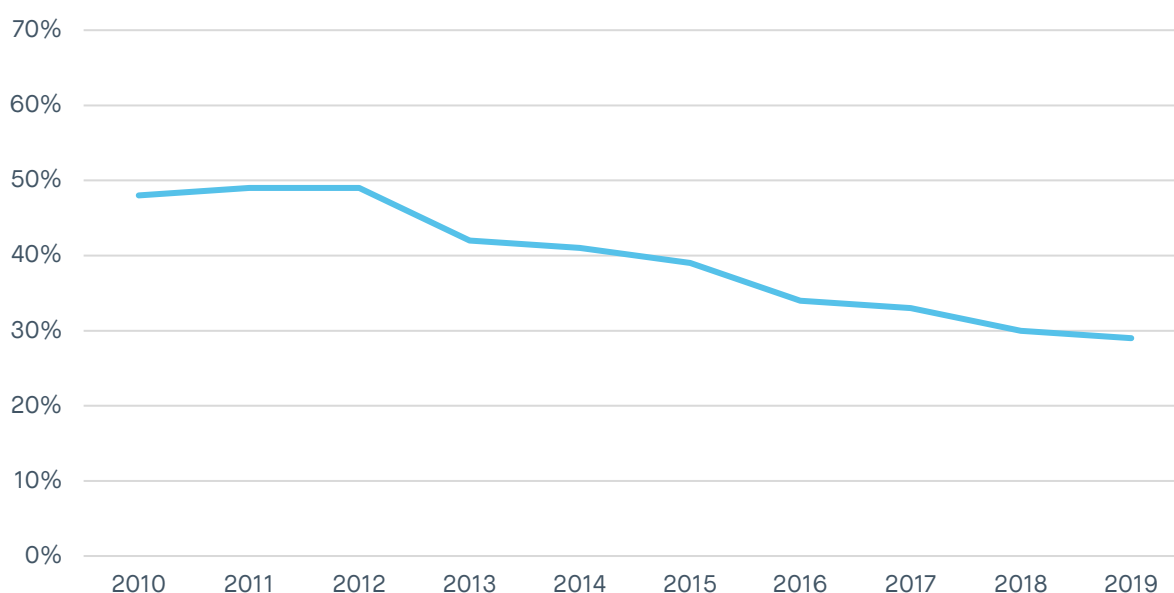
Despite the fact that these licensing objectives are enshrined in law and are meant to be subject to continual assessment, it is clear that they have not been sufficiently upheld by operators and have not been adequately enforced by the regulator. Examples are too numerous to list in this report, but a review of media stories over the past ten years shows the extent to which gambling operators have frequently benefited from the proceeds of crime, have failed to act in a fair and open way, and have allowed vulnerable people to be harmed by their products. These stories include examples of operators failing to comply with anti-money laundering rules, promoting misleading marketing through inducements and so-called ‘VIP schemes’ and enabling unaffordable and harmful gambling.⁹

A review of media stories also highlights how failure to adhere to the licensing objectives by operators has frequently been met with insufficient sanctions by the regulator – a fact recently noted by both the National Audit Office and the Public Accounts Committee. In its February 2020 report on the Gambling Commission, the National Audit Office stated that “the Commission is not doing as much as it could to incentivise operators to raise standards and make gambling safer. Effective regulation not only penalises rule-breaking, but also raises standards across the industry both by strengthening the rules where appropriate and by incentivising and supporting companies to go beyond minimum standards”.¹⁰

Members of the Public Accounts Committee echoed this view in a subsequent oral evidence session, with Richard Holden MP pointing out that between 2008 and 2018 the proportion of people who thought that gambling could be fair and trusted in the UK had dropped (according to Gambling Commission figures), and asking the Chief Executive of the Gambling Commission, “how can we possibly judge in any way whether you are ensuring fair and open play, protecting children and the vulnerable or ensuring that crime is kept out of gambling, when you are not measuring the impact or the effectiveness of the measures that you are taking?” In response, the Chief Executive of the Gambling Commission replied that “we are determined to do more to strengthen our evaluation processes and have a firmer evaluation framework. That is a work in progress, and we acknowledge that it is an area where we need to do more”.¹¹

Both Gambling Commission data and recent polling by Survation has demonstrated that public confidence in the three licence conditions has been eroded. For example, between 2010 and 2019, Commission data shows that the public view that gambling is conducted fairly and can be trusted (a key tenet of the licensing objectives) fell from 48% to 29%, as illustrated in Figure 1. This data reflects a July 2020 Survation poll, showing that only 28% of respondents agree that gambling is conducted fairly and can be trusted.¹²

Figure 1: Respondents who agree that gambling is conducted fairly and can be trusted



Source: Gambling Commission (2020)

When assessing the reasons for this erosion of trust in the integrity of gambling licences, it is important to distinguish between different types of gambling operator rather than refer to ‘the industry’ as a monolithic whole. Operators can be broken down into four broad categories. They are as follows:

1. UK licence-holders which have either most or a significant percentage of their activities based in the UK and which are members of the trade association, the Betting and Gaming Council (BGC);
2. UK licence-holders which do not have either most or a significant percentage of their activities based in the UK, but are located in offshore territories such as Gibraltar, the Isle of Man and Malta;
3. Operators which do not have UK licences and which are based entirely offshore, but which are able to access the UK market through so-called ‘white label’ arrangements with UK licence holders; and
4. The black market, involving operators which are neither licenced in the UK nor have a white label arrangement with a UK licence holder.

Of these categories, the fourth can be discounted from our analysis. The black market exists and is something that demands attention and constant vigilance, and its threat has frequently been raised by mainstream operators as a reason to hold back from more extensive regulation of UK licence holders. In 2019, two of the biggest UK operators, GVC Holdings and William Hill, commissioned a report on this topic by PWC which claimed that around 200,000 gamblers in the UK – 2.2% of the total – had used an unlicensed operator in the last year, with an estimated value of the black market in the UK of £1.4 billion or 1.2% of turnover. The report concluded that further regulation of the industry could lead to “frictions in the customer experience” and “drive gambling further into the black market.”

We have had sight of the PWC report, but are unable to respond to its findings due to the fact that it remains an internal document. We would suggest that only when the report is made publicly available can we, and other analysts, engage with the data it uses and the claims it makes. Until that happens, we are obliged to rely on the only formal public statement that has up until now been made: a statement by the Chief Executive of the Gambling Commission recently at the Public Accounts Committee that “the Gambling Commission does not see a lot of evidence – certainly not on the scale that has been claimed in some of the reports produced by the industry – of this burgeoning black market”. Crucially, he says that “I know that the question of a burgeoning black market is often put forward as a concern – that somehow if the Gambling Commission keeps pushing standards, players will be pushed into the illegal market. That is not what we are seeing, and in any event I would suggest that you couldn’t possibly lower standards in the legal market as an encouragement for people not to set up illegal operators.”¹³

Of the first category of operator, there has been a continuing trend towards market consolidation through mergers and acquisitions, narrowing this field to a core group of what has been called the ‘Big Five’ (soon to be a ‘Big Four’ following the merger of Flutter and The Stars Group), and which we will describe (adopting a term from the petroleum industry) as gambling ‘super-majors’.

The gambling super-majors include: Bet365, GVC (including Ladbrokes and Coral), the new Flutter Entertainment group (including Paddy Power, Betfair and Sky Betting and Gaming) and William Hill. Super-majors make up around a quarter of the global online

industry, with market analysts stating that “the online gambling market is showing signs of maturity, after years of rapid expansion, and growth appears to have slowed... In the long term, we expect greater competition and recent regulation to benefit the largest operators, as they will gain market share from smaller rivals.”¹⁴

Along with a group of other operators based either mostly in the UK or overseas, including Betfred (Petfre Gibraltar), Kindred and LeoVegas, these licence holders are members of the newly-formed trade body, the Betting and Gaming Council (BGC), making up 90% of the UK market. Outside the super-majors, the smaller operators make up around 50% of the online gaming market in the UK.¹⁵

The ‘long tail’ of the industry is primarily made up of operators based overseas. Among the long tail, there are many examples where the assessment of ‘suitability’ has clearly failed, with unsuitable operators being granted licences and allowed to remain active in the British market.

A recent example of this problem would be that of Gibraltar-based MoPlay, which had its licence revoked in both the UK and Gibraltar following revelations that its parent company, Addison Global, could not pay its liabilities. This revocation happened a few months after Manchester United filed a suit against the US-based guarantor of Addison Global, seeking unpaid monies from a defaulted marketing deal – and just one year after Addison announced the deal, saying that it would “bring credibility. In the era of the trust economy, this is vitally important for a new brand like MoPlay.”¹⁶ A few days after the revocation of its licence, Addison Global declared insolvency and declared that customer withdrawals could not be processed, a situation furthered complicated by the migration of MoPlay customer accounts to another operator, Betfred. In response, the Gambling Commission announced to customers that it “expects clear and updated messaging for consumers regarding their accounts” from MoPlay, but “is unable to obtain your money back from the operator”.¹⁷

Issues of suitability also define the long tail of white labels. These are websites which, in the words of the Gambling Commission, are “designed to look and feel like a company or brand, but the contents and services provided on the website are operated and managed by a licensed gambling company”. In other words, it is a commercial arrangement whereby both parties share any profit from the website: the white label rents the technological and operational infrastructure of the casino platform from the British licence holder, meaning that it can focus its activities on marketing and branding.

In 2019, the BBC investigated the prevalence of underage gamblers in Africa exposed to online products without adequate verification of age or affordability. One of the operators featured in this investigation was SportPesa, a company which at the time was a white label of TGP Europe, a licensee based in the Isle of Man. TGP Europe have several such partnerships, including the Philippine company Fun88. SportPesa were sponsors of Everton Football Club until the end of the 2019/20 season and Fun88 are sponsoring partners of Newcastle United – with the club describing them, erroneously, as a “company licensed and regulated by the Gambling Commission”.

These white label sponsorship arrangements are designed to enable prominent Premier League shirt branding of popular football clubs to be directed to domestic audiences in Africa and Asia, without companies like SportPesa and Fun88 having many, if any, actual UK-based customers. The white label scheme is, in effect, a licensing loophole exploited by offshore operators for marketing purposes.

Following the BBC investigation, the former Deputy Leader of the Labour Party, Tom Watson, wrote a letter to the then-Culture Secretary, Jeremy Wright, saying that “a UK gambling licence should not be seen as an opportunity for operators to push the limits of their conditions and responsibilities, or become a labyrinth of white labels and whitelisted jurisdictions. Nor should it be used as a platform for offshore operators to use the reputation of British sport as a marketing tool for their own domestic audience, whereby the benefits of the UK market are enjoyed, but nothing is given back to address the harm that is caused.”¹⁸

Watson argued that following the 2014 Gambling (Licensing and Advertising) Act, “too many remote licences were granted without the proper scrutiny needed to assess the business models, ownership and local markets of the operators concerned,” and called for a full audit of all remote gambling licences in an article for *House* magazine.¹⁹ In response, the Gambling Commission said that all 39 ‘High Impact Operators’ (accounting for 90% of the sector’s Gross Gambling Yield) are already required to submit an annual assurance statement and are subject to a full assessment of their compliance to LCCP. The Commission stated that of a total of 1074 online licences, it assessed 972 in the financial year 2018-2019, with 4 licences revoked during that time and 101 surrendered.²⁰

Despite this exchange, the same problem continues to persist over one year later. In May 2020 the Gambling Commission issued a £600,000 fine to FSB (a UK licence-holder) for not having “sufficient oversight” of its white labels. Omitting to name the websites for “legal reasons”, the Commission ruled that FSB had breached rules on advertising, money laundering and social responsibility, and issued a statement that “gambling businesses are being warned that they will face regulatory action if they do not carefully manage all the third-party websites that they are responsible for.”²¹

The mainstream remote sector operators, in particular the super-majors, are ostensibly making efforts to differentiate themselves from the industry’s long tail by establishing a code of practice to which accredited members of the Betting and Gaming Council must adhere. For example, since the publication of the National Audit Office report, the BGC has introduced a ‘10 pledge action plan’ that sets out standards expected of its members during the COVID-19 pandemic. These pledges include: increasing safer gambling messages, interventions and deposit limits; clamping down on rogue advertising and affiliate marketing; highlighting self-exclusion options and committing to funding the Research, Education and Treatment of problem gambling.²²

We recognise the value and importance of such pledges in encouraging gambling operators to conduct their commercial activities with integrity. However, we would argue that it is not for a trade association to determine the standards of an industry when these standards are already enshrined within the legislation as existing licensing objectives: instead, we argue that it is for the regulator to enforce compliance to these objectives through proper assessment and sanctions.

Self-regulatory pledges are welcome, but they are not a substitute for compliance with the law. The longer that this continues to be forgotten or ignored, the more the integrity of the British gambling licence risks being undermined. It is vital that integrity is restored – for the sake of market confidence as much as the reputation of operators.

A successful culture of compliance is also vital to the reputation of the regulator. Within the framework of the existing legislation, the primary remit of the Gambling Commission is that of a licensing authority. The core function of this licensing authority is to approve, monitor and sanction licence holders. When considering an application, for example, the

legislation states that the Commission should “form and have regard to an opinion of the applicant’s suitability to carry on the licensed activities”, including the integrity of the applicant, the competence of the applicant and the financial and other circumstances of the applicant, such as “the resources likely to be available for the purpose of carrying out the licensed activities”. Insolvency, training, qualifications and a criminal record should, according to the rubric of the Gambling Act, all have a bearing on decisions.²³

Yet for too long, the Gambling Commission has allowed unsuitable operators to remain active in the British market. In addition to the numerous media stories of operator malpractice cited above, this can be seen in the sheer number of applicants for UK licences which have been approved by the Commission rather than rejected. According to a Freedom of Information request submitted by the campaign group Clean Up Gambling, of a total of 966 remote applicants since 2014, over 90% were approved. Prior to the 2014 Gambling Act, the figure was even higher.

Table 1: Number of applications for UK licenses accepted by the Gambling Commission

Remote applications before 01/11/2014		Remote applications on or after 01/11/2014	
Determination	Number of applications	Determination	Number of applications
Granted	831	Granted	906
Rejected/refused	7	Rejected/refused	60
Total	838	Total	966
Acceptance rate	99%	Acceptance rate	94%

Source: Gambling Commission (2020)

We believe that a full audit of all remote gambling operators is long overdue. This audit should represent a proper assessment of the suitability of each operator in terms of ownership, business structure and source of wealth – a process of review which, as we have noted in this report, is already meant to be the core function of the regulator and which is already provided for in the existing legislation.²⁴

We anticipate that such an audit would inevitably lead to the revocation of licences held by unsuitable operators populating much of the long tail of the remote sector, while mainstream operators should, by virtue of their pledges of adherence to LCCP, be able to pass the assessment without a problem.

In this context, we recommend four ways in which the integrity of a UK gambling licence can be both reviewed and renewed: through the establishing of a British standards kitemark; the end of the white label scheme; the creation of Personal Functional Licences online; and through the introduction of a truly transparent system of sanctions.

A British gambling ‘kitemark’

The existence of the kitemark as a symbol of quality, credibility and safety has been associated with UK retail since the creation of the British Standards Institution (BSI) at the beginning of the 20th Century. The BSI received a Royal Charter in 1929. One of its purposes is “to set up, sell and distribute standards of quality for goods, services, and

management systems and prepare and promote the general adoption of British and international standards and schedule in connection therewith.”²⁵

The Gambling Commission already coordinates with the BSI over ISO standards for both information security and remote gambling software and technical standards. In 2019, the Commission hosted a workshop with a range of stakeholders, including the BSI, on the evaluation of safer gambling products,²⁶ and the Commission itself proudly displays the BSI kitemark on its own correspondence.

In June 2020, the Commission published a tweet which advised gambling consumers that “before you transfer any money into a gambling account, check that the company you plan to gamble with is licensed by us by searching for them on our public register.” The tweet then provided a link to the Commission’s register.²⁷ We would suggest that such advice is tantamount to an endorsement of a British gambling kitemark, yet is far too circumambulatory in the way that it is presented: it obliges consumers to click on a link, to then search through a register, to find an operator’s name and then determine whether the licence is active, under sanctions or expired. The reality is that many people would get lost when trying to navigate such a database.

It should not be left to consumers to verify whether or not an operator is licenced, or whether the operator is a BGC member, part of the offshore long tail, or is a white label. This information should be presented on each operator’s website in a clear, unambiguous and visual way, and should not be buried in either the Gambling Commission’s database or in the Terms and Conditions of an operator’s literature. It should be a kitemark which is as immediately identifiable as a Red Tractor logo on food packaging.

In 2014 the predecessor to the BGC, the Remote Gaming Association (RGA), issued a communiqué on “Renewing the legitimacy of Britain’s gambling industry” in which they announced the creation of the Senet Group, designed to be a “new voluntary standards body” run by a Standards Commissioner. Stating that “the Senet Group will effectively police the industry”, this communiqué outlined how Senet would “create a new kitemark of best practice”, whereby “members signing up to the group would commit to a fundamental set of principles... Breaches would be reported and operators named and shamed.” It concluded, “the commissioner and members reserve the right to expel members who repeatedly breach the principles.”²⁸

That same year, the then-Chief Executive of the Gambling Commission produced a briefing to the Commission’s board which, under a section on “Compliance and Enforcement of Remote Operators”, stated that “the display of licensed status (kitemark) from operators’ websites is now fully implemented”.²⁹ Yet despite this announcement, the initiative of a kitemark did not gain traction and the Senet Group has subsequently been absorbed into the BGC along with the former trade associations of the RGA and the Association of British Bookmakers (ABB).

Industry pledges to higher standards are to be welcomed. But standards cannot be left subject to the fortunes of self-regulation. Pledges have been made repeatedly since 2014 and the first mention of a kitemark, yet six years later customers are still expected to navigate their way through a complex database of licensing arrangements in order to determine the suitability of an operator. This task should not be imposed on the consumer; nor should it be left to the self-regulation of the operator. A standards body must be something that exists independently of both.

Recommendation

For this reason, we recommend that the definition and assessment of industry standards should be controlled by the licensing authority of the regulator, with a kitemark given to any operator which has been granted a licence and abides by LCCP. This kitemark should be as clearly visible on an operator website as the Red Tractor is on food packaging. All BGC members should be expected to carry this kitemark. In the case of an operator breaching LCCP, the kitemark should be withdrawn.

The end of the white label scheme

If integrity is to be brought back to the British gambling licence, there can be no more room for grey areas. This means no more room for grey markets. One of the main drivers of the grey market is the continued existence of white labels.

White labels create opacity in terms of the market and confusion in terms of regulation. A situation exists whereby these entities exist as free-floating agents which attach and detach themselves to different licensed operators depending on regulatory circumstances and jurisdictions. They are marketed as easy ways to enter the gambling market as a commercial operator. As a result, the barrier of entry to that market has been brought too low.

The Gambling Commission stipulates that “licensees are responsible for the third parties that they contract with. It also requires licensees to ensure that any contracted third parties conduct themselves in so far as they carry out activities on behalf of the licensee as if they were bound by the same licence conditions and subject to the same codes of practice as the licensee.” This stipulation applies to affiliate marketing as well as to white labels – that is, licence holders are held accountable by the Gambling Commission for the activities of contracted third parties. Crucially, the Commission states that “failure to maintain adequate control of third parties can result in regulatory action including suspension or the loss of the operating licence.”³⁰

Despite these guidelines, the rules continue to be broken. We have shown how the former shadow Culture Secretary raised concerns over white labels to the Gambling Commission in May 2019, and was given assurances that these concerns were being taken seriously. A year later, one major operator of white labels, FSB, was fined £600,000 for breaches of anti-money laundering and social responsibility policies and procedures in place between January 2017 and August 2019.

Some might argue that these are historic breaches and that investigations inevitably take time to reach their conclusion. But FSB is far from being alone. In September 2019, the Gambling Commission instigated a review of EveryMatrix Software Ltd, a B2C and B2B operator based in Malta. This review culminated in a suspension of its licence to operate a remote casino but did not suspend its activities of manufacturing, supplying, installing or adapting gambling software. In other words, EveryMatrix lost its licence to exist as a B2C operator but was allowed to continue its B2B activity. Some EveryMatrix white labels (for example, PlayFrank) migrated to another Malta-based operator, Aspire Global International Ltd, which operates in the UK as AG Communications. AG Communications

have recently been the subject of controversy as one of its white labels, Casiplay, was promoted by an affiliate marketer as a “coronavirus safe casino” during the early stages of the COVID-19 pandemic. Another arm of Aspire Global, Karmaban, has recently been the subject of sanctions in Sweden.

In short, it is apparent that these entities operate at the fringes of the UK’s regulatory framework through complex layers of association across different operators and jurisdictions, creating a complex web of opaque ownership, affiliate marketing, regulatory divergence and inadequate sanctions. This clearly falls far short of the culture of standards which we have put forward in this chapter, both in terms of market practice and regulation.

Recommendation

We therefore echo calls for a total overhaul of the remote licensing system and argue that the existing white label scheme should be scrapped, with all existing white label operators made to apply to the regulator to be licence-holders in their own right, subject to their suitability.

The introduction of Personal Functional Licences online

According to the Gambling Commission, “most providers of commercial gambling based in Great Britain or those providing remote gambling to consumers in Britain require an operating licence... Personal licences are required by those performing a specified management or operational function. The categories of people who need a personal licence are outlined in the *Licence Conditions and Codes of Practice*”.³¹

This means that certain personnel working for gambling operators require a personal licence in addition to the licence of the operation itself. There are two types of personal licence: a Personal Management Licence (PML) and Personal Functional Licence (PFL).

Both PMLs and PFLs are required in land-based betting and gaming. Where the former exists for certain types of management role, the latter, in the words of the Commission, means that “if you plan to be involved in gaming or handling cash in relation to gambling at a casino you must hold a personal functional licence (PFL) before you start work. You need a PFL if you are:

- A dealer/croupier
- A cashier
- An inspector
- Security staff/monitoring surveillance related to gambling activities.”³²

The advantage of a personal licence is that if an individual PML- or PFL-holder breaches LCCP, they are individually liable for the revocation of that licence, meaning that sanctions can be applied in a targeted way at the level of individual as well as operator.

Recent examples of this would include the April 2020 sanction of a personal management licence-holder for Betit, a Malta-based remote operator, who failed to ensure that Betit complied with requirements to complete a risk assessment of money laundering, or the April 2020 revocation of a personal functional licence-holder for an unnamed casino who was dismissed from his role at the casino for collusion and fraud.³³

Both PMLs and PFLs exist in the land-based sector. For the remote sector, however, while certain types of management function require a PML there is no equivalent of an online PFL. Instead, there is guidance for adherence to social responsibility codes, which stipulate that “licensees must put into effect policies and procedures for customer interaction where they have concerns that a customer’s behaviour may indicate problem gambling.” The policies must include: “identification of the appropriate level of management who may initiate customer interaction and the procedures for doing so”; “provision to identify at-risk customers who may not be displaying obvious signs of, or overt behaviour associated with, problem gambling”, and “specific provision in relation to customers designated by the licensee as ‘high value’, ‘VIP’ or equivalent”.³⁴

Discretionary guidance is not the same as regulatory compliance. Repeated examples of misconduct by VIP managers in the remote sector have led to a situation where VIP schemes themselves are now being looked at by the Gambling Commission. At the same time, we recognise that it is not always realistic or desirable to revoke the entire licence of an operator when a VIP manager breaches the rules on money laundering or social responsibility.

Recommendation

For this reason, we recommend that PFLs should be introduced to the remote sector, in particular for key account managers and VIP managers, with a burden of responsibility for adhering to LCCP and customer interaction placed on this role. This would mean that when LCCP is breached, the remote sector PFL-holder would risk having their licence revoked. We believe that this would enable a more targeted and efficient process of licence revocation to be introduced to the regulator’s system of sanctions.

A transparent system of sanctions

When an operator or personal licence holder breaches the conditions of that licence, they are subject to sanction. This typically involves an investigation by the Gambling Commission, sometimes in collaboration with other agencies, such as law enforcement, HM Treasury, HMRC, sports governing bodies, local licensing authorities and industry trade associations. Some investigations are led by other agencies, such as the Advertising Standards Authority (ASA), the Competition and Markets Authority (CMA) and the Information Commissioner’s Office (ICO).³⁵

During the financial year 2018-2019, of a total of 1074 online licences, the Gambling Commission assessed 972 in terms of their compliance to LCCP, with 4 licences revoked and 101 surrendered.

Investigations of a licence can currently lead to one or several of the following sanctions:

- A warning;
- Imposing additional conditions or amending existing ones;
- Financial penalties;
- The suspension of a licence; and
- The revocation of a licence.

According to the existing legislation, the Commission is required to make a judgement on the seriousness of the breach of conditions, “whether or not the licensee knew or ought to have known of the breach”, and the financial resources of the licensee in respect of the penalty imposed. When reviewing a licence, the Commission should “notify the licensee, and inform him [sic] of the procedure to be followed in the conduct of the review.”³⁶

In terms of penalties, Section 5.32 of the *Gambling Commission’s Licensing, Compliance and Enforcement under the Gambling Act 2005: Policy Statement June 2017* states that “regulatory settlements in the Commission context are not the same as ‘out of court’ settlements in the commercial context. A regulatory settlement is a regulatory decision, taken by the Commission, the terms of which are accepted by the licensee concerned... It may be particularly important in this respect to provide redress to consumers who may have been disadvantaged by a licensee’s misconduct, or to relieve licensees of the profits or gross gambling yield resulting from their failures.”

After a review has been concluded, the Gambling Commission publishes the result of its investigation, outlining the sanction imposed and explaining how the sanction applies to a breach of LCCP. However, there is little or no transparency during the investigation itself. The stated reason for this lack of transparency is that an investigation typically involves dealing with commercially sensitive and sometimes criminal activity and material. We understand why the details of an investigation cannot always be laid out prior to a final decision. However, this lack of transparency is compounded by the fact that the Gambling Commission has no publicly available explanation of the structure that underpins the link between breaches and sanctions in the process.

The result of this lack of clarity is that when a sanction is imposed, it risks appearing arbitrary. For example, why would FSB be fined £600,000 for breaching rules around anti-money laundering and social responsibility, but Betway is fined £11.6 million? According to reports, these fines tend to involve a lengthy process of negotiation between operator and regulator before the final amount is agreed. This begs the question: what is the rationale for any given warning, fine, or revocation of a licence? Why are some sanctions different from others?

This lack of a transparent structure is not typical in other regulatory settings. For example, the Health and Safety Executive publishes an Enforcement Management Model, which says that “once risk gap analysis has been used to determine how far a duty-holder has departed from the requirements of the law, or the absence or deficiency in compliance and administrative arrangements has been established, it is necessary to consider the availability and ‘authority’ of the relevant standard that establishes what has to be done to comply.” It then provides clear models which demonstrate how this assessment is made depending on different circumstances.³⁷

Table 2: HSE risk–injury assessment model

Measure of actual risk (where the dutyholder is)	Consequence	Likelihood	Dutyholder complies with or exceeds legal standard			Dutyholder complies with or exceeds legal standard				Dutyholder complies with or exceeds legal standard						
	Minor injury	Nil	Nil	Possible	Remote	Nil/neg	Probable	Possible	Remote	Nil/neg	Probable	Possible	Remote	Nil/neg		
Possible		Probable	Possible												Remote	Nil/neg
Probable																
Significant injury	Remote	Possible	Probable	Possible	Remote	Nil/neg	Probable	Possible	Remote	Nil/neg	Probable	Possible	Remote	Nil/neg		
	Possible															
	Probable															
Serious personal injury	Remote	Possible	Probable	Possible	Remote	Nil/neg	Probable	Possible	Remote	Nil/neg	Probable	Possible	Remote	Nil/neg		
	Possible															
	Probable															
Likelihood			Possible	Remote	Nil/neg	Probable	Possible	Remote	Nil/neg	Probable	Possible	Remote	Nil/neg			
Consequence			Serious personal injury			Significant injury				Minor injury/ Nil						
Benchmark risk (where dutyholder should be)																

Source: Health and Safety Executive (2020)

Similarly, the Financial Conduct Authority publishes an extensive handbook which shows exactly how different sanctions apply to different operational circumstances and breaches of the rules. This handbook shows that “having determined the relevant revenue (of a company), the FCA will then decide on the percentage of that revenue which will form the basis of the penalty. In making this determination the FCA will consider the seriousness of the breach and choose a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach. The more serious the breach, the higher the level.”³⁸

It is highly likely that the Gambling Commission has a similar internal mechanism by which decisions over sanctions are made. But the fact that there is little transparency to this mechanism has led to a situation where public confidence in the rationale behind sanctions is diminished, the industry retains a degree of bartering power over the final sanction, and the process of appeal – for all sides concerned, including both regulator and operator – is made unnecessarily complicated.

In other words, it is not a system that instils confidence, and we would argue that this lack of clarity and transparency is at the heart of many of the controversies over sanctions that we see played out in the newspapers.

The Gambling Commission itself has recently acknowledged the need for reform of the current system in its consultation on regulatory panels, which states that “due to changes in the gambling market and gambling regulation, the cases that are heard by regulatory panels are becoming increasingly complex and legalistic. We are consulting on a number of proposals to ensure that our regulatory panels are best equipped to deal with our evolving casework.”³⁹

Both industry-facing and reformist voices have complained that the current system is not fit for purpose. The campaign group Clean Up Gambling criticise what they call “an iterative process between operators and the regulator” whereby “the threat of enforcement action has been used as a means to negotiate regulatory settlements instead of exercising statutory powers.”⁴⁰ And a legal firm that works with the industry has highlighted the fact that the Commission’s consultation “does not include an adjudication governance framework, which could go some way in addressing independence concerns by ensuring decisions are fair.” In a blog, the firm complains that “other than published decisions, and procedural rules, no information is publicly available on the work of the Regulatory Panel, including the number of cases heard or matters referred, the number of hearings and the waiting time... The very purpose of the Regulatory Panel is to give the

applicant/licensee the opportunity to challenge a “minded to” decision reached by Gambling Commission staff.”⁴¹

Recommendation

We recommend that the only way to instil confidence in the sanctions system is to ensure the introduction of a clear, predictable and transparent structure of regulatory sanctions not dissimilar to the systems used by other public agencies such as the Health and Safety Executive and the Financial Conduct Authority. This structure should represent a clearly explained sliding scale that ranges from warnings over minor infringements to licence revocation for the most serious breaches.

Crucially, the system should include both the revocation of Personal Functional Licences for remote sector staff (as we have laid out in this chapter) and, in the most extreme cases, we propose that the structure should provide greater clarity on the criminal liability of licence holders when questions over AML extend from breaches of LCCP rules to the actual breaking of the law⁴² – noting that provision for criminal proceedings is already included in Sections 24 and 28 of the Gambling Act.

Based on the Commission’s current system of sanctions, then, we propose that a new sliding scale of sanctions should be structured as follows (with our additions to the existing system highlighted in italics):

- A warning;
- Imposing additional conditions or amending existing ones;
- Financial penalties, *with a fixed scale of percentages not dissimilar to that of the FCA*;
- The suspension of a licence, *including Personal Functional Licences for remote sector staff*;
- The revocation of a licence, *including Personal Functional Licences for remote sector staff*;
- *Criminal proceedings.*

CHAPTER 2 - GAMBLING CONTENT

Overview

The June 2020 Online Gambling Harm Inquiry report issued by the All-Party Parliamentary Group for Gambling Related Harm called on the regulator to bring forward “an urgent review of stakes, deposit and prize limits online.” This reiterated the call in its November 2019 interim report for a £2 limit to be applied to online slot games – a recommendation which led to a temporary collapse in share value of the major gambling operators of over £1 billion.⁴³

Echoing the words of Tom Watson at a speech given to IPPR in 2019,⁴⁴ the APPG report describes a situation “where vulnerable players are playing highly addictive casino or slot games. There are no mandatory stake limits, jackpot limits or restrictions on speed of play. In land-based venues such as Adult Gaming Centres or casinos there are clear limits set on each of these and they are systematically reviewed by the Government. Land-based venues also have far more restrictions placed on them to ensure player safety and they have people on their premises on-hand to spot the signs of risky play. This is not the case online and there should be greater regulation to reflect this.”⁴⁵

During an oral evidence-giving session of the APPG, the Chief Executive of the Gambling Commission pledged to review online stakes during the course of 2020. The Commission is now consulting on the matter, and in June 2020 published a progress update on its ongoing work around ‘industry challenges’. This update highlighted the incorporation of Experts by Experience into the Commission’s decision-making process on stake and prize limits, and floated the option of limits set at £1, £2 and £5, as well as limits to speed of play, bonus features, jackpots and certain game modes. It concluded: “we are concerned that as technology and digital approaches evolve rapidly, the techniques that the industry plans to use when designing products and apps, and online games in particular, must be designed with consumer safety at the heart.”⁴⁶

The question of stake limits was at the centre of the debate over changes to B2 machines, known as Fixed Odds Betting Terminals or FOBTs. The evidence on FOBTs showed that allowing gamblers to bet up to £100 per stake was inconsistent with other Category B machines and led to higher rates of loss, addiction and harm.⁴⁷ Because of this, a case was made for placing a limit on the stakes of a particular type of content based on two key factors: its accessibility and its addictiveness.

At the time of this debate, the Association of British Bookmakers (ABB) adopted the same position – the premise that the more accessible the product, the more tightly it should be controlled – to argue *against* the reduction of the FOBT stake, because (in their words) it would push people to gamble online, with more harmful consequences. In a statement, the ABB said that the decision to limit the maximum stake on FOBTs would “have far-reaching implications for betting shops on the high street” and “would simply shift people, the majority of whom gamble responsibly, to alternative forms of gambling where there is less chance of human interaction and its impact on problem gambling levels is far from certain.”⁴⁸

This ABB position was reiterated by the ‘Head of Lifestyle’ at the Institute of Economic Affairs, Christopher Snowdon, in a short 2016 opinion piece which attempted to argue against the proposed reduction of the maximum stake for FOBTs. Snowdon asserted that “the real story of the last ten years in the betting sector has been the rise of online

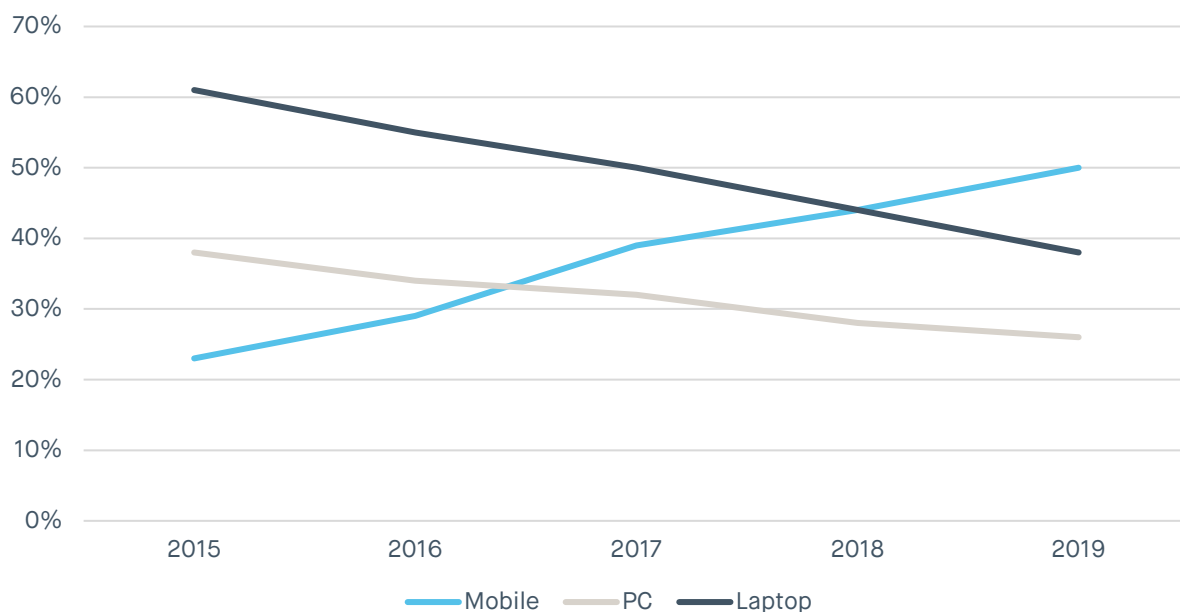
gambling, *much of which remains offshore and untaxed* [our italics]. FOBTs are one way for the incumbent betting industry to keep pace with changing tastes in a digital world.”⁴⁹

Snowdon’s concern over the lack of limits on stakes, speed and spend for remote gambling content, and his alarm over offshore tax havens, mirrors the 2017 Responsible Gambling Strategy Board (RGSB) advice to DCMS’ review of gaming machines and social responsibility measures. This advice stated that the “absence of any regulatory limits on stakes and prizes on remote platforms, including those which offer games identical to those on B2 (or FOBT) gaming machines” is “anomalous, given the wide accessibility of such platforms and the rapid pace with which they are developing”. The advice concluded that “the remote sector needs swiftly to demonstrate that the risks associated with remote gambling are being managed effectively and comprehensively. If they fail to do so, controls should be placed on stake and prizes on remote platforms comparable to those on similar land-based products.”⁵⁰

Access to remote gambling content has increased significantly over recent years. In 2012, 14% of people took part in remote gambling; in 2019, the figure had risen to 21%.⁵¹ Latest Gambling Commission figures show that the number of people who have gambled online in the past four weeks grew from 18% to 21% between 2018 and 2019, and the proportion of online gamblers who have gambled using a mobile phone in the past four weeks grew from 44% to 50% – an increase that the Gambling Commission calls “statistically significant.”

As of 2019, mobile phones have become the most popular method of accessing remote gambling content, representing the continuation of a trend of increasing mobile use for gambling in recent years.⁵²

Figure 2: Devices used for remote gambling



Source: Gambling Commission (2020)

The existing regulatory framework is not equipped to accommodate changes in technology that could not have been foreseen when the legislation underpinning that regulatory framework was first drafted. In the words of the recent Lords Inquiry, drawing on the report presented by Sir Alan Budd prior to the 2005 Gambling Act, “the technology available at the time of... the Gambling Act 2005 was vastly different to the technology available today: in 2005, it was estimated 13.9% of the world population uses the internet. In June 2019, it was estimated 58.8% of the world population now uses the internet. Technological advances have long since gone beyond the internet, and as Sir Alan told us, in 2001, ‘no one had even thought about the possibility that someone might be holding something in his or her hand and be allowed to gamble freely.’”⁵³

It has been claimed by both clinicians and by disordered gamblers that the increased accessibility of content has an influence on that content’s potential addictiveness. Clinicians and experts in behavioural psychology have made the connection between availability and addiction – a connection which extends beyond gambling disorder to incorporate other types of addiction to alcohol, drugs and pornography.⁵⁴ In addition to these studies, numerous testimonials from disordered gamblers also bear witness to the connection. In the words of one former gambling addict:

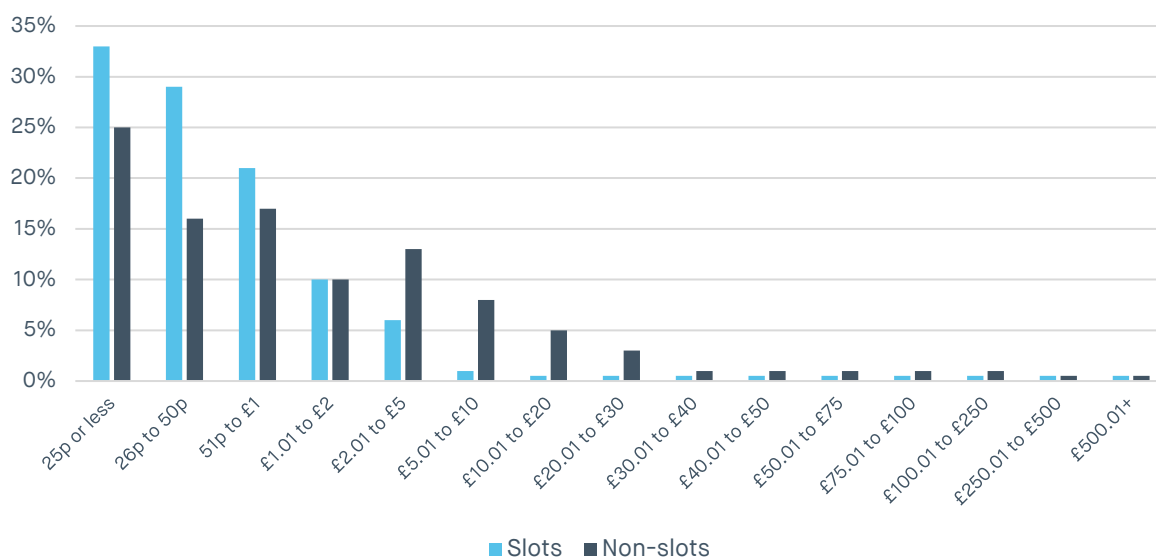
*“It was good and fun natured when it was going into the bookies at the weekend and having a bet with your friends, I don’t think there’s anything wrong with that... It became more sinister and more serious when you could do this via your phone or your laptop because there is no control measure there. You are your own bookmaker with this, and I find it quite terrifying.”*⁵⁵

According to the Lords Inquiry, this continued shift towards mobile play has constituted a “revolution, unforeseen by policy makers at the time [of the 2005 Gambling Act], the almost universal adoption of the smart phone and other devices which enabled gambling 24/7 – whenever and wherever the gambler wanted, totally unsupervised.”⁵⁶

It is important to note that while experts are concerned about the connection between increased accessibility to gambling content and an increased potential for addiction, the fact is that most stakes placed by gamblers online remain under £2. Data from Forrest and McHale shows that 82.8% of spins on slots are at stakes of £1 or less and 57% for non-slots, 92.8% of spins on slots are at stakes of £2 or less and 66.9% for non-slots, and 98.3% of spins on slots are at stakes of £5 or less and 79.5% for non-slots.⁵⁷

Recent data from market analysts corroborates this, showing that for online slots, 99% of play is at stakes under £10; while for non-slots, 87% is under £10. However, these analysts have also noted that “what is surprising is that despite the majority of customers only losing small amounts – we estimate 83% of slots players and 90% of non-slots players win or lose less than £100 per month – total net customer expenditure or, looked at another way, the net revenue by operators is heavily reliant on a profitable tail of high-loss customers”. According to these analysts, applying a limit to online stakes would impact meaningfully on the play of only 10% of gamblers, but this 10% makes up a significant proportion of the remote sector’s revenue.⁵⁸

Figure 3: Percentage of plays with various levels of stake

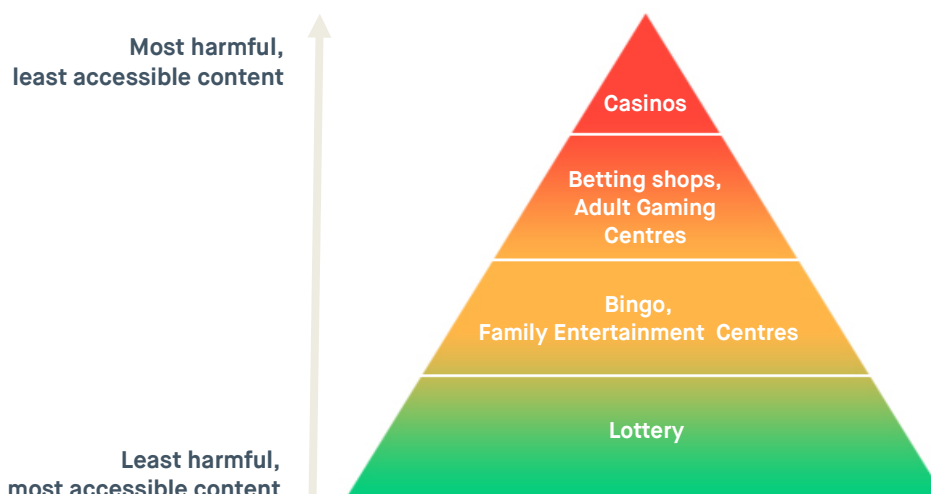


Source: GambleAware (2018)

This commercial emphasis on so-called ‘High Value Customers’ mirrors evidence presented in a recent Gambling Commission report on VIP schemes which shows that for some operators, only 2% of customers account for 83% of deposits – leading campaigners for reform to accuse the industry of deliberately resisting stake limits in order to maximise the revenue extracted from problem gamblers.⁵⁹

The purpose of applying limits to the stake or speed of a particular type of content is in order to mitigate accessibility to that content and, by extension, reduce the potential for harmful play. This is the principle of a ‘regulatory pyramid’ which has underpinned the regulatory approach since the 2005 Gambling Act, based on the premise of the Budd Report that ‘opportunities’ to gamble should be reduced for vulnerable people.⁶⁰

Figure 4: The Regulatory Pyramid



Source: Social Market Foundation (2020)

The regulatory pyramid dictates that the more restricted the accessibility to a machine, the less restrictive the limits. Fixed Odds Betting Terminals were controversial precisely because, with the potential for £100 per spin in accessible high street betting shops, they ran counter to the principle of the regulatory pyramid. The same can be said for their online equivalents. At the moment, remote content is not only among the most accessible form of gambling (and, as we have shown, increasingly available on a mobile phone), it is also the only type of content which has no fixed limits of how much can be staked, or the speed at which those stakes can be made.

In other words, the lack of limits to online gambling turns the regulatory pyramid – and the very foundations of regulation since the 2005 Gambling Act – on its head. In the words of the campaign group Clean Up Gambling, “if this principle is applied to online gambling – the most accessible platform – then it is illogical and entirely contrary to the regulatory pyramid to permit unlimited stakes or speed on the very same content that is found on venue-based machines.”⁶¹

We argue that both the stakes and the speed of remote gambling need to be integrated within the established regulatory pyramid, so that the most accessible – and potentially most harmful – type of content is the most carefully controlled. Establishing a system of online limits would enable the regulator to calibrate degrees of access to certain content, and thereby maintain control over the harm caused by that content.

In this chapter, we make three recommendations for how this might best be implemented: namely, through the introduction of a new category system for online gambling; through a review of specific limits to online slots and non-slots content; and through a better understanding of the relationship between content and harm.

A new categorisation of content

The categorisation of content is an integral feature of the 2005 Gambling Act, and is applied to the stake, speed, prize and setting of different types of gaming machine in land-based venues. Content is broken down into four categories – A, B, C and D – which are subject to regular review. This includes details on:

- The amounts paid in respect to the use of a machine;
- The value of prizes;
- The nature of prizes;
- The nature of the gambling for which the machine can be used; and
- The premises where a machine is used.⁶²

The review of gaming machines and social responsibility measures announced by DCMS in 2016 examined three main things:

- The maximum stakes and prizes for all categories of gaming machines permitted under the Gambling Act 2005;
- The allocations of gaming machines permitted in all licensed premises under the Gambling Act 2005; and
- For the industry as a whole, social responsibility measures to minimise the risk of gambling-related harm.

This review was followed by an announcement in the House of Commons in May 2018 by the then-Minister for Sport and Civil Society, Tracey Crouch, who stated that the maximum

stake on B2s would be reduced to £2, that no changes would be made to the stakes and prizes in other categories of gaming machine, and that implementation of the £2 stake limit would be achieved through secondary legislation.⁶³

There is no comparable statutory category for the content of remote gambling. In a speech given to the IPPR in 2019, Tom Watson advocated the introduction of an ‘E’ category that could be broken down into separate components depending on the stake or speed of the product: that is, an E1, E2 and E3 classification of content which would represent different types of remote slot, social and table game. This idea has since been adopted by others, most recently the House of Lords Inquiry, which recommended “that the Government should work with the Gambling Commission to establish a category system for online gambling products”, and that “the Government and the Gambling Commission should use the online product categories to set stake limits for online gambling products.”⁶⁴

We concur that a reclassification of content is necessary in order to bring online products into line with the existing machine categories. We believe that it would also be an opportunity to review some of the anachronisms that still hang over from the 2005 Act. For example, there is no reason why the redundant ‘A Category’, originally conceived for the ill-fated super-casinos, should remain in place. Similarly, some of the B, C and D categories would benefit from review as to their legitimacy in 2020. An ‘E Category’ could be introduced for remote content, and potentially a new category for other types of remote interaction with game-style content that results in a reward transaction, such as loot boxes. We agree with the Lords Inquiry that “the Government should reinstate the triennial reviews of maximum stake and prize limits, and they should be extended to include both gaming machines and online gambling products.”⁶⁵

We take note that unlike the review of B2s, which dealt with an existing machine category, the introduction of new categories for online gambling content might require changes to primary legislation. Under the existing legislation, the definition of remote ‘gaming’, ‘betting’ and ‘games of chance’ can already be extended to incorporate a range of content and platforms, including “any other kind of technology for facilitating communication”. However, there remains a degree of ambiguity as to the definition of prizes and “money or money’s worth”, meaning that it might be impossible to accommodate some types of remote gaming content within the existing regulatory framework.⁶⁶ We therefore argue that any future review and reclassification of content should include not just remote products and platforms but also prizes and definitions of ‘value’.

Recommendation

We recommend to Government the following: echoing both the policy position of the Labour Party in 2019 and the subsequent recommendation of the Lords Inquiry in 2020, the Government should work with the regulator to establish a new category for remote gambling content. This category should, like that of B, C and D gaming content, be subject to regular review by the regulator and should be broad enough to encompass a full range of new online content, from slots and casino games to social gaming, video gaming and other types of emerging product.

Limits online

In this chapter, we have highlighted the principle of a regulatory pyramid which stipulates that the more harmful the content, the less accessible it should be, with tighter controls on limits to stake and speed. By definition, remote gambling is among the most accessible of all gambling content, being available to anyone with an internet connection. Yet under the current legislation, there are no limits to the stakes or the speed of remote games. In other words, online gambling sits outside of the regulatory pyramid.

The debate over FOBTs put the question of stake and speed at the heart of this link between type of content and harm. In the words of the Responsible Gambling Strategy Board, the association between B2s and problem gamblers was “not surprising”, because “the machines possess several characteristics known to be associated with greater risk of harm. They are also easily accessible on most high streets, especially in areas with populations more vulnerable to gambling-related harm.” Acknowledging the fact that association does not prove causation, the RGSB added that “demonstrating causation is not, however, always necessary. Whatever the reason, the fact that large numbers of problem and at-risk gamblers play on their machines creates an *obligation* on operators to respond and an *opportunity* to implement measures to detect potentially harmful play and mitigate its effects.” The Board concluded: “At higher levels of staking there is a greater concentration of problem gamblers. It is difficult to regard something as an unobjectionable leisure time activity if a high proportion of those participating in it suffer harm.”⁶⁷

By this token, it makes no sense that the same “obligation” to reduce harm through limits to stake and speed should not be applied to an online sector which provides, as noted above, the most accessible content of all. This anomaly has recently been flagged by several key bodies, including the Gambling Commission. In February 2020 the successor to the RGSB, the Advisory Board for Safer Gambling, published a series of recommendations for the Gambling Commission to plan “how a regime of stake, prize and speed of play limits could be implemented for online gambling.”⁶⁸ The Commission has responded by engaging in a consultation on the question of game design, as well as issuing an interim report laying out options for stake limits set at £2, £5 and a “modal number” (based on responses to a GamCare Forum Survey) of £1.⁶⁹ Additionally, the APPG for Gambling Related Harm has put forward its own recommendation for a £2 limit to online slot games.

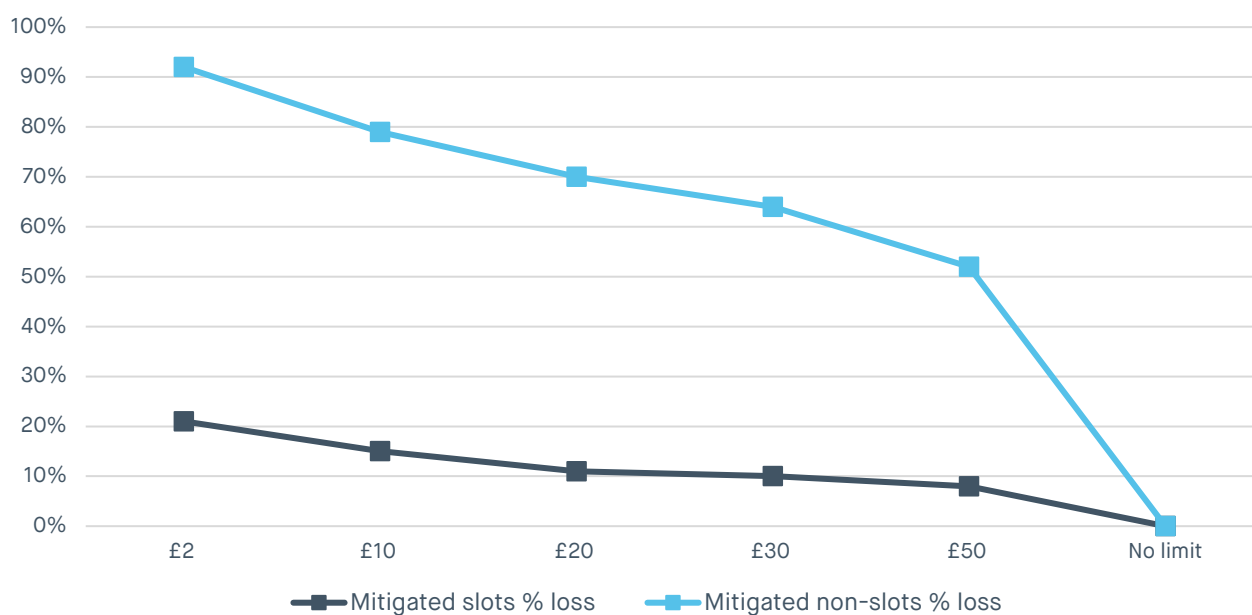
Any process of legislative review has to be anchored within the parameters of commercial, political and regulatory reality. We recognise that the parameters of the debate over stake limits to online slots have now been established by today’s political and regulatory reality: they range from £1 at the lower end of the spectrum to £5 at the upper end. To propose a limit that is either lower than £1 or higher than £5 would be to ignore this reality.

Markets respond to these realities, even when the industry does not. Recent Morgan Stanley research has based its assessment of both short- and longer-term market viability around the ‘risk’ of a £2 online casino stake limit. This assessment shows that while a £2 limit “stands out as a measure with a large, immediate, negative earnings impact”, an analysis of industry modelling concludes that “a framework for player mitigation within our modelling (players increasing play at lower stakes), with a proportion of ‘lost’ revenue from higher stake categories being applied to each limit level ... could lower the headline impact of a stake cut” for slots revenue to 22%.⁷⁰

In other words, the markets have already begun to price in the reality of a £2 limit to online slots. For online non-slots, however, the situation is different. Non-slots is a higher staking product category, and the introduction of a £2 stake limit would lead to a revenue loss of 92% – essentially making that content no longer commercially viable.⁷¹

We believe that it is important that the forthcoming Government review takes this commercial reality into account. Instead of a fixed limit on online non-slot content, a more nuanced assessment of the relationship and ratio between stakes, speed and prizes should be made. It should be noted that the Lords Inquiry has also recommended the “equalisation of speed of play and spin”, arguing that “no game can be played quicker online than in a casino, betting shop or bingo hall.”⁷²

Figure 5: Online casino revenue loss across different stake limits



Source: Morgan Stanley Research (2020)

Recommendation

Following this logic, and also recognising the reality that the majority of online gambling is staked at under £5 (as outlined above by Forrest and McHale), that 79% of people want to see limits on how much money can be placed on any single bet (according to recent Survation polling), and that any limits applied to online casino games should be concomitant with the established principle of a regulatory pyramid, we recommend the following: a future government review of gambling legislation should incorporate a review of online stake limits, as set out in our proposed ‘E Category’, through which the question of limits to online slots should be assessed within the parameters of £1 to £5, and the question of online non-slots should be assessed according to the relationship between speed, frequency and nature of the content.

Establishing an index of harm

In this report, we have pointed to the fact that the regulatory pyramid which underpins the existing legislation is based on a principle that the accessibility of content should be mitigated according to its potential for harm. Within this framework, both the setting and the design of content can be linked to the potential for harm – a fact highlighted by Natasha Dow Schüll in her landmark book, *Addiction by Design*.

According to Matt Gaskell, Clinical Lead & Consultant Psychologist for the NHS Northern Gambling Clinics in Manchester, Leeds and Sunderland, “slot machines are as addictive as any drug. People get intoxicated to the rhythmic flow of ‘the zone’.” He adds, “addiction is a lot to do with reinforcement and the speed and schedule of it. Slots are packed with reinforcement, particularly as you are losing.”⁷³

This view has been echoed by Gambling With Lives, a charity set up to represent families bereaved by gambling-related suicide. At a parliamentary event in February 2020 the co-founder of Gambling With Lives, Liz Ritchie, gave a powerful speech in which (we quote it here verbatim and at length) she talked about how “our happy, clever, courageous, beautiful children were deliberately addicted to toxic products, deliberately given a life-threatening, life-long illness in order that money could be parasitically drawn from them. They and we were told they were safe and that we knew the things to warn them about – drugs, alcohol, road safety, sexual predators. But we didn’t know – we didn’t know there was a different kind of predator around with poisonous toys with flashing lights and pretence at friendship. And we now know that the information – about products and the correlation with suicidal ideation – that would have enabled us to save our young people has been deliberately hidden.”

Appealing directly to Matt Hancock, Secretary of State for Health and Social Care, Ritchie continued by asking the government to “introduce a rating system for gambling products according to their toxicity and effect on mental health”, saying that “we need to classify different forms of gambling just as we classify alcohol from absinthe to lager, drugs from heroin to cannabis. We need proper regulation of toxic forms of gambling – safety testing before introduction of products to the market and the removal of ... toxic industrialised electronic gambling like Fixed Odds Betting Terminals and online casino gambling” – both of which “have addiction rates of over 50%.”⁷⁴

Ritchie’s position has been echoed by the Lords Inquiry, which stated that as “the gambling industry continually offers a variety of products to consumers, including some which can be highly addictive,” the regulator “should establish a system for testing all new games against a series of harm indicators, including their addictiveness.”⁷⁵

Gambling With Lives have developed this line of thinking to argue that prevalence figures of problem gambling are inaccurate because they focus primarily on people rather than product. The charity states that “an alternative view of the data is that the use of overall population figures and the conflation of gambling products mask the fact that some gambling products are highly addictive and that they are associated with over 50% of problem gambling in the UK”,⁷⁶ and conclude that there is a need for better prevalence data. This is echoed by Gaskell, who has also said that “we badly need independent research that quantifies all the harm that gambling causes individuals, families, and communities. We need to understand how that harm is distributed.”⁷⁷

Attempts at defining a framework of harm have been made by leading experts in gambling-related addiction, including Henrietta Bowden-Jones, Steve Sharman and Heather

Wardle. In an RGSB paper authored by Wardle, Gerda Reith and others, a definition is put forward in which “gambling-related harms are the adverse impacts from gambling on the health and wellbeing of individuals, families, communities and society”. They continue: “This means that sustained action to prevent gambling-related harms should include actions taken at the societal level, to change broader environments; the community level, to address local influences; the familial or peer level, to address interpersonal impact, as well as at the level of the individual.”⁷⁸

The authors identify a range of different factors that are related to the wider experience of gambling-related harm, including:

- Loss of employment;
- Experience of bankruptcy and/or debt;
- Loss of housing/homelessness;
- Crime associated with gambling;
- Relationship breakdown/problems;
- Health-related problems; and
- Suicide and suicidality.⁷⁹

Again, this is echoed by the Lords Inquiry, which states that “harm goes wider: for each problem gambler, six other people, a total of two million, are harmed by the breakup of families, crime, loss of employment, loss of homes and, ultimately, loss of life.”⁸⁰

Despite these academic frameworks, ‘harm’ remains difficult to quantify and as such has become a contested term in the debate over regulatory intervention. It is important to note that when researchers have attempted to create standardised instruments to measure harms experienced as a result of gambling (as distinct from measuring prevalence rates of gambling disorder), some of these have resulted in claims that the burden of harm from gambling falls predominantly on low-risk and non-problem gamblers. One concern raised by some academics is that such an approach is based upon establishing a relatively low threshold for ‘harm’, meaning the line becomes blurred between genuinely harmful behaviour and opportunity cost. Delfabbro and King have argued that “a question, therefore, has to be raised as to whether these are genuine forms of harm. If one were to spend more money on shopping, subscribing to a new television channel, or going to sporting events, would not the same sorts of harm occur? The danger here is that if one softens the definition of harm, then it becomes possible to show that harm occurs at any point at the continuum.”⁸¹

The lack of reliable data on harm, already flagged by both Gaskell and Gambling With Lives, was also raised in the Lords Inquiry, which stated that “all the witnesses who have spoken to us about the available data have without exception criticised the lack of reliable data and the urgent need for more research.” The Inquiry notes that the British Gambling Prevalence Survey (BGPS), which was discontinued in 2010, was designed to measure not only the prevalence of gambling participation but also the prevalence of problem gambling and gambling-related harm in relation to socio-demographic factors and attitudes. It makes the recommendation that “the British Gambling Prevalence Survey be reinstated as a first step towards understanding how gambling and gambling prevalence are changing in the UK”⁸² – a position with which we are in agreement.

On the question of a prevalence survey, we note that Public Health England (PHE) has been asked to inform and support action on gambling-related harm as part of the follow

up to the DCMS review of gaming machines and social responsibility. Specifically, this will “conduct an evidence review of the health aspects of gambling-related harm to inform action on prevention and treatment”, alongside two complementary evidence reviews: one led by a research unit at the University of Sheffield to review the effectiveness of national and international policies and interventions to reduce gambling-related harms, and another led by PHE on the prevalence of gambling “and associated health harms and their social and economic burden”.

The objectives of the PHE review are listed as follows:

- To describe the prevalence of gambling and gambling-related harms in England by socio-demographic characteristics, geographical distribution and year;
- To identify the determinants of gambling and harmful gambling;
- To identify and describe the harms to individuals, families, communities, and wider societal harms associated with problematic and harmful gambling; and
- To examine the social and economic burden of gambling-related harms.⁸³

Recommendation

Acknowledging the complexities and controversies of defining ‘harm’, as outlined above, we welcome both the Lords Inquiry recommendation to reinstate a prevalence survey of gambling-related harms and the PHE review of the evidence base. We therefore recommend to Government that the forthcoming review of gambling legislation should include a review of the evidence base for gambling-related harm, drawing on the recent Health Survey data and the ongoing work led by PHE, with a view to establishing an index of harm on which future regulatory interventions can be based.

CHAPTER 3 - GAMBLING AFFORDABILITY

Overview

In the previous chapter, we pointed to discrepancies between the amount of money that can be staked on a physical machine and the amount that can be staked on an equivalent game online. We have called for an overhaul of the categorisation of remote gambling, including the possible introduction of stake limits to some types of remote content, with the view that this would ensure greater regulatory harmony and increased customer protection.

As well as the question of limits to content, there is also the question of limits to the amount of money that can be deposited into an online gambling account. We recognise that it is inevitable that gamblers will sometimes spend more than they can afford, and that irrational decision-making and impulsivity is an inherent characteristic of gambling. However, studies have shown that remote content has particular associations with more extreme types of loss-chasing behaviour and disordered gambling, because of the rapid speed and higher stakes involved with online games.⁸⁴

We believe that individuals should be at liberty to gamble as self-determining agents within a free market. At the same time, if that activity becomes disproportionately more costly than their income allows, making gambling not just unaffordable but also a precipitant of harm, then it is not unreasonable to suggest that it should be mitigated by the protective influence of regulation.

We are fully aware that the question of affordability is a complex and controversial one because it touches upon the extent to which the spending, and therefore the economic agency, of a free individual should be limited by the state. But this does not mean that the question should be avoided simply because it is complex or controversial.

The Gambling Related Harm APPG has referred to affordability as being a key factor in protecting people from harm. The APPG notes that “online gambling companies oppose stake limits. The operators have reported to us that stake limits are not needed as they have data to identify those who are at risk of harm or gambling beyond their means. Yet, when we asked operators about what was an affordable level of gambling for an individual, they all reported that they did not yet have a clear view of what that was. This is inconsistent with operators saying that they do not need online stake limits as they have the data to assess where gamblers are at risk and gambling more than they can afford.”⁸⁵

In other words, online operators state that their automated systems can detect the profiles of problem gamblers and can intervene when someone is spending more than they can afford, yet there is no industry-wide accepted definition of affordability. This means that interventions are left to the discretion of a particular company, rather than being applied as a regulatory standard.

In this chapter, we argue that the question of affordability should not be left in the hands of the operators. We propose a thresholding system that is based on household disposable income and Minimum Income Standards (MIS), establishing a ‘soft cap’ on gambling expenditure through which a customer can only pass to place higher deposits after an enhanced affordability check has been made. For this system to be effective, it would need to work across all operators and be fully independent of the industry, managed by a third-party data depository. We argue this should be the role of the new Gambling Ombudsman.

Affordability is not an unambiguous concept. While it is understood that a commodity or service is unaffordable when it costs more than an overall budget, there are many ways of determining what a budget means. When used in a specific environment, it is inevitable that ‘affordability’ will have contrasting meanings, understandings, and applications. Different areas of the economy are comprised of different market conditions, and there will always be subjective preferences on how much should be spent on a particular commodity or service.

However, by identifying a range of models and establishing a set of common principles that can be applied across contexts, it is possible to put together a working definition of affordability. Economic sectors associated with everyday spending and affordability include housing, food, and medicine; a comparative assessment of these sectors can help determine a universal body of precepts. There is currently no common model of affordability within the gambling industry, but evidence from other markets point to a framework of best practice.

In the housing sector, affordability is typically used in relation to social housing, where homes are subsidised by government so that they become ‘affordable’ for those with less income. It may also be used in a more general way to describe housing considered to be affordable through the analysis of measures such as earnings and housing costs.

There is currently no statutory definition of housing affordability in England,⁸⁶ and it has been suggested that the concept should be abandoned.⁸⁷ For example, ‘affordable rent’ can be anything up to 80% of current market value. This does not always translate as being within budget for households, especially for those on lower incomes or for those that live in more expensive areas. There is also a view within the housing sector that a failure to set income-related affordability results in definitions which lack credibility, and there is little evidence of what a maximum amount or percentage of earnings should be in terms of housing costs.⁸⁸

Despite this ambiguity, definitions used within the housing sector include:⁸⁹

Definition	Description	Distinction
Family budget standards ⁹⁰	Based on the analysis of how much should be dedicated to housing costs to achieve a certain standard of living.	It is difficult to find universal poverty thresholds for housing.
Housing cost to income ratio ⁹¹	The proportion of a household’s disposable income spent on housing.	It does not account for whether income after housing costs is enough to live on.
Housing cost to earnings ratio ⁹²	The ratio of median house prices in the area to median earnings of a full-time employee in the area.	Earnings data is only a partial measure of income, particularly for low-income households.
Residual income approach ⁹³	Defines housing as affordable if a household is able to meet other basic needs after paying for housing.	Is the most comprehensive indicator of affordability as it controls for different types of households.

Residual income stands out as being the most practical definition of affordability in the housing market. It makes sense that affordability should be defined in terms of what people can afford to pay, rather than a threshold that is defined by the market value. Adopting this approach, the 2019 Affordable Housing and Land Compensation Bill states that homes should only be deemed affordable if they cost no more than 35% of household income for lowest quartile income groups.⁹⁴

A Minimum Income Standard (MIS) builds upon the residual income approach, as well as family budget standards, by defining housing as affordable if “a household is able to afford to meet their other basic or essential needs after paying for their housing” in order to reach a minimum socially-acceptable standard of living.⁹⁵ Here, affordability reflects a person’s lived circumstance and how much money they actually have to spend. Indeed, research has found that interpretations of housing affordability change significantly if MIS is adopted, particularly for low income groups.⁹⁶

In the food sector, affordability is typically associated with production, whereby market analyses of food security are used to estimate and evaluate supply and demand, as well as consumption, by looking to identify the micro-level income requirements needed for a household to attain a nutritious diet.⁹⁷ Definitions include:

Definition	Description	Distinction
Food budget share ⁹⁸	The share of total household expenditure devoted to food.	Shows that poorer people devote a larger share of their resources to food, and is therefore a good indicator of food insecurity.
Food prices to labour earnings ratio ⁹⁹	A measure of how many hours of work are needed to earn a given amount of food.	Is easily interpreted for understandings of food security but is not comprehensive.
Food cost to household income ratio ¹⁰⁰	Measures the average household’s food expenditures as a proportion of disposable income.	Approaches affordability from a cost perspective, not a market perspective, to capture socio-economic conditions.
Relative deprivation approach ¹⁰¹	Compares households’ food expenditure with the amount of money needed to have a socially acceptable diet.	Identifies which households are spending less than expected and might therefore be at risk of food poverty.

According to this, definitions of food affordability emphasise income rather than market values. Disposable income stands out as being the most commonly cited measurement of food affordability and reveals itself as the most useful definition, as it would be illogical to suggest that anything which costs more than a household’s available finances is affordable. Again, a Minimum Income Standard approach is especially insightful here as it refers explicitly to budgets and to living standards, thus providing an assessment of the adequacy of incomes.¹⁰²

In the healthcare sector, affordability is an important concept as it has significant implications for people’s health and well-being. Health bodies have the task of deciding whether they can afford to fund an intervention or product, while households have to decide whether they have enough money to purchase that treatment.¹⁰³

Interpretations of how to finance health care therefore have a significant bearing on consumption and on understandings of poverty. Though it may also be calculated via low-skilled labour earnings,¹⁰⁴ the World Health Organisation indicates that two approaches can be used to measure affordability.¹⁰⁵ These include:

Definition	Description	Distinction
Cost to household income ratio	Payments are deemed unaffordable if a household spends a large amount of its budget on an item, reducing its consumption of other goods and services.	The affordability threshold is subjective, placing an onus on individual choice rather than providing an objective position on affordability.
Residual income approach	Considers the quantity of absolute available resources after paying for a health product.	If a household drops below the poverty line after paying, it serves as an indicator of impoverishment.

As with the housing and food markets, affordability in the health sector appears to be best represented by disposable household income. Although the benefit of medicine will usually outweigh potential costs, the function of drug prices invariably relates to a household’s actual financial circumstances. Both approaches are helpful in this regard, but residual income demonstrates how affordability relates to people’s material status more clearly.

A comparative assessment of these different sectors allows us to identify common themes from which a working definition of affordability can be ascertained. These are threefold:

1. Affordability should be viewed from a cost perspective rather than a market perspective: an individual’s financial position rather than the price of the product itself. This captures the socio-economic context of people’s lived circumstance.
2. Household income is the most adequate indicator of an actual financial position. It may be reflected by the budget standard, cost to income, or residual income approaches.
3. Across each sector the residual income approach stands out as being most useful, and it should be considered as the central principle for any affordability model. It shows how household expenditure reflects one’s *ability* to pay for things, it is comprehensive as it controls for different types of households, and it serves as an indicator of deprivation. When supplemented with a Minimum Income Standard (MIS), income is framed within the context of living standards and therefore the adequacy of income is also assessed.

Once a definition of affordability is established, it is necessary for it to be actualised and assessed in the market. Data collection on individual decisions and behaviours is now a main driver in today's information economy, and is key to the question of affordability. All large companies are in possession of such data, as consumer behaviour can be used to provide significant insight into marketing, operations, and even products themselves.

In terms of gambling, detailed information about each consumer is recorded, stored and analysed by remote operators. Though data is primarily harnessed for market-based insight and analytics, it can also be used to ensure that gambling operators meet regulatory standards. But herein lies a conflict: the stated purpose of the current regulatory framework is to facilitate the sustainability and fairness of the market by maximising strengths *and* minimising harms, yet the sharing of data on affordability is not enshrined as a licensing condition.

All remote operators collect data on their users in order to monitor customer behaviour and calculate risk.¹⁰⁶ But because of the inherent competitiveness of the industry, these data repositories are not shared. This means that gamblers – including disordered gamblers – are able to drift between different operators, and information about their behaviour becomes siloed.

Research has shown that the commercial interests of operators act as a major barrier to data-sharing within the industry, as some businesses fear inequity in profits due to sharing data with rivals who may not do the same. It has been highlighted that if there were all-inclusive discussions for gambling operators to share data with competitors and with gamblers themselves, then data sharing could be more easily achieved.¹⁰⁷

At present, there is no universal framework of the measurements used by individual operators to protect people from harm, and no independent third-party data depository exists through which information on customers can be collated and exchanged. This has been flagged in the recent National Audit Office report, which identified gaps in the data used by the regulator to identify patterns of problem gambling behaviour.¹⁰⁸ Rebecca Cassidy has argued that access to industry data should be a key condition of gambling licensing.¹⁰⁹

In this chapter, we make four key recommendations on the question of affordability. We propose a working definition of affordability based on our analysis of government and third sector statistics, and from this definition we present a model of affordability based on Minimum Income Standards and leisure activities expenditure. Our model enables us to conclude that a 'soft cap' threshold of £100 per month, based on net deposits, should be applied across operators on all remote gambling activity, after which enhanced customer due diligence checks should be made.

To ensure the independence of this affordability model, we propose that the new gambling ombudsman should fulfil the role of a third-party data depository, providing a point of liaison between operators, credit agencies and banks in order to keep all consumers' gambling data 'under one roof'. This would also ensure that if the ombudsman is required to investigate a customer's complaint, it already has access to the information needed to make an independent assessment.

Establishing a definition of affordability

We assess gambling affordability from a cost rather than market perspective. According to the Financial Conduct Authority, commonly-used affordability measures are based

around debt to income ratios, which are then compared with a predetermined threshold in making affordability decisions.¹¹⁰ For Experian, one of the UK's largest credit reporting agencies, criteria include: a borrower's disposable income, their likely future disposable income, their credit history, existing and future financial commitments, and their 'vulnerability'.¹¹¹ As with other sectors, disposable income is central to that assessment. According to this specification, affordability can roughly be defined as income minus commitments.

A socially responsible model of affordability is only fit for purpose if it captures different income indices. Because gambling has a clear socio-economic gradient,¹¹² so too should gambling-related definitions of affordability. As such, we argue that household residual income should form the basis of a working definition of affordability so that different types of families can be assessed, including those which might be at risk of deprivation.

According to the Office for National Statistics, disposable income is the most widely used measurement of household income, referring to the amount of money that households have available for spending after direct taxes have been deducted. This includes earnings from employment, private pensions and investments, as well as cash benefits provided by the state.¹¹³ In terms of understanding low income, 'households that fall below average income' (HBAI) is the foremost reference for household income and inequality in the UK, and it is often used as a proxy for living standards. HBAI after housing costs is a typical measure of disposable income.¹¹⁴

However, because some households are unable to reach a socially acceptable standard of living, it is also important to consider the application of income. The Minimum Income Standard (MIS) is carried out by the Centre for Research in Social Policy at Loughborough University and is supported by the Joseph Rowntree Foundation to reflect what the public thinks is a minimum living standard. It is used to understand the adequacy of income levels in the UK today,¹¹⁵ has been adopted by the Living Wage Foundation to calculate the Living Wage,¹¹⁶ has been used to support a High Court ruling on asylum seekers' benefits,¹¹⁷ and has been used to consolidate residual income approaches across different sectors.

By representing a budget standard – an approach also used by some parts of the housing and food sectors – comprised of a list of costed items, such as food, council tax, clothes, travel and rent, MIS establishes a threshold below which households will struggle to have the goods and services needed to properly participate in society. MIS represents the 'floor amount' of what people can spend (on anything) in a socially acceptable way. As a result, it also provides a threshold for *assessing* income, serving as a proxy for living standards.

Recommendation

Based on this, we therefore adopt the following definition of gambling affordability: gambling is only affordable when it does not impede other financial commitments, as determined by MIS, that a household must fulfil in order to achieve a socially acceptable standard of living. Once these commitments are met, individuals are free to spend as much of their disposable income on gambling as they see fit. This way, individuals are able to spend within their means, thereby limiting opportunities for harm.

Establishing a working model of affordability

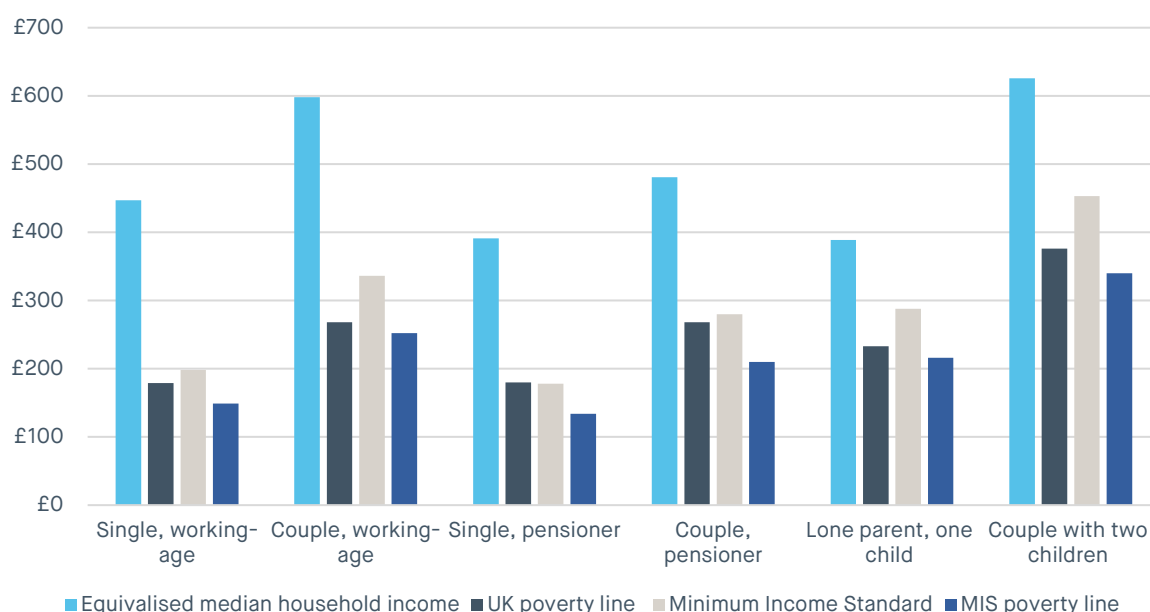
Regular research on the Minimum Income Standard produces budgets for different household types, based on what members of the public think is needed for a decent standard of living in the UK.¹¹⁸ It assesses what items are needed for a minimum socially acceptable standard of living and, as a result, what should be included within a household budget. Below, we propose a socially acceptable budget for gambling according to the MIS approach.

A socially acceptable budget for gambling is here understood as a proxy for the MIS budget for ‘social and cultural participation’, which is comprised of leisure goods, pets, entertainment and recreation, TV licence and rental, and holidays.¹¹⁹ As gambling is regarded as being part of the hospitality, retail, and leisure sector, and is regulated and legislated as a cultural industry,¹²⁰ we believe that it is legitimate for the MIS budget set aside for ‘social and cultural participation’ to be allocated to gambling, if consumers of these activities so wish.¹²¹

In order to understand how a socially acceptable gambling budget relates to the situations of those that are less well-off in society, it has to be contextualised by income thresholds. Research into MIS states that those that live in households at or below 75% of MIS – the amount of money needed per week to achieve a socially acceptable standard of living – can be recognised as being ‘low income’. This threshold is often used as a poverty indicator and as a way of describing deprivation, as incomes below this level are four times as likely to lack the necessities of people with incomes of MIS.¹²²

By looking at a comparison of different income standards, set out in Figure 6, we can see that the MIS poverty threshold is lower than that of the UK poverty line. As it is the only measure that can align with budget standards, and as it is the lowest possible indicator of poverty available, the MIS low income threshold is the most suitable representation of household income for those that might be most vulnerable.

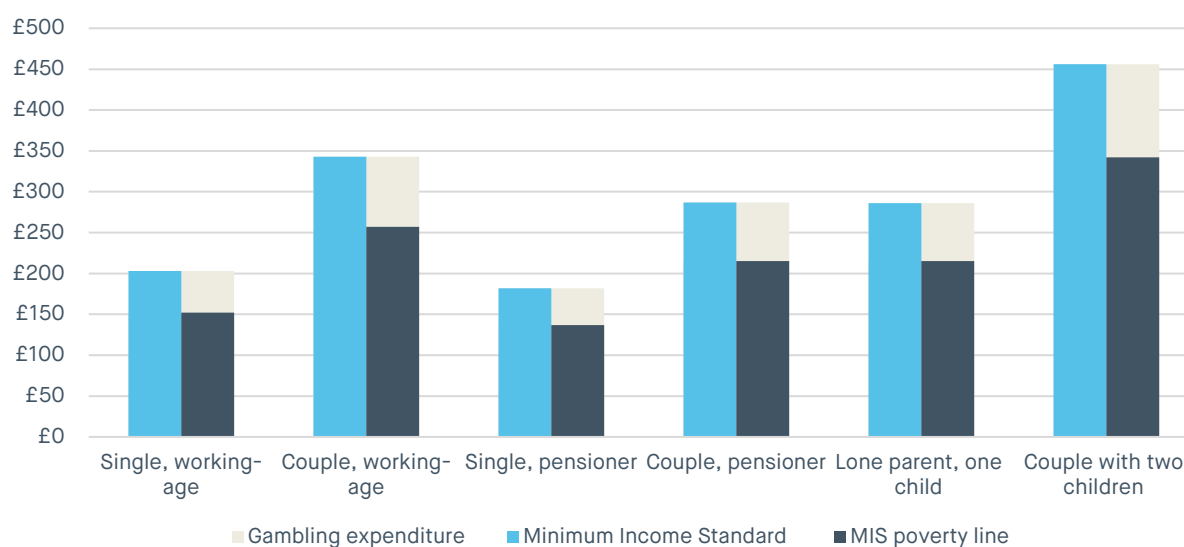
Figure 6: Comparison of different income estimates for different household types per week



Source: DWP (2018-19); Minimum Income Standards data, Loughborough University (2019); SMF analysis

Figure 7 shows the weekly amount of money needed for people to spend on gambling in order to push their household from a decent, socially acceptable standing of living into having a very low amount of disposable income – the point that meets the MIS poverty line. While this amount varies from family to family, the lowest amount (which is for a single pensioner household) is calculated at £45. We can therefore say that £45 would be an affordable amount of spending for anyone to ensure that they do not put themselves into serious financial jeopardy.

Figure 7: Gambling expenditure needed to push households below a socially acceptable standard of living



Source: DWP (2018-19); Minimum Income Standards data, Loughborough University (2019); SMF analysis¹²³

However, a model of affordability should not exist simply to prevent people from the worst-case scenario of reaching poverty. It should also identify how gambling expenditure might impact disposable income in an everyday sense, protecting people from spending beyond their and their family's means without necessarily amounting to severe hardship. For many households, a socially acceptable gambling budget (as per the MIS social and cultural activities budget) is lower than £45. By looking at each type of household individually, we can see that the lowest budget is set at £23.¹²⁴

Table 3: MIS weekly social and cultural participation budget

Household types	Social and cultural participation budget per person
Single, working age	£44
Couple, working age	£37
Single, pensioner	£48
Couple, pensioner	£41
Lone parent, one child	£34
Couple with two children	£23

Source: Minimum Income Standards data, Loughborough University (2020); SMF analysis

Our affordability model proposes a socially acceptable gambling budget for different family types according to Minimum Income Standards (MIS). The model identifies a threshold at which gambling expenditure (as defined by individual spend on social and cultural participation) would affect a household's disposable income and the essential needs necessary to achieving a socially acceptable standard of living.

Recommendation

We identify the 'floor amount' of this budget as £23 per week: it is the minimum amount of money that, according to the Minimum Income Standard, all families need to have in order to participate in social and cultural activities (or, if they wish, gambling); while at the same time it sits well below the £45 threshold that would push some people into more acute vulnerability and poverty.

Deposit limits: the case for a £100 per-month soft cap

We recognise that affordability can change depending on circumstance. We also recognise that some free agents engaging in a fair market might want to spend more than others, and that affordability will mean different things to different people. However, we maintain that when it comes to preventing gambling-related harm, consumer protection is a priority.

We believe that this balance between free agency and protection can be achieved in two ways. First, it can be achieved by applying a 'soft cap' approach to the question of affordability: for any spending up to that cap, deposits are not checked beyond the minimum requirements of identity and age verification; once the threshold is crossed, enhanced customer due diligence and affordability checks are made.

Second, it can be achieved by applying a limit to net rather than actual deposits. Net deposits refer to the total amount a customer deposits into their account deducted by total withdrawals made from their balance. This gives a more detailed view than simple deposits, as it includes funds withdrawn in the event of any winnings. We believe that net deposits should be reviewed independently on a weekly and monthly basis rather than over longer periods, in order to take into account shorter-term patterns of customer behaviour (winning and losing streaks).

Our analysis of MIS adopts a thresholding system whereby the weekly minimum amount needed to engage in social and cultural activities (within which we include gambling) is £23 per week. This equates to £100 per month. Any more than this would be an infringement on other spending necessities for some households. It is also far higher than actual spending, according to ONS estimates. In 2018-19 the average spent on all forms of gambling each week across all households was £2.60.¹²⁵ Secondary analysis of the most recent ONS Living Costs and Food Survey data (2017-18) has showed that the average spent by people who gamble across multiple activities is £8.50 per week, whereas the average amount spent on betting, bingo, and lottery per week is £8.20.¹²⁶

This mirrors data in a study by Forrest and McHale, which found that "the majority of players spend relatively low amounts of money. For example, 73.2% of slots players and

85% of non-slots players either won money over the month or had a loss of £50 or less. While harm can be found among low- as well as high-level gamblers, it would be fair to note that an expenditure of £50 per month is by no means remarkable across leisure pursuits.”¹²⁷

Furthermore, it mirrors recent polling conducted by Survation, which has shown that 65% of people believe the maximum amount of money per week that customers can deposit in an online gambling account should be less than £50. The poll shows that 24% believe it should be between £25 and £50, with 22% supporting a limit somewhere between £10 and £25.¹²⁸

Considering the spending threshold outlined in these various studies, it is clear that our soft cap proposal of £100 a month (which would equate to £23 per week) is representative not just in terms of living standards and national spending estimates, but also in terms of the majority of gambling activity and also public opinion. According to this research, our proposal of a monthly £100 soft cap – which would be double the £50 referenced by Forrest and McHale – on net deposits is a long way off impeding the average gambler’s weekly expenditure.

In other words, our proposed weekly threshold sets the bar low enough to protect everyone, including those on low income, but is high enough to reflect the vast majority of gambling activity among the general population. If a gambler who is not on low income exceeds the £100 monthly (£23 weekly) limit on net deposits, then they would become subject to enhanced affordability checks and, supported with closer oversight, will be free to deposit larger amounts.

Recommendation

We therefore argue that a ‘soft cap’ limit of £100 per month (or £23 per week) on net deposits should be applied to all customer spending. Expenditure of up to £23 per week is far more than what the majority of gamblers actually spend, while also being a threshold that ensures (according to our analysis of income and living standards) that gambling activities do not amount to serious financial harm.

Taking responsibility for affordability: the Gambling Ombudsman

The question of affordability is of particular significance for households that are socio-economically vulnerable, as disposable income is less available to them than it is for others. During the debate over FOBTs, research showed that clusters of betting shops were disproportionately located in areas of higher social deprivation.¹²⁹ Yet there is a lack of equivalent data that would identify links between living standards, deprivation and online gambling. We have referred to the gaps in the evidence base in Chapter 2 of this report.

A key challenge to the evidence base for online gambling is the fact that the operators hold the vast majority of data needed for it to be independently assessed. Our report has presented a working definition of affordability and has applied that definition to a

proposed limit on net deposits. But in order for such a model to be integrated across the remote sector, operators need to make transparent and available the data they hold on their customers.

This has been highlighted by the Government in a letter from the Minister of Sport, Nigel Huddleston, sent to the Chief Executive of the Betting and Gaming Council to address concerns about problem gambling during the COVID-19 lockdown. During the crisis, the Gambling Commission issued advice to operators that they should review thresholds of play and spend patterns, and conduct affordability assessments of their customer base.

In his letter, the Minister stated that “it is essential that the Government and the regulator have access to up-to-date information and granular detail on gambling habits and potential harms during the time of heightened risk. You will today be receiving a data request from the Gambling Commission which will allow us to make a full assessment of the impact of the current situation. Fulfilling this request comprehensively and quickly should be a priority for your organisations”.¹³⁰

While concurring with the Minister’s words, we would argue that data transparency should extend beyond the current public health crisis and, crucially, should not be left as a request to be fulfilled at the discretion of individual operators. Affordability can only work if it is implemented across operators and if data is shared transparently. This requires a third party which can liaise with both the Financial Conduct Authority (in order to access enhanced data) and the Information Commissioner’s Office (in order to protect privacy), as well as credit rating agencies and banks. The sharing and transparency of data should be a regulatory requirement. It should not be left subject to what currently amounts as self-regulation.

We recognise that such data will inevitably contain commercially sensitive material, that regulation would not necessarily benefit from this data being made available to the public domain, and that transparency between industry and regulator does not necessarily translate to total public disclosure.

Because of the zero-sum competition that defines the gambling market, the required data pool that would allow for information sharing does not exist. Operators fear that giving up their data would mean giving up a market advantage, particularly if there is no guarantee that their competitor will do the same. There is therefore a clear need for an independent third party which has full access to industry data without exposing this data to commercial competitors or the public domain.

In the world of consumer credit, a credit reference agency would usually serve as a custodian of credit information. These agencies collect data from a variety of sources in order to provide credit assessments – such as credit scores – to lenders.¹³¹ It is generally understood that transparent credit information is a prerequisite for risk analysis, including questions of affordability. But in the case of gambling data, it becomes problematic for a credit agency to fulfil the role of a third-party data depository, as these agencies will often have gambling operators as their clients. They are not truly independent.

Recommendation

We therefore propose that the most suitable third-party depository for remote operator affordability data would be the new Gambling Ombudsman. This ombudsman would be a public agency with statutory authority, as we outline in Chapter 5 of our report, and would provide a formal, independent point of liaison between remote gambling operators, credit agencies and banks in order to maintain customer data 'under one roof'. It would also ensure that the ombudsman already has full access to the information needed to make an independent assessment of potential customer complaints.

CHAPTER 4 - GAMBLING TAXATION

Overview

In 2016, a series of leaked documents known as the Panama Papers revealed a global network of tax avoidance. By exploiting a range of complex loopholes involving offshore business entities and financial centres, thousands of corporations, high net worth individuals and political leaders were accused of having based their wealth in jurisdictions which offer schemes of low taxation and which do not require transparent business practice.

The Panama Papers highlighted the widespread presence of offshore tax schemes, and how these schemes are routinely used for corporate gain. It was estimated that the tax avoidance revealed in the Papers resulted in up to €237 billion of reduced revenue to the budgets of Member States in the European Union alone.¹³²

It is well known that many large multinational corporations make use of such schemes in order to minimise their tax burden, often in places where they generate the most amount of profit. This deprives governments and their populations of money that would otherwise go towards public services or to tackling income inequality. According to the World Economic Forum, tax havens have become a defining feature of today's global financial system,¹³³ and they collectively cost governments between £400 billion and £500 billion a year in lost corporate tax revenue.¹³⁴

Such arrangements are routinely found in the global tech industry. In the past decade, the world's largest and richest US technology companies have consistently avoided paying corporate tax, amounting to a 'tax gap' of more than £77 billion since 2010.¹³⁵ It is believed that the majority of this corporate tax avoidance "almost certainly" comes from tax havens associated with overseas operations.¹³⁶ For example, Google has been accused of using a regulatory loophole known as the 'double Irish, Dutch sandwich',¹³⁷ Apple has been accused of circumnavigating tax commitments in Ireland – paying less than 1% of its European profits¹³⁸ – and Amazon has been accused of exploiting a similar scheme in Luxembourg.¹³⁹

The avoidance of corporation tax has become a prominent issue in political debate, and tech firms are being placed under increasing demands to pay their dues. As part of a "fairer and more efficient" response to the question of offshore tax avoidance, France became the first major economy to impose a levy on the world's technology giants. The so-called GAFA tax – an acronym for Google, Apple, Facebook, and Amazon – legislates a 3% tax on the total revenues of services provided to French consumers. Six other EU member states are considering similar systems, with the European Commission also supporting such plans.¹⁴⁰

In the UK, five of the biggest US technology firms paid just £237 million in corporation tax in 2018, despite making a combined profit of more than £8 billion from their British businesses in the same year. According to TaxWatch, an investigative think tank which conducts research and analysis on tax avoidance and policy, the corporation tax bill for Apple, Google, Cisco, Facebook, and Microsoft would have exceeded £1 billion in 2018 if tax on UK profits had been paid.¹⁴¹

In the UK, the Government has recently introduced a Digital Services Tax at a rate of 2%. As part of this duty, which is placed only on large multinational corporations, thresholds are conditional – meaning that revenues must exceed a certain amount globally and a

certain proportion of that amount must be derived from UK-based users. Revenue is used to determine tax liability, establishing a minimum contribution that digital businesses must make in return for accessing the British market.¹⁴²

This principle is not confined to big tech. In terms of the property market, HMRC recently extended its rules on capital gains tax by ruling that non-resident owners of a UK property or property fund, even if registered offshore, would have to pay tax on all sales made.¹⁴³ Other sectors are also being encouraged to bring their more intangible assets onshore. In the EU, for example, many companies are now being incentivised to restructure their intellectual property, such as branding and innovation, in order to transfer profits to the tax authorities where their operations take place.¹⁴⁴

We believe that the current trend towards onshoring should serve as the framework for a new culture of tax reform within the UK-based remote gambling industry.

For the past six years, remote gambling taxation in the UK has been determined by the Gambling (Licensing and Advertising) Act 2014, which introduced the so-called ‘point of consumption’ principle to Remote Gaming Duty (RGD). This duty is meant to apply to any gambling operator which supplies remote content to UK-based consumers, as well as some terrestrial gambling operators, and its introduction invoked the repealing of the double taxation relief put forward in the 2012 Budget.

Enshrined in the Finance Act 2014, the duty defines the UK-based consumer as “an individual who usually lives in the United Kingdom” or “a body corporate which is legally constituted in the United Kingdom” and is chargeable on “the gaming provider’s profits” (which are calculated as stakes received, less winnings paid out) at a rate of 21%.

The policy objective of this change in 2014 was, in the words of HMRC, to ensure “remote gambling operators will pay tax on the gross gambling profits generated from UK customers, no matter where in the world the operator itself is located.”¹⁴⁵

Despite the intention that remote gambling operators should pay gambling tax on profits generated from the UK, many remote operators remain clustered in what can only be described as offshore tax havens. There is almost not a single British operator which is fully headquartered in the UK and even some of the best-known British gambling brands are used as trading names for entities based overseas. It is true that these operators pay RGD at the point of consumption but, by locating themselves in locations such as Gibraltar, Alderney and the Isle of Man, they are able to minimise their wider tax burden while remaining in the British market to maximise revenue.

Because of this, the types of ownership and corporate structures inherent to these tax havens have been described as “gambling’s biggest secret... the bearers of opaque offshore finance”, leading Conservative MP Andrew Mitchell to state that “overseas territories and crown dependencies which have our Queen and flag must also accept the values which have driven the promotion of openness and transparency”.¹⁴⁶ In 2013, *Guardian* columnist Simon Jenkins described Gibraltar as having “made a particular specialism of internet gambling. Colonies claim allegiance to the crown, but not to its exchequer, or its financial police.”¹⁴⁷

In other words, a situation exists whereby a significant proportion of remote gambling content provided to UK-based customers originates from outside the UK; where headquarters, servers, and customers are spread across jurisdictions and territorial borders; where one remote operator is known to pay tens of millions of pounds in corporation tax to the UK Treasury while many of its competitors pay significantly less; and

whereby, according to 2017 statistics, at least 55% of the remote gambling services provided to UK-based customers are provided by companies based in Gibraltar.¹⁴⁸

As we outlined in Chapter 1 of this report, the result is a 3-tiered system of remote gambling operators.

First, many well-known British high street brands are essentially trading names for companies headquartered in jurisdictions like Gibraltar. A simple search of the Gambling Commission's public register will provide numerous examples of this. UK corporation tax is not always paid in full by these operators, despite their profits coming from the British market. In a recent report written – though not yet published – by Landman Economics, it is claimed that the total amount of corporation tax avoided by the biggest UK-facing operators who base their headquarters offshore was over £800m between 2015 (when the point of consumption rule was implemented) and 2019. It should be noted that, in the same way we reference an internal PWC report on gambling black markets in Chapter 1, while we have been given access to the Landman report we remain reluctant to further expand upon or critique its findings until it has been made publicly available.

Second, the Government currently allows foreign operators, no matter where they are headquartered, to participate in the British market providing that they are licensed by the Gambling Commission and they pay Remote Gaming Duty. MoPlay would be a prime example of this, as it is a trading name (until it went into administration earlier this year) of Addison Global, which is based in Gibraltar. Other examples would be Mansion, also based through its servers and workforce in Gibraltar; and LeoVegas, a company with servers initially based in Malta, now on Google Cloud, and with the majority of its jobs advertised in Malta and Sweden. All of these companies have been major sponsors of English Premier League football clubs in recent years.

Third, the regulator also allows offshore operators that do not hold a licence issued by the Gambling Commission to enter the British market using so-called “white labels”. These are operations which are based almost always overseas, and which are only able to access the UK market through arrangements with UK licence holders. Most white label operators are Asian and African-facing outfits, which use their access to the British market to advertise on football league club shirts for their own domestic audiences. Examples include SportPesa, Fun88, and KB88, sponsoring Everton, Newcastle United and Wigan Athletic respectively. We have discussed the issue of white labels in detail in Chapter 1 of this report, and have called for their immediate end.

This 3-tier system of remote gambling operators leads to inevitable regulatory confusion. For example, Unibet's website states that its servers are based in Malta, Alderney and Gibraltar, that it is registered and licensed in Gibraltar, but that it is listed publicly on the New York Stock Exchange.¹⁴⁹ In terms of differences between legal accountability, Mansion's terms of service are governed purely by Gibraltar law,¹⁵⁰ whereas Casumo's are governed by England and Wales but its disputes are settled within the ‘exclusive jurisdiction’ of Maltese courts.¹⁵¹

These are obvious disparities within the regulatory and commercial framework, and it is not surprising that many companies take advantage of systems which maximise their market share while minimising their tax burden. Because of this, we argue that incentivising remote gambling operators to establish a more substantial footing in the UK would achieve the following benefits:

- First, it would ensure a more efficient system of remote gambling taxation which would, by extension, lead to increased revenue for the Treasury. At present, the total Gross Gambling Yield of the remote sector is £5.5 billion.¹⁵² If over 50% of remote gambling services come from companies based in Gibraltar alone,¹⁵³ most of which did not pay remote gaming duty prior to 2014 and many of which do not pay corporation tax today, this represents a significant loss of potential revenue to the Treasury.
- Second, it could create more employment opportunities in the UK for those who want to work in the sector. The Gambling Commission claims that around 10,000 people work in remote gambling in the UK.¹⁵⁴ This means that as many people work for the British-facing remote sector in the offshore territories of Gibraltar, the Isle of Man, Alderney and Malta combined as they do for companies in Britain itself.¹⁵⁵
- Finally, it would make it easier for the regulator to act decisively when LCCP rules have been breached (see Chapter 1 of this report). As it stands, it can be difficult for the regulator to intervene properly when companies are headquartered abroad and operate under different terms of service.

To achieve these aims, we argue that a full review of gambling taxation should be carried out, as was pledged by HMRC in 2014, and that a principle of ‘footprinting’ should be established. In this chapter we define what we mean by a ‘footprint’ by examining the human, social, legal, capital, and community costs of gambling. When a footprinting principle is applied to the taxation of remote gambling, we argue that the point of consumption rule effectively becomes redundant – leading us to call for a full review of the 2014 Gambling (Licensing and Advertising) Act.

A review of gambling taxation

Prior to the changes made in the 2014 Gambling (Licensing and Advertising) Act, HMRC conducted an assessment of the potential impact of these changes on the economy, on individuals and households, on civil society and on equalities. As part of this assessment, HMRC stated that “consideration will be given to evaluating any benefits, revenue effects, and changes in administrative burdens arising from the remote gambling taxation reforms after five years of monitoring data have been collected and analysed. In the meantime the effects of the remote gambling taxation reforms will be kept under review.”¹⁵⁶

This 5-year evaluation of Remote Gaming Duty was not carried out. In September 2019, the Shadow Culture Secretary submitted a written parliamentary question to the Chancellor of the Exchequer, asking him “what the timeframe is for the five-year review of remote gaming duty set out in the 2014 HMRC draft note on Remote Gambling Taxation Reform.” The response to this written question from the Treasury was that “the benefits, revenue effects and administration of remote gambling taxation are subject to constant evaluation. We currently have no plans to publish any review or evaluation document.”¹⁵⁷

We believe that a full review of gambling taxation, including betting and remote gaming duty, should be carried out as a central part of the Government’s wider review of gambling legislation. This review should achieve the following:

- First, it should include an assessment of the number and nature of any tax avoidance schemes connected to the remote sector, with particular focus paid to offshore gambling operators currently active in the UK;
- Second, it should assess the economic and social benefits of applying a minimum onshore ‘footprint’ threshold to the remote sector;

- Third, it should examine the current rates of betting and gaming duty, making an assessment of these duties in relation to an operator's onshore footprint and payment of UK corporation tax; and
- Fourth, it should review outdated tax structures of land-based venues such as casinos and betting shops – many of which stem from legislation which predates the 2005 Gambling Act.

At present, there are structural asymmetries between duties paid by remote operators (currently at 21%), machine gaming duty for land-based operators (currently at 25%), and betting duty (currently at 15% of GGY, the second lowest rate in Europe).¹⁵⁸ In addition, a complex sliding scale of duty is applied to land-based casinos that can be as high as 50%, depending on content, premises, and revenue. It is essential that a review of gambling tax should pay particular attention to these asymmetries, and should consider the options of raising RGD to 25%, in line with machine gaming duty, and raising betting duty to 21%, in line with RGD.

Recommendation

We recommend that the Government should, as part of its wider review into gambling legislation, conduct a review of all gambling taxation since 2014 – as was originally planned by HMRC. This review should assess potential changes to Remote Gaming Duty and Betting Duty, particularly in the context of any fiscal consolidation following the COVID-19 pandemic. It should also assess the relationship between operators being based onshore and the benefits to the Treasury. Crucially, this review should include an assessment of corporation tax currently paid by offshore remote operators, as well as options for potential tax rebates that would reflect a company's onshore footprint.

Establishing a minimum onshore footprint

In this report, we have shown that it is common practice for many remote gambling companies to base their operations in offshore jurisdictions such as Gibraltar and Malta, mitigating their tax duties and maximising their profits. We propose that by establishing a set of onshore 'footprinting' principles that gambling operators would have to fulfil in order to participate in the British market, a fairer relationship between industry, the public purse and wider society can be realised.

'Footprinting' is a term usually associated with the environment or with technology. A carbon footprint refers to the amount of greenhouse gas emissions produced by any given process, individual or organisation, and a cyber footprint refers to online security and the data created when using the internet. In both these contexts, measures of 'footprinting' are used by organisations in order to determine economic performance, quantifying the impact of their corporate activities and assessing the possibility of harm. 'Footprinting' is also one of the main tenets on which the 'polluter pays' principle is based.

We believe that a similar standard should be applied to the remote gambling sector in the context of offshoring and taxation.

It is possible to quantify the capital, human, social, legal and digital impact of a business' activity. We point to these five areas that capture the impact of onshore activity and, by extension, contribute to the wider prosperity of the UK.

We argue that the following categories of footprint should be considered as minimum requirements for participating in the UK market. This is essentially a list of first principles, or industry standards, the technical details of which would be open to further examination as part of the Government's forthcoming review.

1. Capital footprint

A macro-economic 'capital footprint' represents the monetary flows of a company. All gambling companies will be able to demonstrate a capital footprint because they operate in the business of financial transactions and profit-making. A capital footprint typically refers to the amount of sales an organisation has made or how much it contributes to a country's GDP. Both direct GVA, the amount of money generated by a company, and indirect GVA, the amount of money supported by a company's activities through other goods, services, and supplies, are part of the capital footprint. Induced GVA, which is the effect of spending by people employed directly and indirectly, could also be included.¹⁵⁹

2. Human footprint

Employment opportunities are a crucial aspect of company operations. People, labour and livelihoods are the lifeblood of economic activity: they are the 'human footprint' of running a business, and they contribute to government revenue through income tax. Much like GVA, employment can be both direct and indirect: just as GVA arises from immediate economic activity as well as being created from activities supported by that immediate activity, the labour market is also quantified in both immediate and extended terms. Induced jobs are jobs estimated to be created through the spending of employees in shops, services and other businesses throughout the economy.¹⁶⁰

Businesses might also consider salaries made to their employees as being part of a wider contribution to their footprint. Salaries and wages are important to the economy because they allow for reinvestment in regional and local areas through spending in businesses, shops, and services. As mentioned above, spending also provides a region with additional jobs.¹⁶¹

3. Social footprint

A 'social footprint' measures the extent to which a company's economic activity positively or negatively impacts a country's population and their communities. There is no conclusive definition of what a social footprint is, but academic research has provided a range of criteria including a company's impact on labour rights and decent work, health and safety, human rights, governance and community infrastructure.¹⁶² Here, a social footprint can be understood as being a proxy for corporate social responsibility.

In terms of the gambling industry, social footprinting also relates to the *burdens* of economic activity – specifically, the financial, social, and health burdens of problem gambling. Too often, we see the economic benefits of remote gambling extracted out of the British market, while the harm of remote gambling is left onshore. Tax avoidance should be understood as part of that process.

We propose that as a condition for operators to remain active in the British market, they should display a commitment to social responsibility by contributing a portion of their

Gross Gambling Yield to the Research, Education, and Treatment (RET) of problem gambling. In alignment with past research and other recent reports, including those of the Lords Committee Inquiry and the APPG for Gambling-Related Harm, we argue that this contribution should be allocated through a statutory levy.

4. Legal footprint

It makes little sense to encourage a company to establish a greater capital, human and social footprint in Britain if the legal framework of that company remains offshore. At present, the terms and conditions of many remote operators apply to the judicial systems of places like Gibraltar, Malta and the Isle of Man, even though their customers will be based in the UK. This inevitably leads to contradictions in terms of regulation and consumer protection, and means that it can be difficult for the regulator to intervene properly when companies are headquartered abroad and operate under different terms of service. We believe that a minimum 'legal footprint' should be expected of remote operators, bringing them closer in line with the laws of England and Wales, Scotland and Northern Ireland.

5. Digital footprint

Finally, we believe that the servers of UK-licensed remote gambling operators – and the depositories of data those servers hold – should be based in Britain. In that way, British authorities would have the ability to carry out investigations into operational malpractice without fear of operators circumventing domestic laws and regulations.¹⁶³ The prohibition of foreign servers is already established in other regulatory settings. It has also recently been enshrined in the new Kenyan Gambling Act.¹⁶⁴

Recommendation

In short, we argue that a government review of gambling taxation should be based on a principle of minimum onshore footprinting thresholds according to the five criteria of capital, human, social, legal and digital presence in the UK. In terms of how this principle would determine a possible recalibration of gambling tax, we would advocate the possibility of a system of inbuilt incentives – most likely in the form of tax rebates on any future increased rates of Remote Gaming Duty and Betting Duty – for those companies which have established a sufficient threshold of their activities onshore.

The taxation of onshore operators

Since the 2014 Gambling (Licensing and Advertising) Act, the taxation of remote gambling has been conducted on a point of consumption basis. Although this means that operators have to pay Remote Gaming Duty on profits made in the UK, it does not mean that they are necessarily subject to other forms of duty, including Corporation Tax. If given the option – which is what the current legislation effectively allows – we accept that it is perhaps inevitable that operators would choose to headquarter their operations in tax havens offshore.

In this chapter, we have argued for the introduction to the tax system of a principle of minimum onshore footprinting. This would mean that the taxation of gambling operators becomes determined by the extent of that footprint. We believe that such a system should involve the creation of incentives as well as disincentives: for example, the bigger the onshore footprint, the smaller the Remote Gaming Duty. It does not make sense that an operator with a bigger onshore footprint – and all the added capital, human, social, legal and digital presence that comes with it – is subject to the same burden of duty as an operator with almost no footprint at all.

For Remote Gaming Duty and Betting Duty to be structured in this way, we propose that the architecture of gambling taxation should be recalibrated around a system of rebates which reflect a company's level of onshore presence. This means that operators could still decide to base their headquarters in locations like Gibraltar, the Isle of Man, or Alderney, but that decision would carry significant tax implications.

HMRC and the Treasury would determine the scale of both the duty and the rebate, which should be based on the five criteria of onshore footprinting that have been set out in this chapter. We believe that this approach involving a system of rebates is the most feasible option; the alternative – setting a baseline rate of RGD and then adding premiums on top for companies that are found to operate offshore – would, we predict, be susceptible to continual appeals from the industry.

In other words, by rewarding companies that have a bigger onshore footprint with incentives, and by sanctioning those that remain offshore with disincentives, we believe that the thorny question of gambling taxation would become a carrot for remote operators which choose to engage and invest in the UK in a spirit of corporate social responsibility – rather than being a stick with which to beat the industry as a whole.

Recommendation

We therefore recommend that remote gambling tax should be reviewed in order to accommodate a system that is based on the principle of minimum onshore footprinting. This would mean an overhaul of both Remote Gaming Duty and Betting Duty, by introducing a system of tax incentives that are linked to a gambling company's footprint onshore. We recognise that this approach to remote gambling taxation would represent a significant departure from the point of consumption principle established in the 2014 Gambling Act.

Reviewing the 2014 Gambling (Licensing and Advertising) Act

In this chapter, we have highlighted some of the incongruities of the current gambling tax system in the UK. As it stands, too many gambling companies are permitted to operate in the British market while retaining significant elements of their headquartering offshore, so long as they pay Remote Gaming Duty. This system has fostered a culture in which gambling tax is often untethered from the regulatory realities of its market.

We have argued that the forthcoming Government review of gambling legislation should include a review of gambling taxation. We have suggested that an assessment should be

made of how gaming duty might be applied at the point of location, rather than at the point of consumption, with particular emphasis placed on where servers and financial headquarters are located.

By basing remote gambling duty on a point of consumption principle, the 2014 Act was designed to ensure that all UK-facing remote gambling operators pay tax on gambling profits generated from UK customers, no matter where in the world the operator might be located. We have attempted to show how this approach does not adequately reflect the fiscal, legal, human, and social realities of gambling operators being based offshore, and that it has, in effect, enabled the creation of tax avoidance strategies and the exploitation of tax loopholes – arrangements that result in other duties not being paid, such as Corporation Tax.

With the introduction of a minimum onshore footprinting principle, it follows that the current ‘point of consumption’ basis for gambling taxation should also be reviewed. This would inevitably mean a review of the 2014 Gambling (Licensing and Advertising) Act.

Recommendation

We therefore recommend that the 2014 Gambling (Licensing and Advertising) Act should be reassessed as part of the forthcoming Government review of gambling legislation, with a view to its possible repeal. We believe that an entirely new approach to taxation should be enshrined in future gambling legislation, and that an emphasis be placed on the territorial location of gambling companies, as well as their commitment to corporate social responsibility.

CHAPTER 5 - A NEW REGULATORY FRAMEWORK

Overview

Since the 2005 Gambling Act, a so-called tripartite arrangement has been responsible for the regulation of gambling, the commissioning of Research, Education and Treatment (RET) of problem gambling, and the advising of both the regulator and, by extension, the Government. At the time of writing (August 2020), this tripartite arrangement consists of the following organisations: the Gambling Commission as regulator; the Advisory Board for Safer Gambling (ABSG) as independent advisor to the regulator; and a voluntary system for RET through which the bulk of funding and commissioning runs through the charity GambleAware. The Gambling Commission is funded through licence fees and regulatory settlements from the operators, the ABSG is funded by the Gambling Commission, and GambleAware is funded by voluntary contributions from the gambling industry, with a recommended minimum benchmark of 0.1% of GGY.

The Gambling Commission is a non-departmental public body sponsored by the Department for Digital, Culture, Media and Sport. It is the only agency with statutory authority within the current tripartite arrangement and its function is enshrined within the 2005 Gambling Act. With RET funding looked after by a charity, GambleAware, and with the advisory board dependent on Commission funding, it is clear that the Gambling Commission is the biggest and most influential stakeholder when it comes to the question of gambling reform. This is despite the fact that it remains comparatively under-resourced for such a role, with its annual budget for 2018-2019 amounting to £19m, to oversee an industry with a total GGY of £14.4bn.¹⁶⁵

The Gambling Commission describes its remit as follows:

- To assess “the effectiveness of licence holders’ self-regulation”;
- To ensure that licence holders “understand and are compliant with the law and with the licence conditions and codes of practice”;
- To give specific advice or guidance to licence holders;
- To take “remedial or preventive action”;
- To vary or impose additional licence conditions; and
- To review licence holders’ financial information.¹⁶⁶

In effect, the remit of the Gambling Commission is essentially that of a licensing authority (we have set out our position on how licensing can be reformed in Chapter 1 of this report). Yet for historic reasons, this licensing authority has found itself in a position where it has been expected to have almost total oversight of all areas of gambling reform, much of which strays into functions beyond its official remit or competence, while not having either the statutory authority or the financial resources to fulfil those functions satisfactorily.

An example of this would be the question of customer protection. The Gambling Commission states that it “exists to safeguard consumers and the wider public by ensuring that gambling is fair and safe... We do this by placing consumers at the heart of regulation and maintaining the integrity of the gambling industry.”¹⁶⁷ Yet the Commission does not provide support or financial redress to consumers who have made a complaint against an operator, although it remains the “competent authority” responsible for the list of approved Alternative Dispute Resolution agencies (ADRs). The Commission works from

the premise that “our main focus is that gambling businesses should be handling their own complaints fairly and effectively.” It states that “we also accept reports from consumers about the way a gambling business is being run. We use this information to look at whether a business is meeting the conditions of its gambling licence. But we don’t investigate individual complaints, and can’t help consumers to get their money back. Nor do we change decisions made by an ADR provider.”¹⁶⁸

In other words, the Commission retains oversight of the dispute resolution process, despite not being able to resolve individual disputes, and places emphasis on the industry’s ability to regulate itself when it comes to the question of customer complaints and compensation. This has created a series of complex and controversial problems, many of which have featured in the media in recent years.

In the absence of a formal dispute resolution process, volunteer groups have been set up to represent the interests of gambling consumers in addition to the services of Commission-approved ADRs. The most prominent of these groups is Justice for Punters, founded by Brian Chappell. Chappell has said that “14 years is far too long for the Gambling Commission not to have acted on how best to set up independent investigatory enquiries into individual gambling disorder disputes. No regulator should leave vulnerable people without an easily accessible avenue to seek justice and, where appropriate, financial redress.”

Chappell claims that “Gambling Commission-licensed ADR organisations lack a culture of high quality customer service – for example, not responding to emails, taking over 90 days to rule on disputes, and often failing to provide proof of the accuracy of evidence submitted by a gambling operator,” and concludes that “there is an urgent need to split the role of licensing and consumer protection. A new consumer body (an ombudsman) is required, which is available at least five working days per week, responsive and completely independent from the gambling industry. An ombudsman must be in a position to make rapid decisions concerning customer disputes, wherever possible.”¹⁶⁹

Chappell’s views are shared by many parliamentarians, including members of the Public Accounts Committee (PAC). During a recent evidence session, PAC member James Wild MP said that “it seems to me that the deck is completely stacked against the individual here in favour of betting companies and gambling companies, which are not held to account against individual action. At the heart of protecting problem gamblers is identifying customers who may be at risk of experiencing harm. My individual constituent cannot get any redress other than taking legal action. No one is holding the company to account for that.”¹⁷⁰ This echoes the views of the National Audit Office, which highlighted in its February 2020 report that “there is also no statutory consumer representative organisation, as exists in some sectors”.¹⁷¹

These various complaints about the current system have led to some significant criticism of the Gambling Commission. The PAC has published a report stating that a “complacent” DCMS and a “slow, weak” regulator are lagging behind industry moves and public attitudes to gambling harm, that both have “failed to adequately protect consumers” and that the whole system of regulation needs a “radical overhaul”.¹⁷² The PAC’s call for a complete overhaul of the regulatory framework has been reiterated by the All-Party Parliamentary Group for Gambling Related Harm, which stated in its recent report that the Gambling Commission “is not fit for purpose.”¹⁷³

In addition to the question of customer protection, the National Audit Office has highlighted several areas where it recommends changes to the current regulatory

framework. These include the claims (we make reference here to several of them in italics) that:

- The Commission does not use sufficiently robust data sets in order to establish adequate measurements of harm and harm reduction (“*the Commission wants to see the number of people affected by problem gambling to reduce significantly but has not articulated what level of reduction, over what period of time, would indicate good progress. It has also not articulated in detail how it interprets which consumers may be vulnerable and when.*” On this point, see also Chapter 2 of our report on the need for an ‘Index of Harm’);
- The Commission does not employ an adequate assessment of impact (“*the Commission does not know the extent to which these increases have strengthened the deterrent effect of enforcement action*”);
- The Commission is too slow (“*the Commission has taken a cautious approach to changing regulations, and some changes have been made via legislation, which has taken a number of years*”);
- The Commission is not proactive enough in raising standards beyond the expected minimum (“*The Commission is not doing as much as it could to incentivise operators to raise standards and make gambling safer. Effective regulation not only penalises rule-breaking, but also raises standards across the industry both by strengthening the rules where appropriate and by incentivising and supporting companies to go beyond minimum standards*”); and
- The Commission does not satisfactorily coordinate with other regulators or regulatory models (“*the Commission also seeks to prompt industry to raise standards but has not explored common approaches that regulators use in other sectors, such as financial or reputational incentives*”).¹⁷⁴

These observations have been echoed by the Public Accounts Committee report, which notes that “the Commission told us it does not use reputational incentives such as league tables [used by other regulators] to influence operator behaviour proactively”, and which has “challenged the Commission on the slow pace of... its decision-making process and how this was impacting consumer confidence in the sector”.

The PAC report also makes a link between the slow pace of change and the fact that “public confidence that gambling ‘is fair and can be trusted’ has collapsed from 49% in 2008 to just 34% on the most recent data”, stating that “regulators operate in a timely manner in equally, or more, complex markets, such as financial services. If applied to other regulators, it would result in considerable consumer detriment across regulated markets.”¹⁷⁵

In other words, the Gambling Commission has been the subject of significant criticism from a range of official and informal parliamentary groups, including the National Audit Office, the Public Accounts Committee and the All-Party Parliamentary Group for Gambling Related Harm, which has over 50 MPs and Peers in its membership and a committee that includes both the Deputy Leader of Welsh Labour and the former Leader of the Conservative Party and Secretary of State for Work and Pensions.

In Chapter 2 of this report, we made reference to ‘commercial reality’ as a reason not to advocate for numerically-fixed stake limits on certain types of remote non-slot content, because we recognised that such limits would render that content commercially non-

viable. By the same token, we must also recognise the political reality of the debate over the role and reputation of the Gambling Commission.

We are reluctant to be too critical of a regulator which has the unenviable task of overseeing one of the world's most controversial industries, and we are aware of the great challenges that come with this role. We also recognise that the Commission has recently put forward its National Strategy for reform and has stepped up the pace and scale of its interventions. But the political reality is that when the National Audit Office, the Public Accounts Committee, an influential All-Party Parliamentary Group and a range of parliamentarians from across the political spectrum all call for the same thing – a radical overhaul of the current regulatory framework – it is incumbent on us to respond to that reality accordingly.

It is clear that the prevailing view is now this: that the 2005 Act has left a legacy of regulatory failure. Many of the persistent problems faced since then in reforming the gambling industry have stemmed from structural flaws at the heart of the tripartite arrangement. We therefore agree with many of the criticisms outlined above. However, while various parliamentary bodies have identified the same problem and have called for similar reform, none have provided detailed recommendations for what exactly a “radical overhaul” of the regulator might look like.

In this chapter, we make a series of proposals that we think will offer some answers to these questions. Unlike many of our other recommendations in this report, the majority of which could be achieved within the current system through statutory instruments, it is our view that an overhaul of the tripartite arrangement – essentially, an overhaul of the entire regulatory framework – would require more fundamental changes to primary legislation.

Our proposed framework would replace the old tripartite arrangement sponsored by a single government department with what we call a new “Gambling Quartet” that would work on a cross-departmental basis. This Quartet would be structured as follows:

First, it would see the replacement of the Gambling Commission with a new Gambling Licensing Authority which would have as its remit a specific responsibility for licence applications, suitability, compliance to LCCP and operator sanctions. The role of this licensing authority would be legal in its nature: investigating sources of wealth and structures of business ownership, as well as cases of money-laundering and LCCP breaches.

A review of the major gambling markets around the world shows that in many jurisdictions, the regulation of gambling licences is sponsored by a ministry of justice. The fact that the UK has placed gambling regulation under the authority of a ministry of culture is an international anomaly which distracts from the highly-specialised and legal functions of licence authorisation and compliance. In our proposed framework, the new Gambling Licensing Authority would be sponsored by the UK Ministry of Justice, replicating best international practice and ensuring that the legal and licensing functions of the regulator are supported by the appropriate departmental oversight and expertise.

Second, our proposed quartet would see the introduction of a new Gambling Ombudsman which would be a public agency equivalent in stature to the Gambling Licensing Authority, and which would be sponsored by its own government ministry: the Department for Business, Energy and Industrial Strategy. BEIS already has oversight of several successful models of consumer and citizen protection in Ofgem, the Advisory, Conciliation and

Arbitration Service, the Groceries Code Adjudicator, as well as various tribunal committees.

As we have argued in Chapter 3 of this report, the new gambling ombudsman would be in charge of customer data and would act as the third-party data depository for the purposes of multi-operator affordability checks, meaning that this information would be immediately available when it comes to consumer protection and potential financial compensation.

Third, we argue that the introduction of a statutory industry levy would necessitate a more formalised approach to the funding and commissioning of research, education and treatment. The UK already has world-class systems of clinical, academic and commissioning expertise in both the NHS and the Research Councils, and it makes sense that a statutory levy should be allocated through these existing structures, as has been argued by Rebecca Cassidy and Jim Orford.¹⁷⁶ In terms of departmental oversight, this would mean that the Department of Health and Social Care would be put in charge of future RET funding.

We do not intend to enter into a detailed analysis of the proposed statutory levy in this report. The case for a levy has already been made at length by almost all major stakeholders over recent years, including Conservative Party MPs, clinicians and academic experts in public health, the All-Party Parliamentary Group for Gambling Related Harm and the Labour Party Gambling Review of 2018, which made the case for a levy set at 1% of GGY, based on a January 2018 submission by the think tank ResPublica to a DCMS Consultation on Proposals for Changes to Gaming Machines and Social Responsibility Measures. More recently, the Lords Inquiry report has stated that “it is beyond belief that the Government have steadfastly refused to exercise the powers they already have to impose a mandatory levy on the industry. They must drag their feet no longer.”¹⁷⁷

Although this agenda has experienced a degree of self-regulatory distraction over the past twelve months, it remains likely that a Government review of gambling legislation will include an assessment of RET spending and the prospect of a statutory levy. If this levy were to be introduced, it would mean over £100 million per year being allocated to the funding, commissioning, and treatment structures of RET. This is a significant amount of money and it is inevitable that it would require an overhaul of the current system. In the words of Tom Watson during a speech to Demos in 2019, “a mandatory levy necessitates the restructuring of the tripartite arrangement. In no other area of government would it be reasonable to have an industry levy of over £100 million without formal processes of auditing, impact assessments, training and clinical standards attached to how that levy is spent... A mandatory levy is the catalyst for structural change.”¹⁷⁸

Finally, we argue that any radical overhaul of the regulatory framework must retain the essential role of DCMS as a key part of the cross-departmental equation. Our proposed new Quartet would see DCMS maintain gambling policy oversight in terms of advertising regulation, the Information Commissioner’s Office (in liaison with the Ombudsman), the National Lottery Community Fund, the Horserace Betting Levy Board as well as a guiding relationship with the full range of sporting and cultural bodies that are relevant to gambling regulation, including the Football Association and the England and Wales Cricket Board.

The end of the Tripartite Arrangement

It is beyond doubt that the tripartite system which has underpinned gambling regulation, government strategic direction and RET funding since the 2005 Gambling Act is no longer fit for purpose.

The Gambling Commission has been severely criticised by a range of influential parliamentary and political bodies, including the National Audit Office, the Public Accounts Committee and the All-Party Parliamentary Group for Gambling Related Harm. Instead of focusing on its core function of licence authorisation and compliance, the Commission – in great part because of inherent flaws at the heart of the existing legislation – has strayed into matters of public health and consumer protection, without having either the authority or the resources to fulfil those functions properly.

At the same time, there is no formal gambling ombudsman which looks after consumer interests, and the current RET system of healthcare commissioning and treatment is administered by a charity through voluntary industry contributions rather than a statutory levy.

In Chapter 1 of this report, we argued that the Gambling Commission has allowed unsuitable operators to be active in the British market for too long. This has led to numerous media stories of industry malpractice over recent years, and is evident in the number of applicants for UK licences which have been approved by the Commission rather than rejected. Of a total of 966 remote applicants since 2014, over 90% were approved.

We believe that this readiness to approve and sustain licences despite their lack of suitability can be explained by the so-called ‘minimised’ approach that the Commission has adopted in its role as regulator. According to its own rubric, the Commission works on the premise that “the responsibility for taking the lead in developing and updating measures designed to protect the licensing objectives lies principally with an operator.”¹⁷⁹ This approach reflects an inherent tension at the heart of the Commission’s role as set out by the 2005 Gambling Act, which demands that the regulator both “pursues” the licensing objectives and “permits” gambling.¹⁸⁰

Too often, “permitting” gambling has been interpreted by the Gambling Commission as a “duty of growth”. In 2013, the then-Chief Executive of the Commission said during an oral evidence session of the Joint Committee on the draft Deregulation Bill that “as you probably know, our statutory duty is to permit gambling while keeping it, as we say, fair and safe for all. Our basic duty, therefore, is pro-growth anyway. Our Hampton-based regulatory model already enshrines the Clause 58 requirement to minimise regulatory action and to act proportionately. We aim to assess the risks of harm from gambling and mitigate them proportionately – that is in the least intrusive and costly way that still achieves the public protection objectives. In that way we minimise the cost of regulation, which allows competition and innovation to flourish, while – and this is the critical point – providing assurance to the consumer and the wider public that such growth can be permitted safely.”¹⁸¹

If the past few years have taught us anything about the current regulatory framework, it is that the tension at the heart of the regulator’s remit – to permit certain gambling content while attempting to protect the public from it – has made the system not fit for purpose. This is further exacerbated, as we have argued in Chapter 1 of this report, by the lack of a transparent structure of licensing and sanctioning.

In addition to these regulatory failings, it is clear that the lack of a gambling ombudsman has led to failings in consumer protection. At present, the Gambling Commission has oversight of the dispute resolution process, despite not having the authority to resolve individual cases, and relies to a great extent on the industry's ability to regulate itself when it comes to the question of customer complaints and compensation.

When these disputes happen, the Commission says that it cannot perform the role of an ombudsman. Instead, consumers are directed to Alternative Dispute Resolution bodies, the courts, or volunteer groups like Justice for Punters. The biggest of these ADRs is the Independent Betting Adjudication Service (IBAS) which receives and processes approximately 90% of complaints from gamblers across all sectors of gambling. IBAS has stated its ambition to “grow and evolve” into “the first gambling ombudsman”, adding that “we believe that a single gambling ombudsman would be in the best interests of clarity and consistency in decision making, as well as reducing potential confusion for consumers. We also anticipate that having a single gambling ombudsman would provide a more solid platform for developing the most constructive working relationship with the Gambling Commission.”¹⁸²

For too long, we have seen numerous examples of consumers exploited, failed and harmed by the current tripartite system. This has to stop. For it to have sufficient independence and status, it is essential that any new gambling ombudsman should have statutory authority that is equal to that of the regulator. The ombudsman should be a public agency sitting under the sponsorship of a government department. It is simply unrealistic to imagine that an ‘evolved’ IBAS could fulfil this statutory role.

Finally, the fact that the current tripartite arrangement exists under the sponsorship of a ministry of culture is an anomaly when compared to other international examples. A survey of the world's 30 biggest gambling markets¹⁸³ shows that ministerial sponsorship of gambling regulators is broken down as follows:

- Finance/Economy: 10 (33%)
- Justice/Attorney General: 9 (30%)
- Home Affairs/Domestic/Interior: 6 (20%)
- Business/Innovation/Customer Protection: 3 (10%)
- Culture: 2 (7%)

Apart from the UK, the only other major market to have a ministry of culture in charge of gambling regulation is Norway – but this a very particular type of state model tied to a public foundation. In other words, the UK is a notable outlier in that it is the only major liberalised gambling market in the world to place its regulatory framework under the sole sponsorship of a culture ministry rather than finance or justice.

Recommendation

In light of the above, we recommend to Government that the current tripartite arrangement of the Gambling Commission, AMSG and GambleAware – a legacy of the 2005 Gambling Act that is clearly no longer fit for purpose – should be scrapped. This would mean a radical change also to the way in which Government organises its departmental oversight of gambling reform: replacing the current system whereby the Department for Digital, Culture, Media and Sport has sole responsibility for gambling legislation and regulation, to introduce a new cross-departmental approach which allows a range of expertise and agencies to collaborate together.

A new Gambling Quartet

In this chapter, we have argued that the existing tripartite arrangement which has underpinned gambling regulation and reform since the 2005 Gambling Act is no longer fit for purpose, and that it should be replaced. We propose that it should be replaced with what we have called a new Gambling Quartet which would work across public agencies and government departments.

By any measure, it is clear that the system that regulates gambling in the UK has failed in its duty to uphold the three licensing objectives enshrined in the 2005 Act: to prevent gambling from being a source of crime or disorder, to ensure that gambling is conducted in a fair and open way, and to protect vulnerable people from harm.

The forthcoming Government Act Review should be seen as an opportunity to implement systemic change. Only by scrapping the failed tripartite arrangement can a new system be introduced that ensures better consumer protection, market fairness and licence integrity.

It is vital that the regulator is able to restore the credibility of its core function: that of acting as a licensing authority. We therefore recommend a reshaping of the existing Gambling Commission into a new, more focussed regulator that we propose should be called the Gambling Licensing Authority.

Because the core function of this licensing authority would be legal in its nature – examining sources of operator wealth and structures of corporate ownership, assessing compliance and investigating malpractice, some of which would be linked to crime – we believe that it would be inappropriate for it to remain under the sponsorship of DCMS. A survey of the world's 30 biggest gambling markets shows that it is commonplace for gambling regulators to be under the governmental sponsorship of a ministry of justice or attorney general. This is the case in 30% of markets, including (albeit with variations of local practice) countries like Belgium and the Netherlands.

We therefore recommend that the new Gambling Licensing Authority should be sponsored by the Ministry of Justice.

In terms of consumer protection, we concur with the widely-held view that there is a need for a gambling ombudsman. For it to have sufficient independence and status, we argue that the gambling ombudsman should have a statutory authority equal to that of the

regulator, and that it should benefit from the ministerial sponsorship of the Department for Business, Energy and Industrial Strategy – a department which already has oversight of various successful models of consumer protection, as well as tribunal committees.

In Chapter 3 of this report we argued that the new gambling ombudsman should act as a third-party data depository for the purposes of multi-operator affordability checks. Instead of the present arrangement, whereby ad hoc ‘subject access requests’ are made by consumers seeking information from operators on their transaction histories, the ombudsman would provide a formal system for accessing and auditing operator data.

In this way, the role of the ombudsman would complement that of the regulator. The relationship between these two public agencies would be symbiotic, with the Gambling Ombudsman focused on consumers and the Gambling Licensing Authority focused on operators.

Finally, we believe that by placing RET funding and commissioning under the responsibility of the NHS – and, by extension, the ministerial responsibility of the Department of Health and Social Care – the research and treatment of problem gambling can be integrated as part of a formal process linked to the NHS Long Term Plan, subject to the relevant devolved responsibility. This would be necessitated by the introduction of a statutory levy. With the NHS as commissioner, clinical standards would be ensured, a model of addiction would be analysed and established, the evidence base would grow and gambling would be given “parity of esteem” when compared to and combined with other services.

In summary, we propose that the new Gambling Quartet should be structured as follows:

- First, the regulator should restore its core function as a licensing authority with a single focus on operator suitability, compliance and sanctions. This new Gambling Licensing Authority should be sponsored by the Ministry of Justice, in line with international best practice.
- Second, a new Gambling Ombudsman should be set up to ensure consumer protection. This ombudsman should be a public agency equal in stature to the Gambling Licensing Authority, and should be sponsored by the Department for Business, Energy and Industrial Strategy.
- Third, the introduction of a statutory levy at 1% of industry GGY should be overseen by the commissioning expertise of both the NHS and UK Research Councils, under the sponsorship of the Department of Health and Social Care.
- Fourth, questions of advertising and marketing regulation, the National Lottery and the oversight of sporting and cultural events related to gambling should remain under the sponsorship of the Department for Digital, Culture, Media and Sport.

Figure 8: The old regulatory framework for gambling

The Old Tripartite Arrangement		
Department for Digital, Culture, Media and Sport		
Gambling Commission Regulator funded by DCMS	Advisory Board for Safer Gambling Independent Advisory board funded by the Gambling Commission	GambleAware RET commissioning funded by voluntary industry contributions to a charity

Source: Social Market Foundation (2020)

Figure 9: The new regulatory framework for gambling

The New Quartet			
Ministry of Justice	Department for Business, Energy and Industrial Strategy	Department of Health and Social Care	Department for Digital, Culture, Media and Sport
Gambling Licensing Authority In place of the Gambling Commission, with a renewed and specific focus on license suitability/compliance/LCCP/standards	Gambling Ombudsman A new public agency equal to the Gambling Licensing Authority in charge of customer protection, data and affordability	NHS In charge of the new RET statutory levy of 1% of GGY	ASA, ISO, Lottery, various sporting and cultural bodies In charge of advertising rules, horseracing, relationship between gambling and sporting/cultural events

Source: Social Market Foundation (2020)

This new cross-departmental approach would best serve the complex question of gambling regulation and reform, as it would bring together a necessarily wide range of expertise and authority to policy areas as diverse as market governance, financial crime, taxation, social responsibility, advertising, sport, consumer protection, addiction and public health.

Cross-government collaboration has already been successful in recent strategies involving food research, international development, suicide prevention and loneliness. We believe that such an approach should also be applied to the question of gambling reform.¹⁸⁴

Recommendation

We therefore recommend to Government that its forthcoming review of gambling legislation should include a reassessment of the current tripartite arrangement, with a view to its replacement with a new cross-departmental ‘Gambling Quartet’ of: a licensing authority under the sponsorship of the Ministry of Justice; an ombudsman under the sponsorship of BEIS; RET allocated via a statutory levy under the sponsorship of DHSC; and the oversight of advertising, the lottery, and sporting and cultural events under the sponsorship of DCMS – as presented in Figure 9 of this report.

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¹²⁴ In order to ascertain individual budgets from the household social and cultural participation category provided in MIS data, we have divided that household budget by the number of adults in the household and, where necessary, separated children's budgets and household budgets (such as for family holidays) from that of adults'. For the 'lone parent, one child' and 'couple with two children' categories, the children have been budgeted as being 'aged 0-1' and 'aged 2-4 and primary school age', respectively, as is ascribed by MIS data.

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