

ONLINE GAMBLING: Addicted to Addiction

Tim Cowen and Phillip Blond





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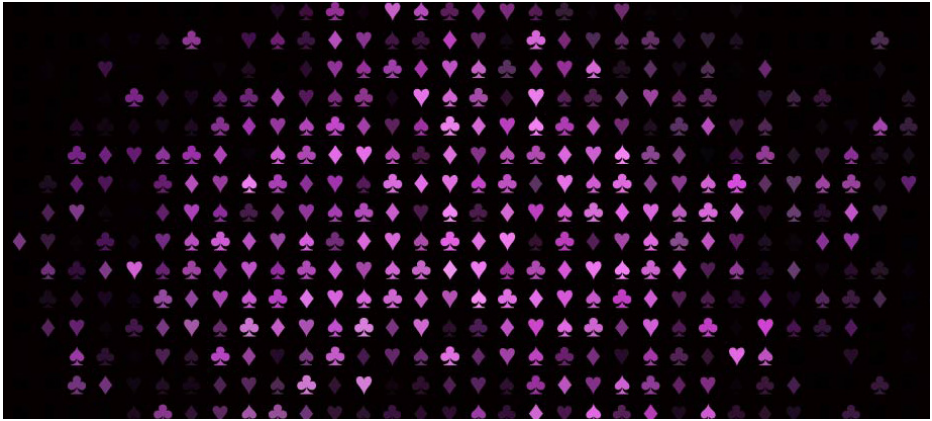
The Campaign for Fairer Gambling is a not-for-profit organisation that aims to ensure delivery and enforcement of the licensing objectives of the 2005 Gambling Act, including preventing gambling from being a source of disorder or crime, ensuring that gambling is conducted in a fair and open way, and protecting children and other vulnerable persons from being harmed or exploited by gambling.

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Executive Summary

In May 2018, the Government announced the introduction of a £2 limit on Fixed Odds Betting Terminals (**FOBTs**). ResPublica campaigned for this in the 2017 Paper, 'Wheel of Misfortune';¹ which demonstrates the impact these machines have upon gamblers at risk of developing a problem, and indicates the more general problem for society at large. Following on from this, ResPublica published the report 'Watershed';² which has argued for government to close the legislative loopholes that exist in gambling advertising.

This report builds on the recommendations in the previous ResPublica reports, developing a growing package of reforms

to make the gambling industry more sustainable and responsible.

The Competition and Markets Authority (**CMA**) opened an investigation into the online gambling industry in 2016 and continues with enforcement action.³ Its findings to date are shocking:

- It has found breaches of consumer protection law.
- It has found restrictions that require people to play multiple times before allowing them to withdraw their own money.
- It has found restrictions on the right to withdraw winnings made from gameplay with their deposit.

- It has found daily weekly or monthly withdrawal limits that keep players online and appear unreasonably low.
- It has found dormancy terms that allow firms to confiscate funds or impose excessive charges after a certain period of inactivity.
- It has found that firms denied pay-outs.⁴

In this report, we submit in addition that the online gambling industry obtains more than half of its profit from at risk and problem gamblers.⁵ Thus, the industry is addicted to addiction – too high a proportion of its profits come from the vulnerable and it has an interest in people spending time online and keeping people online to develop a habit – drawing them into gambling and creating long-term dependency.

We also submit additional findings concerning variable rate reinforcement techniques which are highly suited to the online world – with the consequence that the path to dependency is probably swifter and easier to create than in any other medium. Again, the CMA, Gambling Commission and other authorities and those in government should, if needed, investigate this further and take these additional points into account in the development and the enforcement of the regulatory system.

In short, we consider that CMA has found evidence of a culture that is not fair and open – and that the firms concerned are thus in breach of the licensing objectives under the Gambling Act 2005.

On completion of the CMA enforcement action with the firms, the CMA is committed to working with the Gambling Commission to deliver sector-wide change in these areas of concern identified and to drive improved compliance with consumer protection law more broadly. We don't see this as enough and therefore make a series of recommendations below.

The authorities must consider context and consequence. Regulators need to take on board at risk and problem gambling and the dangers of online gambling when seeking change to the behaviour of online gambling companies. Problem and at risk gamblers are vulnerable consumers and need to be treated accordingly.

Consumer protection should be high on the priority list of actions for any government. It is also the case, in a modern economy, that the state cannot completely protect everyone from everything at all times. People should be expected to assess some risks for themselves, and the responsibility for their own actions is a core value at the heart of a free society. Freedom in a free society means that people bear a responsibility for themselves and their actions. Each person's health and wellbeing are a matter primarily for that person. However, care needs to be taken to protect the vulnerable, those that may be older or younger, and those at greater risk need proportionate responses.

Freedom for all means laws that apply and are enforced considering the context and consequences for those most affected. We submit in this report that freedom to make decisions can only be exercised by those exercising free and independent decisions – which can be distorted by ongoing behavioural conditioning.

One-sided contracts are a matter of routine. They are routinely imposed on consumers by business. It is not unusual for businesses to aim to make a profit while seeking to limit their risk and avoid liability where possible in the terms and conditions of consumer contracts. Consumers are rarely in a position to challenge such terms and conditions when contracting, and complaints may therefore be responded to with a simple “it was in the terms and conditions”. Unfair “Take it or leave it” contract terms are thus common, especially in the “Click Here” or “I Agree” sections of websites in the modern economy. As a mechanism to provide redress, public bodies such as the CMA are routinely charged with consumer protection responsibilities.

However, context and consequence are not a matter of routine. They must be considered as specifics and tailored to needs in any enforcement action. In many situations, following a breach of unfair contract terms legislation, leaving redress to individuals to take claims in small claims courts is not necessarily unreasonable. However, for those

affected by unfair online gambling the idea that those harmed by breaches can take independent action for redress is an illusion. For example, for a penniless gambling addict justice is often not likely to be available. Access to justice demands swift and effective public intervention in the public interest – the authorities need to act on behalf of those that cannot act for themselves. This is not addressed or undertaken by the CMA in its enforcement action to date.

The CMA has been cast in the role of the protector of the powerless. Here gambling is different, and the CMA’s response needs to be different. It is different from the sale of goods of doubtful quality – Similarly safeguarded by consumer protection laws. People are protected by the same consumer protection laws against a washing machine that breaks down after 5 washes, a TV that flickers, or set of hair straighteners that blow up. The consequences of product failure or breach of terms for the consumer are manifestly very different for people suffering from gambling addiction. In many cases of consumer protection, the products can be returned, insurance can be bought, warranties provided and the consumer can, ultimately, obtain redress or gain compensation through a claim in a small claims court, for a very limited amount. The CMA may even take action which adequately rectifies the harm done to consumers; undertakings from the firms involved in such breaches

might be acceptable, and encourage the development of adequate compensation schemes for affected individuals.

The problem here is that gambling addiction can't easily be claimed for – it needs to be prevented. So, the fact that the current enquiry has led to the CMA wringing undertakings from the gambling firms is important and is a good first step. The CMA left the door open for compensation, and private actions for redress for breach of consumer rights legislation to be taken by individuals. Is this really optimal regulatory action in the public interest? We think not.

Two things are fundamentally different about the social consequences of unfair terms in online gambling and the consequences of unfair terms in other industries. As described, the first is that the type of harm is fundamentally different from ensuring that goods and services are of merchantable quality. Consumers engaging with the gambling industry carry the additional risk of addiction and self-destructive behaviour. This affects players, their families and those close to them. Addicted gamblers are a notorious social problem, as much for those they live with as for themselves. This wider impact is simply absent as a matter of context and consequence from unfair terms in most consumer contracts.

The second issue is access to justice for the addicted gambler. Justice, in terms of

a court decision or civil suit, costs money. Even as a litigant in person, without professional legal advice, court fees have to be paid and a significant amount of time invested in bringing any claim. Given the impact of addiction on personal finance, and the cost of legal action, justice for addicted gamblers can be virtually non-existent. Both the lack of funds available for legal action, and the social stigma of admitting to a gambling habit, limits claims brought and thus benefits the gambling industry. There is likely to be a large number of potential claims for small sums – the costs of bringing each claim individually could also operate as a hurdle to prevent them being brought. These sums are likely to amount to high profits for online firms.

Inadequate public enforcement and redress can thus send the wrong signal to the industry and cause further social harm – or simply allow the behaviour to continue. Damage to social systems and damage to our society requires and deserves swift and effective public enforcement. Normal consumer protection measures are simply inadequate to account for this added dynamic.

What do we recommend?

We consider that enforcement action should consider the context and consequences and that enforcement takes place on behalf of the vulnerable – they should not be left to sink or swim on their own.

Action has been taken by the CMA where breach of the law has been found. Undertakings from those found to be in breach have been offered. But the law has been broken and people suffered harm – and harm to individuals that goes unassessed and unpunished is unjust.

We therefore recommend:

- As a minimum, those responsible must be brought to account and must change their ways, given the evidence to date of a culture of cynical exploitation, their gambling licences should be at risk unless they immediately return illegally obtained money and commit to ongoing compliance.
- The CMA should use the full extent of the powers it has and, if necessary, be granted further powers to act as a Public Prosecutor, enabling it to strip those that have broken the law of their unlawful gains, and obtaining redress for consumers that have been harmed.
- The undertakings are monitored and enforced against strict publicly available targets to prevent gambling addiction.
- Those firms responsible for causing harm must not be able to continue to profit from their wrongdoing.
- Deposit money and winnings generated under unfair contracts and now trapped in player accounts should be returned to the players.
- Work needs to be done on vulnerable consumers and their exposure to different games, some of which may be more addictive than others. We need bespoke action to ensure that more addictive games are not developed without due regard to the vulnerability of the user. In essence, a scale of addictiveness for games needs to be developed. Similar government action should be taken in the online world as has been taken in the bricks and mortar world. For example, fixed odds betting has recently been more carefully controlled, while the online world remains a “Wild West”, an enormous unregulated Cybercasino. Similar rules should apply both online and offline. Happily, the government in February 2018 announced a review of current legislation, with the aim to ensure that what is illegal offline is illegal online.⁶
- It should be accepted that the online environment is more dangerous for those at risk as there is greater scope for using sophisticated techniques to create ongoing dependency for the vulnerable. Similar action to that recently taken to ensure child protection and prevent or restrict online access to unsuitable content can and should be used here.

This report shows that there is an urgent need for action. The online gambling industry is an industry that makes more than half of its profits from those at risk and problem gamblers⁷ and is itself addicted to addiction – needing to generate more addiction to generate more profits.

This report highlights the need to prevent operant conditioning techniques from being used. There is a clear need to protect those at risk, and particularly the young, from being enticed down a road that limits their ability to make rational judgements.

This requires independent choices to be made. Greater numbers of those at risk may become a bigger problem online rather than offline. At the very least, as has been done for child protection online in other contexts, clear and unambiguous warnings are needed for certain types of online gambling.⁸



1. Introduction

The Gambling Commission, the body that regulates gambling and supervises gaming in the UK, is required to ensure that gambling is “conducted in a fair and open way.”⁹

The objective is framed as a way of doing business. The Competition and Markets Authority’s current investigation demonstrates that the online gambling industry is not, in fact, being conducted in a fair and open way.¹⁰ The problems are clearly widespread in the online gambling industry, and this has led the CMA to seek undertakings aimed at changing the culture of the industry for the future.

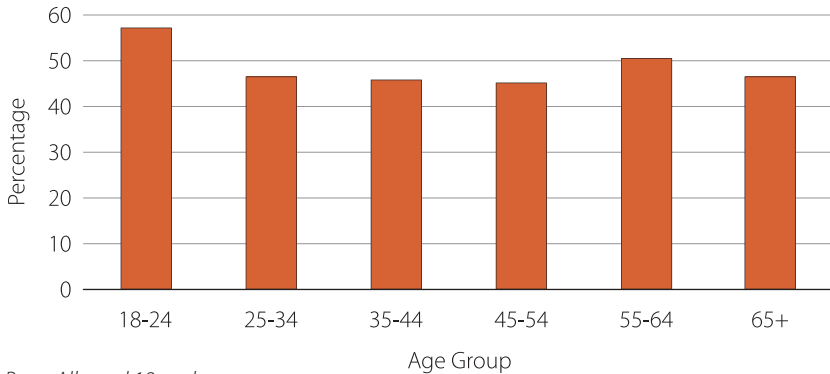
This is welcome. It manifestly does not go far enough though – and the investigation needs to conclude with much stricter enforcement.

As part of the current investigation, enforcement action has, thankfully, been

taken against several gambling firms in connection with their online gaming promotions for new players, and certain aspects of their free bet promotions. Concerns were raised around inadequate or unclear information about the restrictions and conditions of the promotions, restrictions on withdrawing winnings, and potentially unfair rules on certain play strategies, which allowed firms to deny pay-outs.¹¹

We appreciate that the CMA has a different remit from the Gambling Commission. We also appreciate that the Gambling Commission called in the CMA and is consulting on changes to the licence conditions and codes of practice to strengthen the Commission’s position. However, the CMA’s findings show that the

Figure 1: Prevalence of At Risk Gambling by Age



Base: All aged 18 and over

Source: <https://about.gambleaware.org/media/1225/report-2-identifying-problem-gambling-findings-from-a-survey-of-loyalty-card-customers.pdf>

current gambling regime is failing to achieve one of its central objectives; it demonstrates that the culture in the industry is not fair and not open. Indeed, the CMA's investigation reveals a cynical, hidden unfairness,¹² with an ongoing exploitation of those with gambling addiction.

While we are supportive of fairer and more open terms, as well as fairer gambling in general, it must be recognised that some types of gambling can be addictive. There are a range of estimates on the number of at risk and problem gamblers in the UK, one of which puts the number at 2 million.¹³ People at risk represent a substantial group which, as far as we know, has not been subject to significant research. Based on evidence available, the majority of at risk gamblers are young men in the 16-34 age bracket, and the odds of being an at risk

gambler is higher among non-white ethnic groups.¹⁴ At risk gambling is measured using the Problem Gambling Severity Index (PGSI), which identifies people at risk related to their gambling behaviour, but who are not classified as problem gamblers. 2.8% of adults were classified as low-risk, with a PGSI score of 1 or 2, and 1.1% as moderate risk, with a score between 3 and 7. Problem gambling is measured using the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) as well as PGSI, which are both shown below. Problem gamblers would have a PGSI score of 8+, whilst problem gambling had a prevalence of around 0.8% of the population by these two measurements.¹⁵ These at risk and problem gamblers are both a demographic group and a target consumer base for the gambling industry.

Figure 2: the nine PGSI scoring items. There are a choice of four responses to each item: never, sometimes, most of the time and almost always, with a score of 0, 1, 2 and 3 for each choice respectively

<i>PGSI</i>
Bet more than can afford to lose
A need to gamble with increasing amounts of money
Chasing losses
Borrowed money or sold items to get money to gamble
Felt had a problem with gambling
Gambling causing health problems including stress and anxiety
People criticising gambling behavior
Gambling causing financial problems for you and your household
Felt guilty about way that you gamble or what happens when you gamble

Source: <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2015.pdf>

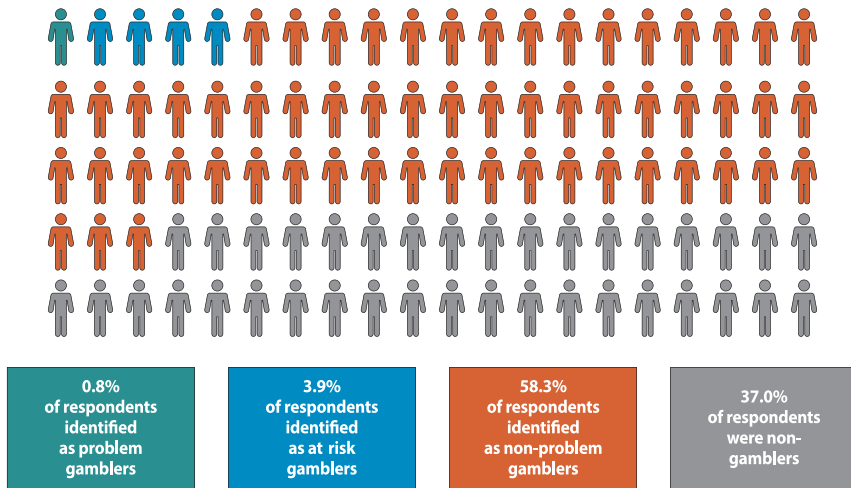
Figure 3: the DSM-IV dichotomous scoring chart. Assessed on four-point scale of very often, fairly often, occasionally and never, then responses to questions are scored between 0-1. Meeting three criteria is used to define problem gambling

<i>DSM-IV</i>
Chasing losses
A preoccupation with gambling
A need to gambling with increasing amounts of money
Being restless or irritable when trying to stop gambling
Gambling as escapism
Lying to people to conceal the extent of gambling
Having tried but failed to cut back on gambling
Having committed a crime to finance gambling
Having risked or lost a relationship/job/educational opportunity because of gambling
Reliance on others to help in a financial crisis caused by gambling

Source: <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2015.pdf>

Figure 4: Data from a Telephone Survey Conducted by the Gambling Commission, Showing Categorisations of People's Gambling Habits

Problem gamblers, at risk gamblers and non-problem gamblers were fully screened with DSM-IV or PGSI, whilst the data on non-gamblers was conducted with the 2015 Combined Health Survey 2015

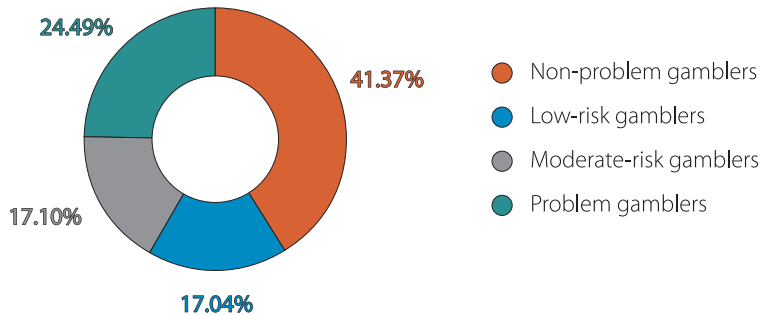


Source: <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-participation-in-2017-behaviour-awareness-and-attitudes.pdf>

Problem gambling is currently defined as 'gambling to a degree that compromises, disrupts or damages family, personal or recreational pursuits'.¹⁶ Research shows that being male, reporting that a parent was or had been a problem gambler, and being in the lowest income category are socio-demographic factors that are associated with being a problem gambler. Importantly, it is estimated that over half of industry profits are derived from at risk and problem gamblers¹⁷; this suggests that the industry is itself "addicted to addiction" and needs to generate more addiction to generate more profits.

In this report we review the CMA's findings in order to highlight the failings of the current system, and the need for a re-think of the CMA's role. By examining the costs and effects of problem and at risk gambling, as well as the particular risks associated with online gambling, we will demonstrate the urgent need for action to protect consumers. This report also recommends that the at risk group should be considered more carefully and appreciated more fully; the dynamics of the transition from at risk to problem gambling must also be more closely studied.¹⁸

Figure 5: Percentage of Online Gambling Industry Profits Derived from Each Category of Gambler



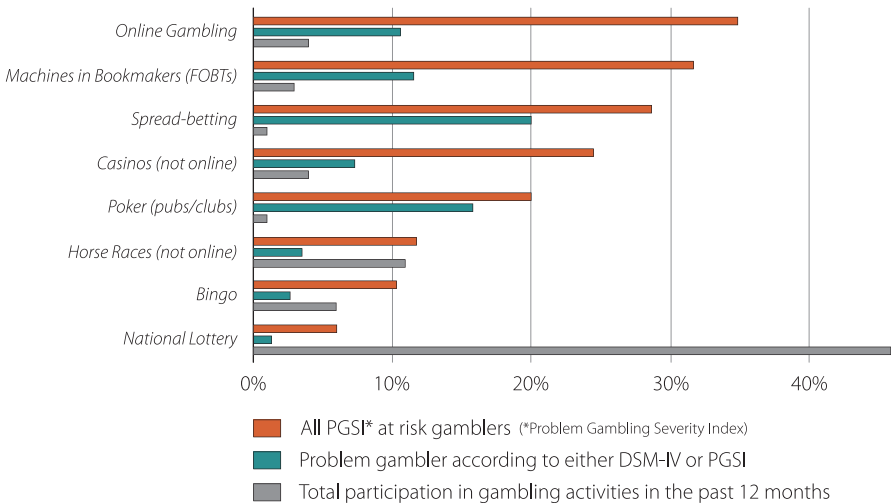
Source: Despite representing just 0.8% of the adult (16+) population, as shown in Figure 6, 430,000 problem gamblers contributed to 24.49% of the online gambling industry's profits. Howard Reed of Landman Economics calculated this data using the number of days and the amount of money spent on online gambling, using Table 13 on Page 43 in the PWC report for GambleAware (2017), Remote Gambling Research (online) - available at https://about.gambleaware.org/media/1549/gamble-aware_remote-gambling-research-research_phase-2_pwc-report_august-2017-final.pdf - and combining this with Tables 3.3 and 4.5 in NatCen (2017), Gambling behaviour in Great Britain in 2015 (online), which is available at <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2015.pdf>

Figure 6: The Different Categories of Gambler, as a Percentage of the UK Adult (16+) Population

Type	Number	Percentage
Non-gamblers	19,998,750	37.21%
Non-problem gamblers	31,336,250	58.30%
Low-risk gamblers	1,430,000	2.66%
Moderate-risk gamblers	555,000	1.03%
Problem gamblers	430,000	0.80%
UK adult (16+) population	53,750,000	100%

Source: The numbers for each type of gambler are based off their PGSI and DSM-IV scores, which was collected by a telephone survey from the Gambling Commission in (2018) Gambling Participation in 2017: behaviour, awareness and attitudes (online) - available at <http://live-gamble.com.cloud.contentis.com/PDF/survey-data/Gambling-participation-in-2017-behaviour-awareness-and-attitudes.pdf> - data which is representative of the UK adult population as a whole. This data was then correlated with Howard Reed's calculations, as described in Figure 5, to create an overall picture of UK gambling participation, and the source of the online gambling industry's profits.

Figure 7: The Gambling Habits of At risk and Problem Gamblers



Adults aged 16 and over, England, Scotland and Wales

Source: <https://www.theguardian.com/society/2017/aug/24/problem-gamblers-uk-gambling-commission-report>
 NatCen Social Research, *Gambling behaviour in Great Britain in 2015*.

Furthermore, we outline our particular concerns that the online environment is conducive to the use of operant conditioning, which uses variable success ratios to reinforce the desired behaviour of continued playing – and can generate addiction. These games can be designed to entice consumers (particularly the young) down a slippery slope, affecting the ability to retain the rational judgement required for independent choices to be made. Greater numbers of those at risk may become a problem in such a world. Thus, as an operational imperative, at the very least clear and unambiguous warnings are needed for certain types of online gambling.

Finally, this report argues that, considering this landscape, and as an institutional matter, the CMA's responsibilities should be strengthened. At present, a basic problem remains un-addressed; consumers that paid out on unfair terms have not recovered their money. This does not amount to fair play in the gambling industry. In part, this is likely because industry incentives towards compliance are unsound. The CMA must be able to act to deprive the industry of the gains reaped from its wrongdoing, taking on a role of public prosecutor to facilitate recoveries and incentivise future compliance.



2. CMA Findings: Gambling Contracts Are Not Fair and Open

The current investigation was launched due to concerns raised by the Gambling Commission regarding potential breaches of consumer law, which included misleading promotions and unfair terms being used by firms to block player pay-outs.¹⁹ The investigation focused on whether contracts were fair and open, because, while there is an element of risk to gambling, operators must not attempt to confuse customers with complicated terms and conditions.

Paragraph 4.2 of the Gambling Commission's 'Statement of principles for licensing and regulation' states that:

"the Commission expects operators to... have due regard to the interests of customers and treat them fairly... have due regard to the information needs of customers and communicate with them in a way that is clear, not misleading, and allows them to make a properly informed judgment about whether to gamble..."²⁰

As a result of this investigation the CMA have outlined six key points of concern.²¹

Firstly, the CMA found a lack of transparency regarding promotions, with operators offering promotions without providing clear or adequate information concerning several significant restrictions and conditions that applied. This meant that consumers were not fully equipped with the information they would need to reach a considered view about the nature and value of a promotion.

Next, the CMA argued that there were unfair restrictions on withdrawing deposit winnings. In deposit match and bonus promotions, consumers were often prevented from being able to access any winnings obtained using their deposit funds unless and until specified wagering requirements were met. There were additional concerns in respect of unfair obstacles on consumers withdrawing funds.²² The CMA found this to be a significant restriction on the consumer's right to withdraw. Of particular importance here is the practical impact repeated wagering has on the average return to player percentage. Similarly, the CMA found that restrictions on withdrawing unspent deposit funds, by direct or indirect restriction also created an "imbalance in the parties' rights and obligations under the contract to the detriment of the consumer."²³

The CMA found that improving transparency would not be an adequate solution. Instead, operators would need to make the following changes:

1. Stop offering gaming promotions that include a restriction on the withdrawal of deposit winnings.
2. Ensure that terms clearly and prominently articulate the right to withdraw deposit winnings.
3. Ensure that consumers can clearly distinguish between play with funds that are subject to restrictions and play with unrestricted funds.

The CMA also noted that there were issues in the fairness and transparency of play restrictions, with some online operators using terms that are nebulous and uncertain. For example, reference is made to terms which talk broadly about consumers engaging in 'low risk betting' strategies or otherwise behaving in a manner which the operator considers amounts to an 'abuse' of the promotional terms. Generally, there is nothing to stop consumers inadvertently engaging in such behaviours, and operators may exercise their discretion with serious consequences for the consumer. For the CMA, vague terminology, high levels of operator discretion and disproportionate sanctions are all 'unfair'.

To address these concerns, the CMA outlined that the industry must do the following:

1. Ensure that promotional play restrictions do not apply to consumers' deposits or the winnings therefrom, save where operators can ensure that invalid wagers cannot be placed.
2. Clearly outline all prohibited types or patterns of play, with no discretion reserved to the operator after the event.
3. Distinguish terms relating to gameplay restrictions from other terms which set out (valid) restrictions connected with allegations of fraud, collusion, use of multiple accounts, manipulation of software, exploitation of loopholes or other technical forms of abuse or other behaviour which amounts to deliberate cheating.
4. Provide full explanations to consumers where the application of gameplay restrictions results in the loss of (bonus) winnings.

The CMA also investigated the withdrawal of free bets or the reduction of their value. It examined situations in which operators were able to remove a consumer's entitlement to a free bet, despite them having placed all or some of the necessary qualifying bets required under that promotion, and where consumers were

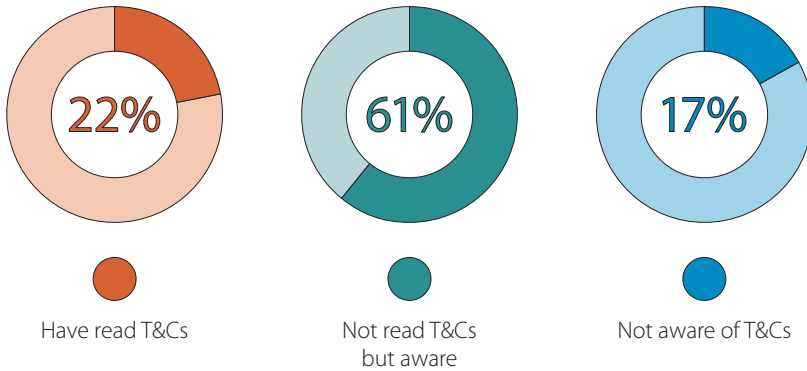
only informed after placing all or some of the qualifying bets that a restriction was being imposed on them, which could either make it harder to complete the remaining qualifying bets or reduce the value of the free bet they ultimately receive. The CMA has recommended that operators should not seek to enforce account restrictions that would either remove a consumer's entitlement to a bet, or reduce its value, where a consumer has already placed all or some of the qualifying bets under the promotion.

Finally, the CMA expressed concerns about terms and conditions which purport to allow operators to use consumers' names, photos, locations, and other personal data for promotional purposes without seeking their consent to do so. The CMA advise that operators must not use, enforce, or seek to rely on such terms in their contracts.²⁴

Action taken since the CMA's initial findings

Since the CMA outlined its initial findings, the Gambling Commission announced that firms across the sector must make these changes to address the concerns they've identified.²⁵ The CMA followed this up in June 2017 by opening enforcement cases, and in March 2018 launched further enforcement action against a number of operators.²⁶ As part of this action, operators were said to be at risk of losing their licences. However, thus far, no operators have faced any penalties

Figure 8: Gambler's Use and Awareness of Terms and Condition



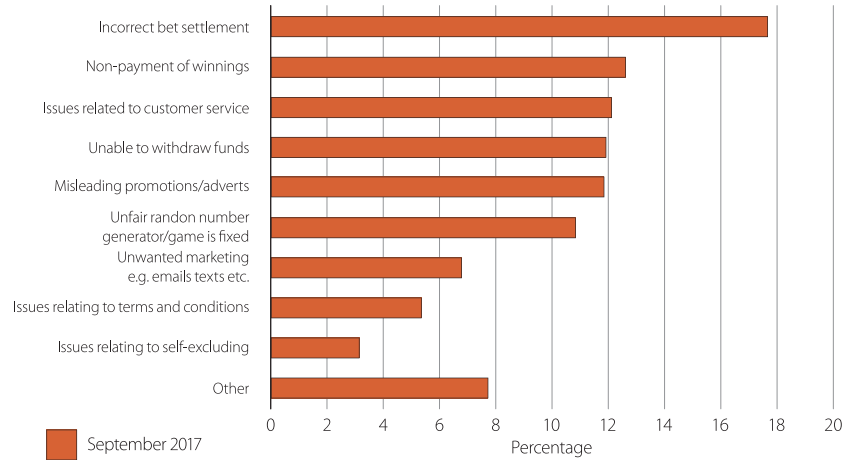
Source: <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-participation-in-2017-behaviour-awareness-and-attitudes.pdf>

with regards to breaches of consumer law. Despite launching the investigation in 2016, it was only in February 2018 that some gambling operators agreed to change the way they offer bonus promotions to customers playing online via a series of undertakings agreed with the CMA; specifically, Ladbrokes, William Hill, PT Entertainment, and BGO.²⁷ In the intervening period, consumers will have continued to be harmed.

The CMA also produced a 'do's and don'ts for online gambling firms.' This set of advice outlined that 'all gambling firms must review their terms and practices for fairness and change them as required.'²⁸ However, action has again lacked teeth in that it

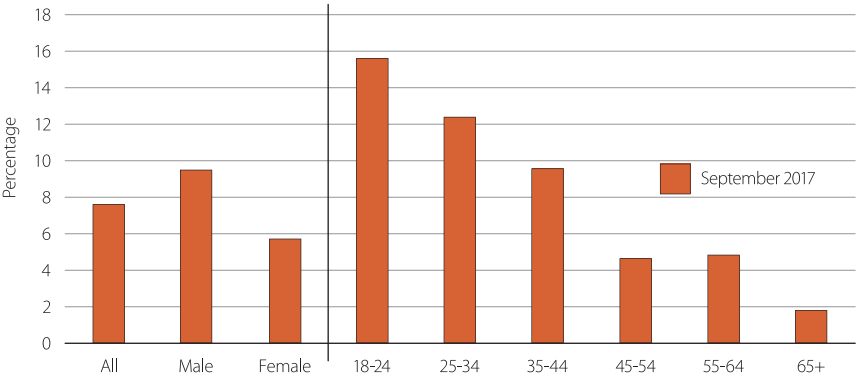
requested that gambling firms take action, but with long timeframes for change and little evidence of significant consequences for lack of compliance.

Figure 9: Customer Reasons for Most Recent Complaint



Source: <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-participation-in-2017-behaviour-awareness-and-attitudes.pdf>

Figure 10: Proportion of Gamblers Who Have Made a Complaint, by Gender and Age



Source: <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-participation-in-2017-behaviour-awareness-and-attitudes.pdf>



3. The Costs of Gambling Addiction

Gambling addiction causes detriment to consumers and society at large, for example through the cost to the public health system. There is also direct harm to problem gamblers and the dynamic of harm to those at risk.

In 2016, an IPPR report (supported by GambleAware), 'Cards on the table', estimated that problem gamblers "cost the government between £260 million and £1.2 billion per year."²⁹ This estimate is based on the following breakdown:

Health:

- *Hospital inpatient services (£140 million - £610 million).*
- *Mental health primary care (£10 million - £40 million).*

- *Secondary mental health services (£30 million - £110 million).*

Welfare and employment:

- *JSA claimant costs and lost labour tax receipts (£40 million - £160 million).*

Housing:

- *Statutory homelessness applications (£10 million - £60 million).*

Criminal justice:

- *Incarcerations (£40 million - £190 million).³⁰*

As well as indicating the cost to society in general, it is possible to infer from this breakdown the type of direct impact suffered by problem gamblers: health issues, loss of employment, loss of homes, and in some cases being forced to resort to criminal behaviour.

At risk gamblers

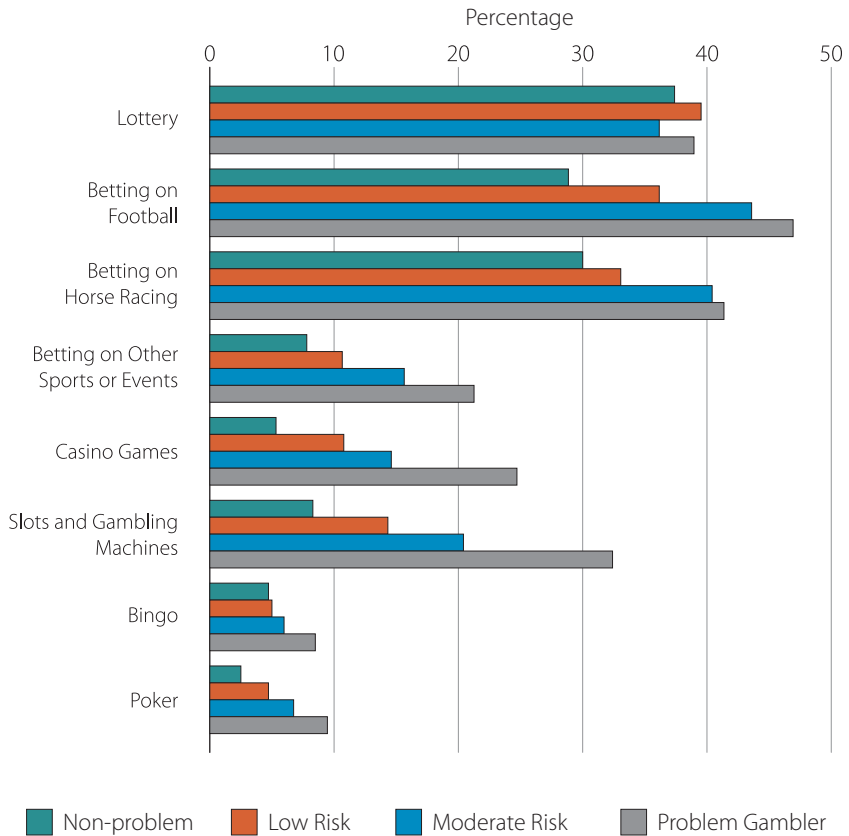
However, this breakdown only covers the impact of those diagnosed as problem gamblers. It does not include those in the adjacent group, the at risk gamblers³¹, who are likely also affected to some extent, or the social costs and impacts on the relevant individuals' family and friends and the impact that will be generated and occur dynamically over time, and that which is growing in the future.³¹ In order to properly assess the scale of the issue and its impact on the state, those at risk need to be included and the true financial burdens and costs properly assessed alongside the obvious social costs.

Moreover, the use of set numbers referring to those that are "problem" gamblers and those that are at risk gives the impression that this is a static problem, quantifiable as an unwavering number. To the contrary, January 2017 advice from the RGSB to government indicated that "46% of loyalty card gamblers on FOBTs had changed problem gambling status during a two-year period from 2014 to 2016."³² The fact that gambling behaviour is not static indicates it is likely that more people will be harmed in their lifetime than any headline percentage or number will suggest. The combination of these factors indicates that the problem is even greater than calculated above, and proper detailed assessment of this stock and flow issue should be carried out by the Gambling Commission and by GambleAware.

While the state funds a significant proportion of research, education and treatment (RET) regarding gambling, the gambling industry also contributes through voluntary donations to GambleAware. In 2017 GambleAware raised over £8m from the industry in 12 months, falling 20% short of the £10m target set by the Responsible Gambling Strategy Board. Accordingly, GambleAware have called on the industry to donate a minimum of 0.1% of their Gross Gambling Yield to meet this target.³³ If this £10m target was met, funding for the RET of gambling addictions would still fall woefully short of per capita spending on other addictions (an estimate of £133 per capita on gambling compared to £377 per capita on drug addiction).³⁴

All the while the gambling operators made a total gross gambling yield of £13.8 billion in the period from April 2016 to March 2017, with a considerable proportion thereof coming from the remote (or online) sector: £4.7 billion.³⁵ With significant industry profits derived from harm, it is evident that the current system fails to address the high cost of problem gambling, particularly in the context of industry gains from this type of harm.

Figure 11: Where Gambling Takes Place



Source: https://about.gambleaware.org/media/1549/gamble-aware_remote-gambling-research_phase-2_pwc-report_august-2017-final.pdf



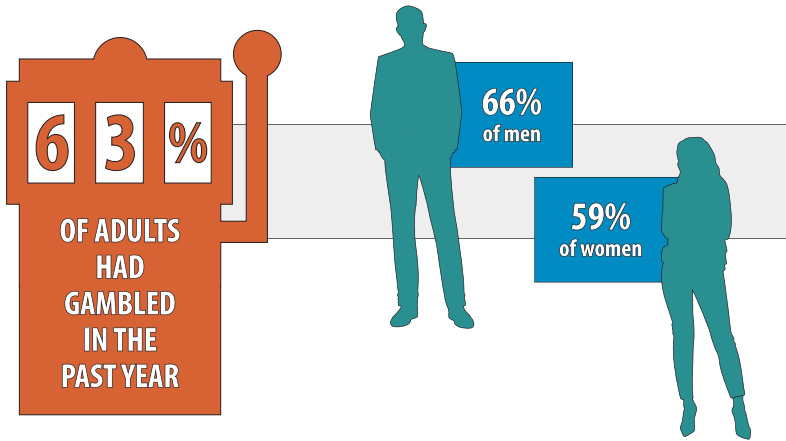
4. Online Gambling: The Risks of Operant Conditioning

Unfair terms and conditions, such as those above which the CMA has raised concerns about, are likely to contribute to the risk of many more in society developing gambling problems. It is now clear that increased online advertising generates increased online attention³⁶ and provides an opportunity for online gambling companies to expand their market. In circumstances where people are making free and independent choices this could be unobjectionable. However, where people are required to spend a considerable amount of time betting online before they are able to get their funds back they may find themselves conditioned through

“Operant Conditioning” techniques to spend more and more of their time learning an addictive behaviour. The outcome is that questions must be raised about just how free and independent consumer choice is in this market.

For instance, online betting sites exploit known behavioural weaknesses such as bias and risk discounting to encourage or “steer” people towards more addictive content; and increasingly higher stakes. For example, online betting sites encourage users towards gambling on electronic slot games and sometimes roulette; both games are known to have the most addictive

Figure 12: Percentage of Adults that have Gambled in the Past Year



Source: <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2015.pdf>

content and generate a reinforcement of gambling behaviour.³⁷ This steering is very harmful and appears to use sophisticated psychology adapted as an online “training” technique to condition behaviour.³⁸ A desired behaviour can be reinforced more easily in an online environment, where the ‘online training’ is something consumers are not consciously aware is taking place, nor are they aware of the risks, nor have they had the consequences brought to their attention.

The theory of operant conditioning posits that behaviours are reinforced by consequences. Simply, if consequences are positive, a person’s behaviour will, generally, be reinforced. However, there

are different schedules of reinforcement - from consistent to partial reinforcement. Gambling on slot machines or online uses a partial, variable ratio reinforcement which emits the desired outcome after a random number of plays. This type of reinforcement schedule has been shown to produce a high, steady rate of response, as players do not know how often they have to play before they win, but they know that they will eventually win. Often, players are reluctant to quit as they believe the next game could produce the win they are seeking to secure.³⁹

Free money is offered, usually in addition to requiring money to be deposited, but

in the terms and conditions it becomes clear that to redeem money requires the gambler to play for longer – so people are gradually enticed and induced into playing over an increased time frame for their reward. The requirement to make a certain number of plays may also lead to the use of slot games, as they are faster, where there is less and less likelihood of getting money back. However, crucially, there is still a small chance that money will be paid out. As mentioned above, this is known as “variable rate reinforcement” and is a well-known method by which behaviour can be conditioned. Under a variable rate reinforcement system, a person’s behaviour is conditioned after the event that is to be reinforced with a reward on a variable basis.

B. F. Skinner⁴⁰ is recognised as having discovered that positive reinforcement via variable rewards is a more powerful tool for encouraging and conditioning consistent behaviour. Variable rate reinforcement occurs in a system where a player wins irregularly – encouraging people to gamble more.⁴¹ As described in one psychology study:

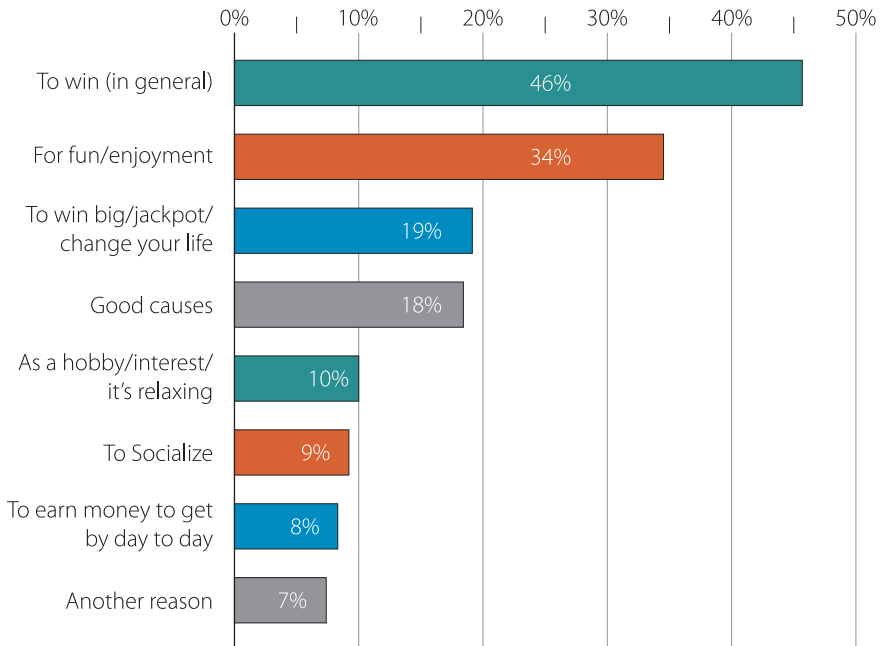
“The random ratio is similar to the variable ratio schedule of reinforcement. This schedule of reinforcement has long been demonstrated to rapidly produce a frequent level of gambling that is difficult to suppress (Dickerson, 1984; Skinner, 1972) and has been found to take longer to extinguish in high-frequency gamblers (Horsley, Osborne, Norman, & Wells, 2012), showing deficits in partial reinforcement that demonstrate

themselves in greater perseverative gambling not unlike loss-chasing.”⁴²

The online environment with its ready access⁴³ and ease of use, makes online gambling a bigger issue than gambling in the past, which was confined and regulated through the licencing of locations, such as betting shops, building in inaccessibility and increased effort for players to exert.⁴⁴ This is not now required given the wide number of access devices from mobile phones through tablets to laptops and desktop computers. It is also likely to be targeted at younger people.⁴⁵

It has been suggested in a recent review of the relevant psychology literature about online gambling’s addictive qualities that mobile phones are a particular issue that creates a higher risk of problem gambling, with particularly harmful effects among the young. This study shows that smartphones are a rapidly growing platform on which individuals can gamble using specifically designed applications, adapted websites or text messaging. The review considered how mobile phone use interacts with psychological processes relevant to gambling, the games users are likely to play on smartphones, and the interactions afforded by smartphones, and found that they have rapidly become adapted in ways that they found “Maladaptive”.⁴⁶

Figure 13: Reasons for which People Gamble



Source: <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-participation-in-2017-behaviour-awareness-and-attitudes.pdf>

“Our interpretation of the evidence is that the schedules of reinforcement found in gambling interact with the ways in which people tend to use smartphones that may expedite the acquisition of maladaptive learned behaviours such as problem gambling.”⁴⁷

The accessibility and ease of use of online gambling has led to increasing levels of gambling, affecting the impact of gambling on the population generally, and the pace at which that impact can occur. With mobile phones and websites having direct access to players’ bank accounts, and online and mobile gameplay occurring at a much faster pace than in

land-based gambling sites, players can lose far more, far faster. This has increased the number of people at risk, and the degree of that risk, and increased the need for greater control and enforcement. Those aged 16-24 represent higher rates of online gambling and receptiveness to advertising,⁴⁸ demonstrating greater risk for this younger group.

A wider observation could be made about the policy issue here; the state appears to be allowing people to be exposed to a system of damaging behavioural reinforcement that harms both them and those close to them, without proper assessment and understanding of the system and its effects and consequences. At the very least full investigation is required. Thus far, there has been no significant, industry-led investigation into online gambling, and its impacts. Considering the changing landscape of the gambling industry, this must be fully investigated by the Gambling Commission.

So, what steps should then be taken to prevent harm? As suggested above, the Gambling Commission should take a more active role in addressing this potential harm. Whether the issue is categorised as ensuring gambling is conducted in a fairer and more open way, or protecting the vulnerable or the young from harm, or as a public health issue with the use of warnings, as are commonly used on cigarette packets about the dangers of smoking on people's health, the Gambling Commission must be at the forefront, looking for the solutions. In all events, the responsibility for the injury caused to individuals can be traced back to the door of those licencing and allowing the online gambling firms to operate in this way.⁴⁹ We set out our proposals for both prevention of future harm and redress for that which has occurred, in outline, below.



5. Institutional Action

The Gambling Commission's Powers

The Gambling Commission has both regulatory and prosecutorial powers to ensure operators comply with the licensing objectives. With regards to regulatory enforcement, the Gambling Commission has relatively wide powers to review licence-holders' activities and take enforcement action, such as the imposition of fines on non-compliant operators, or the revocation of their licences.⁵⁰ The Gambling Commission also has powers to prosecute offences, where gambling is taking place outside of the legal framework set out in the Gambling Act 2005.⁵¹

The Gambling Commission published a paper entitled "Raising standards for consumers" in 2018.⁵² In the report they state that they are "concerned customers whose gambling starts to escalate are only identified and their source of funds verified once an operator's commercial triggers are hit, and often once it is too late to have picked up the deposits of significant criminal finances." The report also finds that the Commission's "research last year showed signs public trust and confidence in gambling is declining, with 78% of those surveyed believing there are too many opportunities to gamble, and 69% feeling gambling is dangerous to family life. In addition, our evidence shows 430,000 people in this country are classified

as problem gamblers and up to two million are classified as at risk.⁵³ Moreover, the statistics on page 28 of the report seem to indicate, worryingly, that enforcement action taken against unlicensed remote gambling operators has increased from 40 in 2015 to 61 in 2017, rather than the Gambling Commission raising standards, as the title of its report indicates.

Following a discussion about how interaction with customers reveals how the gambling industry behaves when faced with customers experiencing difficulty – for example where gamblers have started to become addicted – the report notes that “we have become particularly concerned – and taken the most stringent action – where customers who were experiencing significant problems with their gambling have been treated as ‘VIP’ customers. Here, we have seen repeated instances of engagement with these people being only to facilitate their further gambling rather than to make checks on their source of funds and their welfare.” The report then examines two cases where gamblers had run up losses of hundreds of thousands of pounds, using stolen money as funds, being treated as VIPs. From these investigations there were no policies or procedures in place that would enable the operator in question to comply with its licence obligations. A payment of £1 million to problem gambling research in lieu of a financial penalty was achieved. Thus, the Gambling Commission clearly does use some of its powers, for example its website

reports fines being levelled against several operators.⁵⁴ It has also drawn its guidance to the public’s attention.

However, the ongoing issues in the industry indicate that this is not enough to change the behaviour of the gambling companies. The Gambling Commission must use the full range of its powers in order to properly enforce the law and achieve cultural change in the industry in line with its statutory remit.

The CMA’s powers are outlined in the Enterprise Act 2002 (“EA02”). It has the power to commence sector investigations and require undertakings from companies active in that sector in lieu of further enforcement action.⁵⁵ Thus far, four operators have offered undertakings to the CMA. These are: PT Entertainment Services Limited, WHG (International) Limited, Ladbrokes Betting & Gaming Limited, and BGO Entertainment Limited.⁵⁶

The compliance requirements include that players will not be required to play multiple times before they can withdraw their own money, gambling firms must ensure that any restrictions on gameplay are made clear to players, and gambling firms must not make players take part in publicity to collect winnings.

The CMA has powers to monitor compliance with any requirements, which, it has been indicated, it will carry out with the aid of the Gambling Commission.⁵⁷

Since the entry into force of the Consumer Rights Act 2015, which amended EA02, the CMA has been able to implement Enhanced Consumer Measures (“ECMs”).⁵⁸ These include measures to ensure redress, (such as compensatory measures, termination of contracts, or “measures intended to be in the collective interests of consumers”⁵⁹), compliance measures, or measures to enable consumers more effective choice between suppliers of goods or services.⁶⁰ Because of the widespread nature of the practices adopted by online gambling companies we understand that the CMA has focused on undertakings designed to change gambling companies’ behaviour.⁶¹

We believe the CMA has made a good start, but that the powers available to seek compensation, and take collective redress have, thus far in this investigation, not been fully explored. Moving forward, we believe that these powers must be fully employed and extended in order to change the gambling companies’ incentives and encourage full culture change in the industry.

Given that the evidence indicates those most at risk tend to be young, perhaps online gambling platforms should require full proof of ID, or online access subject to gambling company approvals and subject to responsibility by firms for those that use them – and with online information available that can be audited and monitored. Gateways can be introduced

before firms allow their games to be played. Moreover, the CMA could require that sign-up offers are not allowed in the industry, due to the enhanced risk of problem gambling, or at least that such offers would be limited according to age, so that the offers do not target those under 25, for example.

The CMA, as the consumer protection body in the UK, should benefit from the recent EU proposals⁶² for increased collective redress powers for consumer protection bodies. However, while the proposal is also a further potential improvement over the current system, it will be of limited value as the collective action would be limited to claims for compensation, so would allow defendants to profit from their continuing breach of the law, and the fining powers would be coordinated, again, with no regard to the amount of profit accumulated from the illegal action.⁶³

The CMA’s action to date does not stop private legal actions for individual compensation from being taken. We consider the likelihood of such claims being made to be low, and even if taken the change to behaviour will be immaterial. In these circumstances we believe the CMA should act as a Public Prosecutor. The CMA should be given the power to bring cases against companies that break consumer law on behalf of consumers. It should be able to use its powers of investigation to assess the profits and gains made by the online operators through such activity, and order

redress of the situation for the whole period covered, not just since October 2015. This would help ensure that consumers are compensated for losses suffered and that the gambling operators are stripped of the profits. It is fundamentally wrong and unjust for the gambling companies to keep people's deposits or to profit from their wrongdoing.



6. The Gambling Operators' Gains

It is important to highlight that in online markets, the gain to an operator from its behaviour toward large numbers of consumers is often very profitable. In online markets revenues can increase dramatically with no direct increase in the cost of sales - indeed internet businesses are frequently characterised by having very low variable costs as the same systems are used by increasing numbers of users many times over. In such an environment the gain to a company of non-compliance is often likely to be far greater than the quantifiable loss to even large numbers of individual consumers.

In addition to the basic economics of online businesses described above, there are often additional factors at play. The longer a consumer plays on a website or app, the more data the gambling company is able to gain about them. This data can then either be sold on or used for targeting ads for many different purposes. Where ads can be more accurately targeted they command more sales and the value of the advertising is increased. In addition, the data gathered from consumers' time spent online can be used to reinforce desired behaviour and in the gambling company's own marketing, all enhancing the gambling company's profits.

Some Problems with Private Actions

We understand that the CMA considered further action against the gambling operators, such as a voluntary compensation scheme, but in such cases, it has to be recognised that there would be difficulties in identifying precisely which consumers had suffered what amount of loss and how to quantify any such losses.

We wonder whether this is really so difficult:

- all data that is collected online is available
- the actions of each player are monitored at all times and their positions in terms of winnings and payment and billing details
- individual credit cards used for payments
 - are known in precise detail. Indeed, it is hard to understand why such action was not pursued.

The CMA's investigation and the voluntary undertakings obtained can be used as evidence in private actions against the gambling operators. Individuals or groups of consumers could claim where they can prove harm. For reasons discussed earlier, we don't believe that such private action is likely.

To reiterate, the age-old issue here is that it may be more expensive to bring private actions than would be warranted by the amount of recoveries. It is likely that individual consumers' loss will, individually be relatively low, making individual claims uneconomic in light of the costs involved in making the claims. If consumers could be grouped together there might be an economic case for claiming. However,

the Consumer Rights Act 2015 only introduced opt-out and opt-in collective proceedings for breaches of competition law, not consumer law.⁶⁴ So that route is unavailable for this type of case. Moreover, when used, in competition cases such actions have not been taken successfully for multiple procedural reasons, which favour the defendants.⁶⁵

Not only are gambling 'consumers' faced with these usual cost and procedural barriers to making claims; the gambling context means they are faced with even further barriers because those 'consumers' worst affected – i.e. those who would otherwise be expected to pursue private action to enforce their private consumer rights – are in fact those who are most likely to have lost significant amounts of money and therefore will have even further financial barriers to bringing cases, than may otherwise be the norm. Additionally, gambling (and, in particular, gambling addiction) carries a degree of social stigma and is often shrouded in secrecy. Many 'consumers' simply will not want to air the fact that they have been gambling at all in a public forum, if at all, let alone the amounts of money they have lost in doing so.

We applaud the CMA's steps to date but consider they do not go far enough. The CMA should be required to prosecute cases where consumers have been harmed. Where illegality has been shown the CMA should be required to take deterrent action in the wider interests of all

consumers, and in the public interests of society. This is especially so in this context, where private enforcement is likely to be lacklustre, at best.

The CMA's initiative in seeking a change to behaviour can be complemented by action that also fully addresses the incentives of the wrongdoer. To achieve this, the incentives and position of the offender have to be taken into account. Penalties are said to be designed to have deterrent effect – but this is powerless where it profits the wrongdoer to continue to breach the law.

It is imperative that gambling organisations found to have breached the law, do not gain a windfall simply because they never see private action for compensation.

To address this problem in public enforcement the basis for the calculation of the penalty or fine would need to take into account the full extent of the gains from the breach of the law.

We gather that the government is considering extending the CMA's powers and has recently indicated its intention to introduce civil fining powers in consumer matters.⁶⁶ We recommend a new fining mechanism designed to deter repeated offences by stripping out profits from those that break the law, an idea which appears consistent with current proposals.⁶⁷ In the circumstances of online companies, where fines based on turnover have no meaningful impact on profits,

and company incentives, the fines would need to be assessed after an account of profits. The amounts recovered could then be distributed to those harmed and any over-recoveries distributed to those representing the cost to society. In this case, gambling addition charities and healthcare professionals.

This appears consistent with the current approach at European level. The EU Commission has identified flaws in consumer protection arising from lack of enforcement powers and has proposed similar changes in its recently published "New Deal for Consumers".⁶⁸ This follows a major re-evaluation of EU consumer law conducted in 2017.⁶⁹ The New Deal proposes amendments to existing laws to empower national regulators with fining powers. In particular, the EU is proposing GDPR-level fines (up to 4% of worldwide turnover).⁷⁰ The EU has also proposed the establishment of a collective action scheme for consumers to pave the way for damages claims to be brought.⁷¹

In the context of Brexit, it is particularly important for justice and the rule of law that the CMA be empowered to act in a public prosecutorial role, to take action against such wrongdoing. A strong case can be made that there should be an account of profits as well as revenues in setting levels of fines and that the UK can go further than the EU New Deal in securing compliance and in making the UK a safe online environment.⁷²



7. Conclusion and Recommendations

We have reviewed the CMA findings, the effects on society and costs to the public health system of problem gamblers. We are supportive of fairer and more open terms and fairer gambling in general, but we recognise that some types of gambling can be addictive, and some people may become problem gamblers. People at risk represent a bigger group who have not been fully investigated, as far as we know. We recommend that the at risk group should be more closely studied.

Existing consumer protection law and competition enforcement powers do not go far enough for effective enforcement.

This is especially true in the context of online gambling.

We are particularly concerned that the online environment is conducive to games using operant conditioning, and games can be designed to entice consumers (particularly the young) down a slippery slope affecting their independence of mind and the judgment required for independent choices to be made. Greater numbers of those at risk may become a problem in such a world. As an operational imperative, clear and unambiguous warnings are needed for certain types of online gambling.

As an institutional matter, the CMA's responsibilities should be strengthened. As a basic problem that remains un-addressed; there remain consumers that paid out on unfair terms and have not recovered their money. The incentives on the industry toward compliance are unsound; the CMA should act to deprive the industry of the gains of its wrongdoing and must have a role as public prosecutor to facilitate such recoveries, and ongoing compliance in future. Action has been taken by the CMA where breach of the law has been found. Undertakings from those found to be in breach have been offered. However, the law has been broken and individuals have suffered harm. It is not just that such harm goes unassessed and unpunished is not just. In particular, we recommend:

- As a minimum, those responsible must be brought to account and must change their ways, given the evidence to date of a culture of cynical exploitation, their gambling licences should be at risk unless they immediately return illegally obtained money and commit to ongoing compliance.
- The CMA should use the full extent of the powers it has and, if necessary, be granted further powers to act as a Public Prosecutor, enabling it to strip those that have broken the law of their unlawful gains, and obtaining redress for consumers that have been harmed.
- The undertakings are monitored and enforced against strict publicly available targets to prevent gambling addiction.
- Those firms responsible for causing harm must not be able to continue to profit from their wrongdoing.
- Deposit money and winnings generated under unfair contracts and now trapped in player accounts should be returned to the players.
- Work needs to be done on vulnerable consumers and their exposure to different games, some of which may be more addictive than others. We need bespoke action to ensure that more addictive games are not developed without due regard to the vulnerability of the user. In essence, a scale of addictiveness for games needs to be developed. Similar government action should be taken in the online world as has been taken in the bricks and mortar world. For example, fixed odds betting has recently been more carefully controlled, while the online world remains a "Wild West", an enormous unregulated Cybercasino. Similar rules should apply both online and offline. Happily, the government in February 2018 announced a review of current legislation, with the aim to ensure that what is illegal offline is illegal online.⁷³
- It should be accepted that the online environment is more dangerous for those at risk as there is greater scope for

using sophisticated techniques to create ongoing dependency for the vulnerable. Similar action to that recently taken to ensure child protection and prevent or restrict online access to unsuitable content can and should be used here.

This report shows that there is an urgent need for action. The online gambling industry is an industry that makes more than half of its profits from those at risk and problem gamblers and is itself addicted to addiction – needing to generate more addiction to generate more profits.

This report highlights the need to prevent operant conditioning techniques from being used. There is a clear need to protect those at risk, and particularly the young, from being enticed down a road that limits their ability to make rational judgements.

This requires independent choices to be made. If action is not taken to properly ensure compliance on online gambling platforms, greater numbers of those at risk may rapidly become a bigger problem. At the very least, as has been done for online child protection in other contexts, clear and unambiguous warnings are needed for certain types of online gambling.⁷⁴

There is a clear and compelling case for tougher action from the Gambling Commission. We look forward to seeing the Gambling Commission taking such action and, given the nature of the current process respectfully reserve our position to make further representations once the final CMA/ Gambling Commission determinations have been made.

Endnotes

1 See ResPublica, 'Wheel of Misfortune', October 2017, <https://www.respublica.org.uk/wp-content/uploads/2017/10/Wheel-of-Misfortune-Embargoed-until-Monday-16th-October-00.01.pdf>

2 See ResPublica, 'Wheel of Misfortune', October 2017, <https://www.respublica.org.uk/wp-content/uploads/2017/10/Wheel-of-Misfortune-Embargoed-until-Monday-16th-October-00.01.pdf>

3 See CMA case page, March 2018, <https://www.gov.uk/cma-cases/online-gambling> - Online gambling throughout this report refers to both online and mobile gambling. Under the Gambling Act and in Gambling Commission documents, online gambling operators are referred to as 'remote' operators.

4 Ibid.

5 Howard Reed of Landman Economics used data on the number of days and the amount of money spent on online gambling, using Table 13 on Page 43 in the PWC report for GambleAware (2017), Remote Gambling Research (online). See GambleAware, August 2017, https://about.gambleaware.org/media/1549/gamble-aware_remote-gambling-research_phase-2_pwc-report_august-2017-final.pdf - and combining this with Tables 3.3 and 4.5. Also see NatCen, 'Gambling behaviour in Great Britain in 2015', 2017, <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2015.pdf>. From this data, he calculated that low-risk, medium-risk and problem gamblers contributed to 17%, 17% and 24% of total gambling losses respectively, constituting 58% of the industry's total profits.

6 See press release, 'Government outlines next steps to make the UK the safest place to be online', February 2018, <https://www.gov.uk/government/news/government-outlines-next-steps-to-make-the-uk-the-safest-place-to-be-online>

7 For combined data on the number of days and the amount of money spent on online gambling, see the PWC report for GambleAware, 'Remote Gambling Research', August 2017, https://about.gambleaware.org/media/1549/gamble-aware_remote-gambling-research_phase-2_pwc-report_august2017-final.pdf and NatCen, 'Gambling behaviour in Great Britain in 2015', 2017, <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2015.pdf>

8 Such as those recently put in place for child protection purposes as sponsored by the Digital Policy Alliance – See Digital Policy Alliance, 'Internet Child Safety Achievements as Part of the Digital Economy Act 2017', June 2017, <https://www.dpalliance.org.uk/download/dpa-internet-child-safety-achievements-as-part-of-the-digital-economy-act-2017/?wpdmdl=2374>

9 The Gambling Commission was established by Part 2 (<https://www.legislation.gov.uk/ukpga/2005/19/part/2>) of the Gambling Act 2005. Section 24(a) of this Act requires the Commission to pursue the licensing objectives, which are (i) to prevent gambling being a source of crime or disorder, being associated with crime or disorder or being used to support crime, (ii) ensuring that gambling is conducted in a fair and open way, and (iii) protecting children and other vulnerable persons from being harmed or exploited by gambling. This is acknowledged by the Gambling Commission on its website (<http://www.gamblingcommission.gov.uk/about/Who-we-are-and-what-we-do/Who-we-are-and-what-we-do.aspx>). We provide an outline of how this may be achieved.

10 When we refer to online gambling we mean it to include all use of internet-based products and services and in particular the access to the online world unrestricted by the type of device, whether desktop, laptop, tablet mobile or smart phone.

11 See CMA case page, March 2018, <https://www.gov.uk/cma-cases/online-gambling>

12 Ibid.

13 Rob Davies, 'Number of problem gamblers in the UK rises to more than 400,000', *The Guardian* 24 August 2017, available at <https://www.theguardian.com/society/2017/aug/24/problem-gamblers-uk-gamblingcommission-report>

14 Heather Wardle et al, 'Gambling machines research programme', 2014, – findings from a survey of loyalty card customers showed that "among men, age, income, ethnicity, economic activity and gambler type were associated with problem gambling. The odds of being a male problem gambler were around 1.5-1.8 times higher among those aged 25-54 than those aged 18-24. The odds were significantly higher among those from non-White ethnic groups than White/White British ethnic groups. Odds were highest among men who were Asian/Asian British, who had odds of being a problem gambler that were five times higher than their White/White British counterparts. For both economic activity and income, the relationship showed that those who were more economically disadvantaged were more likely to be male problem gamblers. Odds were 1.8 times higher among those who were unemployed than those who were in paid employment and were 0.4 times lower among those with an income of £32,000 per year or more than those with an income of £10,200 per year or less." Heather Wardle et al, 2014, 'Gambling machines research programme. Report 2: Identifying problem gambling', <https://about.gambleaware.org/media/1225/report-2-identifyingproblem-gambling-findings-from-a-survey-of-loyalty-card-customers.pdf>. This evidence reflects the findings of Forrest and Wardle (2014), who state while that participation rates in gambling amongst British Asians is low relative to that in the White majority, problem gambling prevalence is significantly higher. See David Forrest and Heather Wardle, 2014, 'Gambling in Asian Communities in Great Britain', *Asian Journal of Gambling Issues and Public Health*, <https://link.springer.com/article/10.1186/BF03342121>

15 Information and data on the classification of at risk and problem gamblers can be found in NatCen, 2015, 'Gambling Behaviour in Great Britain in 2015', <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2015.pdf>

16 Stephanie Bramley, Caroline Norrie and Jill Manthorpe, KCL, March 2017, <https://www.kcl.ac.uk/sspp/policy-institute/publications/The-nature-of-gambling-related-harms-for-adults-at-risk-a-review.pdf>

17 For combined data on the number of days and the amount of money spent on online gambling, see the PWC report for GambleAware, 'Remote Gambling Research', 2017, https://about.gambleaware.org/media/1549/gamble-aware_remote-gambling-research_phase-2_pwc-report_august-2017-final.pdf and NatCen (2017), Gambling behaviour in Great Britain in 2015 (online). Available at: <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2015.pdf>

18 NatCen, 'Gambling behaviour in Great Britain 2015', 2015, <http://natcen.ac.uk/our-research/research/gambling-behaviour-in-great-britain-in-2015/>

19 See press release, October 2016, 'CMA launches investigation into online gambling', <https://www.gov.uk/government/news/cma-launches-investigation-into-online-gambling>

20 Speech by George Lusty (CMA Project Director), November 2017, 'Online gambling: the investigation so far and next steps', <https://www.gov.uk/government/speeches/online-gambling-the-investigation-so-far-and-next-steps>

21 Ibid. Also see CMA, February 2018 'CMA action in the remote gambling sector: Overview for industry', <https://assets.publishing.service.gov.uk/media/5a81a50240f0b623026986bd/cmagambling-sector-overview.pdf>) for summary of the CMA's findings and the undertakings they have received to address those concerns.

22 Not limited to promotions, such as time limits on withdrawing funds, arbitrarily short deadlines for verification of information to enable withdrawal of funds or non-forfeiture and dormancy terms which allow for the confiscation of funds or imposition of excessive charges after periods of inactivity.

23 Speech by George Lusty (CMA Project Director), November 2017, 'Online gambling: the investigation so far and next steps', <https://www.gov.uk/government/speeches/online-gambling-the-investigation-so-far-and-next-steps>

24 Ibid.

25 See press release, 'Gambling sector told to raise its game after CMA action', February 2018, <https://www.gov.uk/government/news/gambling-sector-told-to-raise-its-game-after-cma-action>

26 Ibid.

27 See CMA cases, 'Timetable', March 2018, <https://www.gov.uk/cma-cases/online-gambling#timetable>

28 CMA, 'Online gambling promotions: do's and don'ts for online gambling firms', February 2018, <https://www.gov.uk/government/publications/online-gambling-promotions-dos-and-donts/onlinegambling-promotions-dos-and-donts-for-online-gambling-firms>

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30 Ibid.

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33 GambleAware, Submission to DCMS consultation on proposals for changes to Gaming Machines and Social Responsibility Measures, January 2018, <https://about.gambleaware.org/media/1676/gambleawares-submission-to-dcms-proposals-for-changes-to-gaming-machines-and-social-responsibility-measures.pdf>

34 ResPublica, Submission to DCMS consultation on proposals for changes to Gaming Machines and Social Responsibility Measures, January 2018, https://www.respublica.org.uk/wp-content/uploads/2018/01/ResPublica_submission-to-DCMS-Gaming-Machines-and-Social-Responsibility-Measures-Consultation.pdf

35 For combined data on the number of days and the amount of money spent on online gambling, see the PWC report for GambleAware (2017), Remote Gambling Research (online). Available at: https://about.gambleaware.org/media/1549/gamble-aware_remote-gambling-research_phase-2_pwc-report_august2017-final.pdf and NatCen (2017), Gambling behaviour in Great Britain in 2015 (online). Available at: <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2015.pdf>

36 Tim Wu, 'Attention Merchants: The Epic Scramble to Get Inside Our Heads', 2016, (Penguin Random House: New York).

37 For example, 888 Casino's website (https://www.888casino.com/sem/double-1500.htm?gclid=EAlaQobChMrlSpk6Og2glVb7vtCh0RKwH8EAAYAiAAEgJUuPD_BwE) advertises its new player free play offer with imagery of slot machines and roulette.

38 Saul McLeod, 2018, 'Skinner – Operant Conditioning', *SimplyPsychology*, <https://www.simplypsychology.org/operant-conditioning.html>

39 Kendra Cherry, March 2018, 'Variable-Ratio Schedules Characteristics', <https://www.verywellmind.com/what-is-a-variable-ratio-schedule-2796012>

40 Saul McLeod, 2018, 'Skinner – Operant Conditioning', *SimplyPsychology*, <https://www.simplypsychology.org/operant-conditioning.html>

41 Terry Knapp, 1997, 'Behaviorism and Public Policy: B. F. Skinner's Views on Gambling', *Behavior and Social Issues*, cites Skinner observing in Science and Human Behavior "If the gambling establishment cannot persuade a patron to turn over money with no return, it may achieve the same effect by returning part of the patron's money on a variable-ratio schedule."

42 Richard James, Claire O'Malley and Richard Tunney, October 2016, 'Understanding the psychology of mobile gambling: a behavioural synthesis', *British journal of Psychology*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5516195/> See also Centre for Social Justice, 2016, 'Breakthrough Britain: Ending the costs of social breakdown', <https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2016/08/BBgambling.pdf>

43 See Gambling Commission press release, February 2016, <http://www.gamblingcommission.gov.uk/news-action-andstatistics/news/2016/Commission-research-features-online-gambling-trends-for-the-first-time.aspx>, which indicates that while the most common place to gamble on the Internet is at home (97% of gamblers played at home), younger gamblers (under 35s) are increasingly gambling while commuting, at sports events or in social environments, such as pubs.

- 44 The context of use is also important when contrasting remote and retail gambling, as one of the attractive features of remote gambling is its private nature, whereas retail gambling locations may have a tendency to discourage some potential gamblers because of the negative social connotations associated with them. On this point, see Sally Gainsbury, Robert Wood, Alex Russell, Nerilee Hing, and Alex Blaszczyński, 2012, 'A digital revolution: Comparison of demographic profiles, attitudes and gambling behavior of Internet and non-Internet gamblers', *Computers in Human behaviour*, <https://pdfs.semanticscholar.org/4555/9ae03db58c5b54c4055aa8ecfc28bf3c5613.pdf>
- 45 See evidence in House of Commons, Culture, Media and Sport Committee, July 2012, 'The Gambling Act 2005: A bet worth taking?', <https://publications.parliament.uk/pa/cm201213/cmselect/cmcumeds/421/421.pdf> For example, Betfair's Martin Cruddace's comment that the next generation of gamblers will "absolutely" go straight to online rather than land-based gambling.
- 46 Richard James, Claire O'Malley and Richard Tunney, October 2016, 'Understanding the psychology of mobile gambling: a behavioural synthesis', *British Journal of Psychology*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5516195/>
- 47 Ibid.
- 48 See Daniel Hanss et al., 2015, 'The impact of gambling advertising: Problem gamblers report stronger impacts on involvement, knowledge, and awareness than recreational gamblers', *Psychology of Addictive Behaviours*, <https://www.ncbi.nlm.nih.gov/pubmed/25730628>
- 49 The Gambling Commission was established by Part 2 (<https://www.legislation.gov.uk/ukpga/2005/19/part/2>) of the Gambling Act 2005. Section 22(a) of this Act requires the Commission to pursue the licensing objectives, which are (i) to prevent gambling being a source of crime or disorder, being associated with crime or disorder or being used to support crime, (ii) ensuring that gambling is conducted in a fair and open way, and (iii) protecting children and other vulnerable persons from being harmed or exploited by gambling. This is acknowledged by the Gambling Commission on its website: <http://www.gamblingcommission.gov.uk/about/Who-we-are-and-what-we-do/Who-we-are-and-what-we-do.aspx>.
- 50 See Sections 116-122, Gambling Act 2005: <https://www.legislation.gov.uk/ukpga/2005/19/part/5/crossheading/regulation>
- 51 See Section 28, Gambling Act 2005: <https://www.legislation.gov.uk/ukpga/2005/19/section/28>. These powers do not apply in Scotland.
- 52 See Gambling Commission, 2017-18, 'Raising Standards for Consumers: Enforcement Report', <http://www.gamblingcommission.gov.uk/PDF/Raising-standards-for-consumers-enforcement-report.pdf>.
- 53 According to a 2017 National Centre for Social Research (NatCen) report prepared for the Gambling Commission, there were over 430,000 problem gamblers in the UK in 2015, an increase from 280,000 in 2012, with another 2 million at risk. See NatCen, 2014, 'Gambling behaviour in England and Scotland: Findings from the Health Survey for England 2012 and Scottish Health Survey 2012', <http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-England-and-ScotlandFindingsfrom-the-Health-Survey-for-England-2012-and-Scottish-Health-Survey-2012.pdf>
- 54 See Gambling Commission, 2018, <http://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2018/Gambling-business-fined-for-advertising-failures.aspx>
- 55 EA02, Part 4, 2002, <https://www.legislation.gov.uk/ukpga/2002/40/part/4> and EA02, Part 8, 2002, <https://www.legislation.gov.uk/ukpga/2002/40/part/8>. The CMA's gambling investigation has been conducted under EA02, Part 8
- 56 See CMA case page, March 2018, <https://www.gov.uk/cma-cases/online-gambling>
- 57 See Gambling Commission letter, February 2018, <http://www.gamblingcommission.gov.uk/PDF/Letter-Call-to-action-on-unfair-terms-February-2018.pdf>. The CMA will be monitoring compliance with undertakings which have been offered by specific companies (PT Entertainment Services Limited, WHG (International limited), Ladbrokes Betting and Gaming and BGO). A report to the CMA from these companies is due by 31 July 2018. The Gambling Commission has made clear that the rest of the sector are also expected to adopt necessary changes to deal with the concerns identified, or face further regulatory action.

58 See Section 79 of the Consumer Rights Act 2015, <http://www.legislation.gov.uk/ukpga/2015/15/section/79/enacted>

59 See section 219A(2) EA02, 2002, <https://www.legislation.gov.uk/ukpga/2002/40/section/219>

60 Ibid.

61 Section 79(2) Consumer Rights Act 2015, as brought into force by section 3 of the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015/1630, <http://www.legislation.gov.uk/uksi/2015/1630/made>

62 European Commission Fact Sheet, April 2018, 'New Deal for Consumers', http://europa.eu/rapid/press-release_MEMO-18-2821_en.htm

63 Moreover, the reference in the law to penalties needs clarification; if the amount available to claimants were to place defendants in double jeopardy, that would clearly be wrong, so no defendant should face being penalised twice for the same infringement, nor should the defendant pay damages by way of compensation twice, but there is no inconsistency with that position and the defendant being stripped of their profits from breach of the law. Neither should such a law be able to affect or curtail the residual jurisdiction of the common law courts to impose exemplary damages in order to preserve the rule of law, in the very narrow category of cases where they are and should continue to be available.

64 See Schedule 8, Consumer Rights Act 2015, March 2017, <http://www.legislation.gov.uk/ukpga/2015/15/schedule/8/enacted>

65 See, for example, *Dorothy Gibson v Pride Mobility Products Limited*, March 2017, CAT 9, or *Walter High Merricks v Mastercard (& Others)*, July 2016, CAT 16.

66 See letter from BEIS to CMA of 20 December 2017, <https://assets.publishing.service.gov.uk/media/5a3bbeace5274a7356de0f5e/beis-response-to-cma-on-dcts.pdf>

67 The Consumer Green Paper, April 2018, sets out proposals for civil fining powers in consumer matters and indicates that there will be more powers granted to various enforcement bodies, including the CMA.

68 See EU Commission press release, April 2018, 'A New Deal for Consumers: Commission strengthens EU consumer rights and enforcement', http://europa.eu/rapid/press-release_IP-18-3041_en.htm

69 See summary and materials, 2018, http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332. For associated documents, see https://ec.europa.eu/info/law/law-topic/consumers/review-euconsumer-law-new-deal-consumers_en

70 EU Commission, 2018, 'The New Deal for Consumers How can Public Authorities boost consumer protection?' factsheet available at: https://ec.europa.eu/info/sites/info/files/ndc_factsheet5_boost_consumer_protection.pdf

71 EU Commission, 2018, 'The New Deal for Consumers How will the new Collective redress mechanism work?', factsheet available at: https://ec.europa.eu/info/sites/info/files/ndc_factsheet4_redress_mechanism.pdf

72 In line with government commitments see Secretary of State for Digital Culture Media and Sport making the UK the safest "place in the world to go online" (October 2017).

73 See press release, 'Government outlines next steps to make the UK the safest place to be online', February 2018, <https://www.gov.uk/government/news/government-outlines-next-steps-to-make-the-uk-the-safest-place-to-be-online>

74 Such as those recently put in place for child protection purposes as sponsored by the Digital Policy Alliance – See Digital Policy Alliance, 'Internet Child Safety Achievements as Part of the Digital Economy Act 2017', June 2017, <https://www.dpalliance.org.uk/download/dpa-internet-child-safety-achievements-as-part-of-the-digital-economy-act-2017/?wpdmdl=2374>



RESPUBLICA
society · prosperity · virtue

Society

The UK has one of the most centralised states in the developed world and one of the most disaffected and politically passive populations in Europe. We hold our leaders in contempt, but despair of doing anything for ourselves or our community. The dysfunction at the highest level of society stems from the collapse of our social and personal foundation. There is little doubt that we are becoming an increasingly fragmented and individualist society and this has deep and damaging consequences for our families, our communities and our nation state.

Starting from the bottom up, the collapse of the extended family and the ongoing break-up of its nuclear foundation impacts on all, but disproportionately so on the poor and on their offspring. Too many children at the bottom of our society are effectively un-parented as too much is carried by lone parents who are trying to do more and more with less and less. We know that the poorer you are, the less connected with your wider society you tend to be. Lacking in both bridging and bonding capital and bereft of the institutions and structures that could help them, too many poorer families and communities are facing seemingly insurmountable problems alone, unadvised and without proper aid.

Based on the principle of subsidiarity, we believe that power should be devolved to the lowest appropriate level. Public services and neighbourhoods should be governed and shaped from the 'bottom up', by families and the communities. These neighbourhoods need to be served by a range of providers that incorporate and empower communities. Moving away from a top-down siloed approach to service delivery, such activity should be driven by a holistic vision, which integrates need in order to ascertain and address the most consequent factors that limit and prevent human flourishing. Local and social value must play a central role in meeting the growing, complex and unaddressed needs of communities across the UK.

The needs of the bottom should shape provision and decision at the top. To deliver on this, we need a renewal and reform of our major governing institutions. We need acknowledgement of the fact that the state is not an end in itself, but only one means by which to achieve a greater end: a flourishing society. Civil society and intermediary institutions, such as schools, faith groups and businesses, are also crucial means to achieving this outcome. We also need new purpose and new vision to create new institutions which restore the organic and shared society that has served Britain so well over the centuries.

The Competition and Markets Authority (CMA) began investigating the online gambling industry in 2016, and has revealed a cynical, hidden unfairness with an ongoing exploitation of those with gambling addiction. Some firms have been found to be in breach of the licensing objectives of the Gambling Act 2005.

In *Remote Gambling: Addicted to Addiction*, ResPublica highlights that the largely unregulated online market derives a significant portion of its profits from problem and at risk gamblers, often employing sophisticated techniques, which can encourage a swift path to dependency. This can be especially damaging for vulnerable groups, and these techniques can, in turn, limit an individual's capacity to make rational choices.

There has been a lack of public enforcement and redress for industry behaviour that is unfair and exploitative. This has sent the wrong signal to the industry, and is likely to foster further social harm. We argue that while the CMA is committed to working with the Gambling Commission to deliver sector-wide change, this is not enough. The CMA must take a more powerful role as a Public Prosecutor, and where necessary, strip operators of any unfair gains and obtain redress for consumers that have been harmed.

