



Submission to the Gambling Act 2005 review

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About Vita CA

Vita CA is a research and strategy agency. Our evidence and insight help organisations improve the lives of their users. What makes us unique is our focus on understanding people's experiences and motivations, the human element behind the numbers and data. We believe change is possible for even difficult problems if we learn with the people who face them every day.

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Declaration of Interests

The report was commissioned by Clean Up Gambling, who paid for this report on the understanding that the content is not subject to control by them. Control sits solely with Vita CA Limited.

Summary

The Call for Evidence limits the scope for fundamental reform to gambling regulation

The Government committed to review gambling regulation to be fit for a digital age, as public concern and evidence of people suffering gambling harm grow due to ineffective regulation. It is disappointing that the Department of Digital, Culture, Media and Sport (DCMS) Call for Evidence does not consider the fundamental changes necessary to achieve fit for purpose gambling regulation and repeats the gambling sector's narrative used to ward off limits on commercial practices.

In this account, gambling is a mainstream leisure activity that contributes to the economy. The laissez-faire regulation of dramatically expanding online gambling has not had a negative impact but has generated economic growth and tax revenue. Issues are caused by a minority of aberrant problem gamblers. This hides the role of the risky and exploitative products and practices of the gambling sector and the inadequacy of the existing regulation. It supports industry expansion and gambling taxes as a source of government revenue.

The profits of online commercial gambling and tax revenue have come disproportionately from people experiencing mental ill-health, younger and poor people

This account held by the DCMS, regulator and gambling industry of gambling since the Gambling Act 2005 is not based on evidence. Rather, profits to the industry have come through increasing losses to around the same number of people participating in gambling and have disproportionately been generated by higher risk online gambling, by a group of disordered gamblers experiencing mental ill-health, or younger and poorer people.

The economic contribution of online gambling has not been balanced against the socio-economic costs of harms and wider Government policy goals

DCMS and the regulator acknowledge wide-ranging gambling harms to the health and wellbeing of individuals, families, communities, and society. However, unlike other markets, the

Government has failed to quantify the socio-economic costs of gambling, including to other parts of the state. These costs, as well as Government's wider goals for society and communities, have not been weighed against a narrow assessment of economic benefit, defined in terms of corporate profit and tax.

Additionally, gambling operators have avoided tax by basing their operations offshore.

The gambling sector has been exempted from the basics of good regulation Government applies to any other market for goods and services

There is nothing inherently wrong with having a gamble – the staking of money on a chance outcome in the hope of winning something of greater value. The concern is how the commercial gambling market operates and how it should best be regulated. This is not moralist or prohibitionist.

It is not wider Government policy that a wholly free market is the solution, and any manner of products can be sold to consumers, using any commercial practice. It is Government policy to make use of a suite of measures to regulate markets for the benefit of businesses, consumers in general, vulnerable consumers and society as a whole. This applies both to markets for everyday goods and services and riskier or 'dangerous' ones. Reformers simply ask that the government apply its policy to gambling so that gambling regulation can be brought in line with good practice for any other consumer goods or service.

The Government places a general requirement on all products, services and leisure activities sold to the public across markets to have a basic level of safety in consumer protection and health and safety regulations. It puts in places additional requirements for a wide range of products and services, from cars to houses, to utilities, for public health and to achieve social and environmental goals and protect and reduce vulnerabilities. It also places limits on consumers as to how they can consume or take part in activities. There is no reason the gambling sector should be exempt.

Regulation has not afforded gamblers the same rights and protections as consumers of other goods and services

The DCMS, Gambling Commission and the gambling sector frequently state that gambling is a mainstream leisure activity and should be treated as such. Despite such claims, the basics of regulation of other consumer goods and services have not been applied to the gambling sector.

Despite proclaiming gambling is to be regarded as a legitimate leisure activity, the stigma attached to gambling seems to persist, and gamblers are not afforded the same rights and protections as other consumers.

Regulation has allowed the exploitation of people with disabilities, and it can be argued the public sector equality duty has not been met

Commercial gambling practices enabled by the current regulatory regime have both caused and exacerbated vulnerabilities, mental ill-health, and inequalities. Gambling regulation is not in line with wider Government policy to make markets work for vulnerable consumers. Even further, it can be argued that regulation has failed to protect the human rights of people with disabilities and to fulfil the public sector equality duty. Gambling disorder is a recognised complex and enduring mental health condition, and disability is a protected characteristic.

The inherent market dynamic of commercial gambling is to increase the risk of harm to consumers and society and requires strong regulation

A regulatory approach's effectiveness lies in deploying regulatory tools that address the market's underlying dynamics to create the behaviour change in producers and consumers that the Government wishes to achieve. This is a leisure pursuit based on losing money, with financial loss, at the core of potential harm to consumers. Commercial gambling makes money through gamblers losing money, and all commercial gambling products are designed so that, in the long run, all gamblers lose. When gamblers win, they do so because other gamblers have lost.

Commercial gambling has an inherent market dynamic that is risky to consumers and society, as profit is made by getting people to lose more money, more frequently. The size of turnover determines gross profit, which accounts for the potential dangerousness of commercial gambling. Gambling companies do not compete based on price or consumer discernment, or selective participation but on turnover - frequency of staking and the amount staked. The gambling company must persuade consumers not only to lose once but to continue participating and losing – and participate more and lose more. The result is markets subject to oligopolist control where companies consolidate and compete based on total extraction of money.

This is the driving motive for product innovation and all commercial practices in gambling. Market logic means that in gambling, commercial innovation and promotion is always in the direction of increased risk of harm and addiction to the consumer when unregulated. Thus,

innovation to increase a product's profitability inherently means an increased risk of harm and addiction to consumers. In other sectors, promotions, bonuses, loyalty and VIP schemes may provide a genuine benefit to consumers while ultimately having the purpose of increasing profit for the company. But in commercial gambling, these are always risky for consumers, as increasing profit for commercial gambling equals persuading gamblers to lose more money. Given these inherent market dynamics, voluntary development and adoption of 'responsible' gambling products and commercial practices are simply uncompetitive, running directly contrary to profit.

Regulatory tools need to be deployed to effectively manage this inherent market dynamic.

Effective regulation of gambling will benefit companies, as well as consumers and the public

Regulation to change the market dynamics provides the opportunity for gambling companies who genuinely wish to provide gambling as a reasonably safe, enjoyable leisure activity to be commercially viable and competitive. This requires placing limits on exploitation to extract maximum money from consumers as fast as possible, which otherwise necessarily characterises the gambling market, given its inherent nature.

Limits on products and play

The wider health and socio-economic factors contributing to problem gambling are not easily amenable or within the scope of gambling regulation. However, most of the modifiable risk factors for problem gambling are gambling-related, and the most direct risk factors for problem gambling are gambling forms/products and risky forms of play. This means that the approach with the greatest likelihood of directly preventing or reducing gambling harm is the control of commercial practices and limits on high-risk forms of gambling and gambling behaviour patterns that are addictive and harmful.

Gambling products are built around the most powerful behavioural reinforcer of all, an intermittent, unpredictable pattern of rewards – occasionally winning money. This adds a range of carefully constructed elements (structural characteristics) that modify fundamental aspects of human decision-making and behaviours, using classical and operant conditioning, cognitive biases, physiological arousal, and dopamine signals. Through their design, gambling products hijack behavioural, cognitive, emotional, and physiological dynamics of human psychology to get people to continue gambling and lose money.

Product design modifies behaviour within a gambling session, increasing the likelihood of losing control, difficulty quitting the game and increased loss of money. The game's design features

increase the likelihood of repeated gambling, that play becomes ingrained as a habit, and the development and maintenance of problem gambling and gambling disorder.

Basic psychological processes common to all humans underpin gambling product design. The product characteristics involved in difficulties with gambling and disordered gambling are the same as those that result in any player continuing to gamble.

Those in more privileged positions are more likely to have internal and external resources, which place limits on the influence of gambling products and commercial practice. However, due to socio-economic position, education, life events, mental and physical ill-health, those who are more vulnerable have fewer such internal and external resources and are more susceptible to harm.

Recent evidence from neuroscience demonstrates that in gambling disorder, gambling products function in the same way as addictive substances, causing modification to the risk and reward structures in the brain, associated with intense cravings. The American Psychiatric Association has reclassified gambling disorder from a disorder of compulsion or impulse control to an addictive disorder, recognising that gambling disorder is an addiction, with the same dynamics as addiction to a substance such as drugs or alcohol.

The product being sold in commercial gambling is, in essence, a construct of psychological tricks developed to encourage the loss of money. Consequently, gambling companies do not wish to transparently provide gambling product information - on price, the probability of winning, how gambling works and the risks of different products. Rather, market dynamics drive operator behaviour to the provision of misinformation, which exaggerates the chances of winning, encourages false beliefs about skill and luck, confuses players about the facts regarding gambling products, and which push people towards riskier, more profitable products or bets. The extensive evidence on psychological mechanisms used in gambling product design, the direct role of these in causing harmful gambling and addiction and evidence for the effectiveness of product limits creates a strong rationale for product controls. Product design is highly amenable to change through gambling policy, as basic psychological processes underpin product design, and 'all psychological characteristics are amenable to modification'. This is especially so given the computer-based nature of contemporary gambling.

The purpose of such controls is to make what gambling companies sell to the public – gambling products – reasonably safe. This is not to isolate and control a factor that can be proven to cause a disordered gambler to become disordered, as the psychological processes underpinning products are common to all people, and the vulnerable consumer should be taken as the average consumer. In addition, the majority of play is at low stake, speed, and frequency. Consequently, product controls do not impinge on the majority but rather keep them safe from loss of control and harm from gambling in a session and the likelihood of development of problem gambling and addiction.

Online tools to prevent risky play have an important role to play. It is paramount that safer gambling tools are redefined from being post-harm tools for 'problem gamblers', to become a means to prevent harm, protect and safeguard all gamblers. The evidence shows that the current approach to safer gambling tools, whereby they are inconsistently promoted by gambling companies, as a voluntary measure to those already experiencing difficulties, is at best ineffective and at worst negligent. It is important to move from safer gambling tools as optional add-ons to safety systems that are built into every customer's experience.

Research and data

The Gambling Commission and the Department continue to argue that they need to establish a sufficient evidence base to make changes to regulation yet fail to use their powers to collect said evidence and drag their feet on making meaningful changes for research and data. Research on gambling in the UK is lagging behind other countries. This includes gaps on the occurrence of harms and approaches to measure such harm. It includes a very significant gap on the costs of gambling to the public purse in the UK context even though studies of this kind have been conducted in other countries.

DCMS has continually refused to use its powers to enable transparency and investment in research, to develop a diverse and independent field of gambling studies in the UK. The Gambling Commission has not used the powers to require online gambling companies to provide data to understand risk from products, changes in consumer behaviour over time, or to monitor compliance.

A new approach is needed to gambling regulation for consumer protection and public health

There is a new direction in best practice for gambling regulation internationally, toward a public health approach to prevent, reduce, and mitigate harm. This takes a whole population approach, with the aim of healthy communities, resilient and healthy individuals. Attention moves from identifying and treating people with gambling problems to preventing and reducing harm across the population. This is achieved by addressing the many contextual factors that can contribute to harm from a social determinants of health perspective. The onus moves from the individual to changing the gambling environment and the characteristics of gambling products and situations. An effective strategy to reduce gambling harm is to invest in the prevention of at-risk gambling, causing harm, while at lower levels, to a larger number of people - and to stop entrenched addiction. A focus on prevention would benefit not only the individual gambler and those close to them but also the wider community.

The call for a public health approach to gambling is a call to:

- Acknowledge that commercial gambling is not a leisure activity commensurate with joining a sports club. It is not an activity for which the Government should wish to stimulate demand, any more than for alcohol, tobacco, sugary foods, single-use plastic, or speeding.
- Make the primary focus of gambling regulation public health, achieving wider socio-economic policy goals, and preventing harm and socio-economic costs of harm – as opposed to commercial profit and tax revenue.
- Recognise that commercial gambling is a market and product in which the inherent dynamic is risk and harm, and increasing risk and harm to consumers and society, when left unregulated. Significant regulatory intervention is justified and required.
- Deploy systematically the full range of regulatory levers – rules, outcomes, disincentives, and incentives – in a way appropriate to gambling market dynamics, to effectively impact producer and consumer behaviour. The regulation of markets is fundamentally about influencing the behaviour of companies and consumers to achieve wider goals. To do so effectively, the nature and extent of regulation must be based on an understanding of the product, market dynamics and drivers.
- Adopt a universal and preventative approach, which makes gambling safer for everyone. This involves limiting harm from gambling, in one or a few episodes, the likelihood of developing problem or disordered gambling and limiting harm to those experiencing problem or disordered gambling.
- Given the wide range of vulnerabilities associated with gambling difficulties, the difficulties of identifying such vulnerabilities, that anyone can become vulnerable, and that there is a clear and defined group of vulnerable consumers, disordered gamblers, the vulnerable consumer should be taken as the average consumer. Products, services, and communication should be designed with the vulnerable consumer in mind, with additional measures where necessary. This will not impinge on most gamblers, who play at low levels, but will make all gamblers safer.
- Rebalance regulation from an almost exclusive focus on voluntary measures for consumers to requirements placed on producers to the limit risk generated by commercial practices. Given the very clear evidence that the greatest direct risk for gambling harm is intensive gambling and high-risk products, this includes changes to factors that make forms of gambling or products risky and addictive and implementing rules to prevent customers from engaging in risky gambling practices.
- Achieve the consumer rights and rights under the Equalities Act that would be expected of any market or public body. This includes ending the stigma and discrimination towards people with a mental health condition – disordered gamblers. It includes a regulation that reduces rather than exacerbates inequities and the exploitation of younger and poorer groups. This means structural changes rather

than the provision of information, which is of most use to people with more resources to make 'informed choices.'

Recommendations

Changes to the objectives of gambling regulation in law

To achieve a new regulatory regime requires changes to the licensing objectives and additional duties on the regulator gambling companies. These must be contained in legislation to ensure avoidance of any doubt as to how gambling needs to be regulated and conducted by the Gambling Commission and gambling companies.

- That gambling should not be permitted save for meeting the licensing objectives, codifying a preventative approach.
- The addition of a licensing objective to promote public health and wellbeing, prevent harm, and redress inequalities.
- The addition of a duty on the regulator and operators to ensure consumers are reasonably safe, so they must build safety into gambling products and practices.
- The addition of a duty on operators to return money to a consumer if they have let them gamble when they should not have, so operators have a direct, legal duty to individual consumers to ensure rules about how consumers can gamble are followed, and legal liability if they are not. Making the operator liable would create a stronger incentive for them to comply with regulation and statutory obligations.
- Establish a transparent and independent ombudsman system. This should include processes for paying compensation to those harmed by gambling companies violating regulations over the last decade, with funds from a mandatory levy.

The regulator should have the capability to regulate a big-tech sector

It does not appear that the Gambling Commission requires additional powers, so long as its mandate and statutory duties are clear. The Gambling Commission evidently requires an overhaul in leadership, capability, and funding. The regulator needs to make strategic and full

use of its powers and should work with and learn from other regulators and adopt best practices – especially those regulators in the digital, big data and financial services. With gambling increasingly moving online and becoming ever more sophisticated, there is a need for a tech-savvy regulator that understands and can stay ahead of the curve on digital technologies and big data. Gambling is an online harm and needs to be approached through that lens. DCMS, which also has responsibility for digital, online harms and the information commissioner, has done nothing to join up or ensure that the gambling regulator is fit for a digital age.

Bring new gambling and gambling-like products in new digital spaces into the scope of regulation

To effectively build regulation for the future and ever-increasing advancement of technology, the definition of 'gambling' needs to be reviewed. The absence of a potential redefinition of gambling in Gambling Act review is a missed opportunity that will limit any potential changes. There needs to be a coherent regulatory approach across gambling regulation and regulation on online harms.

Mandatory, harm-based levy or tax

According to wider government policy on markets, the gambling sector is a market that is not working well. Consequently, mechanisms to reduce market concentration and to generate competition that is consistent rather than in opposition to consumer benefit and rights, harm prevention and minimisation are required.

The costs of research, education, and treatment to address gambling harms should be paid from gambling sector profits through a mandatory system. Most importantly, this must build the costs of harm into companies' operation, so there is an incentive to reduce harm to reduce costs. This is the approach taken in for environmental protection in a variety of sectors. The most harmful gambling products should be subject to highly progressive tax systems to discourage operators from pursuing the super-profits that such products frequently yield. Operators could also be subject to higher tax if profits are generated from a small proportion of consumers.

There have been objections to a levy on the basis that it is a hypothecated tax. However, given the inattention to gambling harms by the government and low base compared with other public health issues, there is justification for raising dedicated funds, ring-fenced by statute, for a defined period.

Research and data

Research for policy

In addition, the ‘burden of evidence’ needs to be shifted from those who have experienced harm to prove they have, to the regulator to demonstrate its regulation is effective at making gambling safe and preventing harm – before commercial products and practices are allowed onto the market. Implementation needs to be accompanied by a comprehensive evaluation.

Big data

The Gambling Commission needs to enhance its analytical capability to better identify risk and harm and intervene quickly, including taking advantage of big data. At the same time, operators' online gambling datasets and communications with customers (and offline where available) should be made available to researchers. This is an essential resource, and data is one of the core costs of research.

Independent funding and institutional arrangements for research

Funding for research needs to be raised through a statutory levy or ring-fenced tax and should be primarily awarded and administered through independent research councils. This would mean that research into gambling harms is attractive for the best researchers no matter the discipline and make funding available within academic structures. This is preferable to directing funding to a central, standalone centre, which will inevitably represent a particular perspective – rather than enabling the diversity of competing, independent research across universities, academics, and disciplines necessary to advance knowledge.

Safer gambling products

Product risk categories

Scoring scales have been developed to evaluate the risk of available and planned gambling types. These are based on theoretical and empirical evidence of the characteristics of products that cause harm, validated against data from longitudinal studies, which demonstrates which product categories lead to the development of problem gambling. The large transactional and account-based consumer datasets give the potential to further validate and refine product risk categories. Product risk could be assessed through factors such as the percentage of GGY from a small number of consumers or loss of control during a session. Algorithms have been developed to identify risk play, and these could also be applied to risk products – i.e., the products where there is more play demonstrating these characteristics carry more risk.

Limits and essential characteristics

Given the logic of the gambling market in which innovation and development is for increased risk and harm to consumers, there need to be hard limits – rules – placed on products. These could be developed using the historic gambling regulatory approach of essential characteristics. A basic set of characteristic and parameters in which these can operate need to be defined for

each category of product: slots, roulette, table games and fixed odds betting. For online gambling, essential characteristics should not simply codify existing high-risk practice but put in place new base restrictions to bring these to a level of safety.

These could form the basis for controls on the characteristics of different products categories, and on access to different products categories, both well-established techniques of gambling regulation.

Safety by design

To achieve safety by design in the context of gambling, where a gambling company wishes to add a new feature or adopt a new feature from another game or setting, or invent a new game, which goes beyond the defined essential characteristics of that product category, permission from the regulator should be sought. There is no reason the real-world experimental approach and expertise of behavioural insights should not be applied to achieve safer product design. In addition, there needs to be ongoing monitoring of products in the market, making use of operator big data to enable regulatory adjustments, as necessary.

Gambling situation risk

There needs to be a coherent product regulation regime across land-based and online gambling, using the established regulatory principle of considering the way product risk increases depending on the characteristics of the gambling situation and access. There are many features of the online environment that add to product risk, including the addictive nature of online activities in general, ease of access to money, and 24/7 accessibility via mobile devices.

Importantly, the level of safety for online products should not be based solely on parity with offline gambling but commensurate with the added risks due to being available in an online gambling situation.

Immediate action on speed and stake limits for continuous play products

The following are controls needed immediately for which there is more than sufficient evidence - to reduce further harm and should not be delayed as this new approach is implemented.

Speed and stake are the two most harmful features, because both in isolation and in combination, they create the facility for excessive spending and thus risk of harm to consumers in general, as well as problem or disordered gamblers. Limiting either and both put a limitation on the amount of money that can be lost in a period on continuous gambling products. Limits on speed and stake should be put in place for all continuous online gambling products. In the first instance, this could bring parity with offline products – a limit on stakes of at least £2 for parity with land-based fixed odds betting and reduction of the speed of roulette to that of manual table game. However, this needs to be assessed in the longer term within the development of a coherent regime of limits on products.

Betting is frequently overlooked in discussions on product controls and measure to address the risk of in-play betting and rules regarding ‘mugs bets’, the complexity of bets, bets manipulating cognitive heuristics and creating your own bet. These are generally very difficult for consumers

to understand, are more likely placed by young, poorer, and vulnerable people and generate very high losses. Betting thus needs to be included in the review of stakes and speed to ensure parity in consumer protection.

Fake reinforcements and illusion of control

There should be a consideration to removing clearly false and misleading elements of game design. This would involve removing elements that are of no actual benefit to consumers, produce the illusion of control, and mislead the player.

Appeal to children and young people

Gambling products should not be allowed to use references to other culture or leisure appealing to children and young people and associated with youth culture.

Considerations to limit access

There is also no necessary reason why controls on access should not be considered in the remote sector to create parity with the land-based sector. This could include the requirement for remote gambling to close between 12 and 8 am, as happens in other jurisdictions.

In remote, offering a single generic license to provide all product types has resulted in online gambling provision becoming essentially the same, as companies all offer everything and compete based on pushing consumers to higher risk more profitable products. The remote sector could be disaggregated, and specific licenses provided for different product types, with the prohibition on the promotion of higher-risk products to consumers. This produces the potential, e.g., bingo operators to compete for customers with each other on dimensions of, for example, social interaction and leisure experience, rather than purely on the extraction of turnover with high-risk products.

While it is the case that consumers can open accounts for different kinds of play, this introduces friction rather than promotion for the general consumer. In addition, the ability to monitor all an individual consumers' play needs to be put in place via the independent consumer portal.

Fair and open product information

The provision of information to enable rational choice and make consumption 'fair and open' is misguided and inappropriate as the basis of regulation of gambling products – based on complex mathematical concepts and designed to distort human behaviour and decision-making. Nonetheless, there is a great deal of scope to improve gambling product information, and this should be done on the basis that gambling wishes to be a mainstream leisure occupation, and consumers have a right to fair, open, accessible, and understandable information on what they are paying for. This is likely to have minimal effect on behaviour, however, compared with product controls and would favour the privileged consumer.

Product information needs to be made a mandatory requirement by the regulator and be communicated as official government health information. Requirements should include both

content and placement, implementation, taking advantage of dynamic messaging capabilities online. Information should not be left to the discretion of gambling companies.

Safer play

It is recommended that there be the creation of an independent consumer portal, where consumers would be required to sign up before gambling on any online gambling site in GB. This site would be a one-stop-shop for all safer gambling tools from deposits to self-exclusion, along with affordability checks. This means that when a deposit limit is set, it applies to all gambling operators and all a consumer's accounts.

The introduction of a gambling 'driver's license'. Any gambling consumer who wants to gamble online need to sign-up to the independent consumer portal - ideally ombudsman - and receive a unique gambling identification number. This number could then be used when creating gambling accounts for all licensed operators and would tie the individual to their safer gambling profile. This would ensure that safety tools, affordability and safeguards are in place for all online gamblers, at all times.

Clean up gambling

One of the challenges is that 'the cat is out of the bag' in online gambling, and we are required to imagine the world to be different for effective change.

This review is the Government's opportunity to clean up gambling, lead the world in creating a genuinely fair and open gambling market where consumers can participate with a reasonable degree of safety. DCMS is responsible for gambling regulation and several sectors which benefit commercially from gambling, sport, online, broadcasting. The Government is asked to look beyond narrow commercial interests. consider its wider policy goals and practice in other markets, and ensure they are applied to gambling.

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Abbreviations

ABSG: Advisory Board for Safer Gambling (previously Responsible Gambling Strategy Board)
AGH: Action Against Gambling Harms
APA: American Psychiatric Association
BAME: Black, Asian and Minority Ethnic
BEIS: Department for Business, Energy and Industrial Strategy
BERR: Department for Business, Enterprise and Regulatory Reform
BGC: Betting and Gaming Council
CMA: Competition and Markets Authority
DCMS: Department for Digital Media Culture and Sports
EGM: Electronic Gambling Machine
EbE: Experts by Experience
LCCP: Licencing Codes and Practices
PFI: Personalised Feedback Interventions
EGM: Electronic Gaming Machine
FOBT: Fixed Odds Betting Terminal
GGY: Gross Gambling Yield
GVA: Gross Value Added
HOL: House of Lords
HSE: Heath Survey for England
LDW: Losses disguised as wins
NAO: National Audit Office
PAC: Public Accounts Committee
PFI: Personalised Feedback Interventions
RET: Research, Education and Treatment
RGSB: Responsible Gambling Strategy Board (now ABSG)
RGT: Responsible Gambling Trust (now GambleAware)
RNG: Random Number Generated
RTP: Return to Player
RTS Remote Technical Standard
SHeS: Scottish Health Survey
TOR: Terms of Reference
TRTP: Theoretical Return to Player
WHO: World Health Organisation

Introduction

Setting the scene

We start our submission to the Review of the Gambling Act 2005 by setting the scene. We use an analogy to bring to life the current state of gambling regulation.

Gambling is often compared to other kinds of 'sinful' consumption, such as alcohol, tobacco, or illicit drugs. This results in the gambling sector accusing reformers of being 'prohibitionist' and anti-gambling.

We create an analogy for gambling regulation using an everyday consumer good. This shows how gambling regulation falls short of Government policy and practice in regulation that consumers would expect for any goods or services.

Cars are a commonplace consumer good. Government standards dictate the production of cars and place limits on engineers' and designers' creativity. These standards' role is to increase the safety of cars for drivers and passengers and control the environmental impact of vehicles. Government requires that safety for consumers and the public is built into the product.

People who drive cars are subject to rules. These include getting a driving license, registering, insuring, and taxing the vehicle, and getting an MOT to ensure the car is safe to drive. There are rules – the highway code – which govern how people must drive their cars. The rules are specific, and adherence to them is closely monitored and enforced. Rules govern how consumers operate their vehicle for their safety and the safety of others.

Car manufacturers may also design into cars additional safety features, such as airbags, and compete for consumers based on their cars being safer than others on the market. It is a matter of consumer choice, whether a person decides to buy a car with additional safety features.

The Government puts in place a variety of taxes and subsidies to incentivise the sale of low emission cars, which are produced in energy-efficient, sustainable ways. These change the commercial dynamics of the market – which of commercial practices are more or less profitable – to influence producer behaviour for the benefit of consumers and the public.

Consider an alternate reality. Engineers, designers, and car manufacturers make more money the faster and more unsafe the cars they produce. You are surrounded, on the streets, in public spaces, in your own home, at work and leisure, 24/7, with advertising and salespeople telling you to buy cars, drive more, drive faster.

You are told this is fun and exciting, all the best people do it, and there is no risk involved, as all sensible, normal people do so without any harm. All the while, there is no training, guidelines or rules for what safe driving consists of.

There is no upfront cost for buying a car. Instead, you are given bonuses when you sign up and told that if you drive your car, you will win money, and the more and faster you drive, the more you will win. The designers have done a great job, and the more you drive, and the faster you go, the more pleasurable it is. You are having a tough time in your life, and you escape through the pleasure and excitement of driving.

The company charges you based on how much you drive and how fast you go, but you were not told how much that would be, and it is hidden in the obscure fine print. The car company is charging you all the time, but now and then, you do win – but not as much as you are paying, although the company promises that you will win more if you keep going harder and faster.

The car company gives you more bonuses and persuades you to buy more and faster cars. There is no check whether you have the money to keep driving or can afford more cars.

You want to quit, but you now crave the pleasure of driving and owe so much money. You are stressed and exhausted, and the only way you can find to escape your problems is by driving more and hoping you win some money back.

The car company mentions a safety feature in your car you can choose to turn on if you want to, small lights on the dashboard you can set to flash to keep track of time and money. You give it a try, but driving is now such a strong habit, you ignore them when they flash.

You have an accident, you injure yourself, your passengers and damage someone else's property. The damages are awful as the car had a formula 1 engine and no seat belts, and there was no speed limit. You are told that all this is entirely your fault; you should have behaved responsibly. You are personally liable for all the damages, may face criminal charges and even jail time - on top of the overwhelming debt you have from using cars. Media reports say you are a deviant criminal responsible for ruining lives, and your community shuns you.

The NHS needs to cover the costs of lifelong ill-health due to injury and mental trauma for you and the people in the accident. But the NHS does not understand your mental health condition and type of addiction, and there is no treatment available for you. You are unable to work again and become dependent on state benefits and social housing.

You try to get some redress from the car company. They say you signed up to the terms and conditions, and they do not have any responsibility for the safety of their products and any harm caused to you from driving them. Or they offer you a small amount of money in exchange for signing a non-disclosure agreement to keep quiet - knowing you are in such a desperate situation that you will likely take anything.

When you contact the regulator of the car industry to ask for help, they tell you there is no consumer redress for drivers of cars - if the products are unsafe, or you have been subject to unfair, aggressive, and misleading commercial practices or if you were targeted to buy more because the car company knew you were vulnerable. The regulator says this is because if car drivers were allowed to ask for redress, then all car drivers would try and use this to get their money back illegitimately.

When reformers say that the private vehicle sector needs to be better regulated, the car industry says the reformers are against people having fun and people should be able to drive whatever car they like, however they like to. People will buy what they want illegally if regulation is tightened. They warn the Government that regulations will stop them from making money and contributing tax and force them to get rid of jobs. They explain there is not enough evidence for regulation, that none of the proposed reforms will work and will result in unintended consequences and new risks. So, it is better for the Government to do nothing and let them continue as is, making money the way they do.

The Government tells producers they should behave better and regulate themselves. But the car companies know if they do so, they will be unprofitable and uncompetitive for shareholders - because their profits come from people buying the fastest cars and driving them more and faster.

This alternate reality describes the state of Great Britain's current gambling regulation.

Approach to the submission

The DCMS call for evidence states that Government wants all those who choose to gamble in Great Britain to be able to do so in a safe way. It sets a number of specific questions.

But it provides an inaccurate account of the nature and scale of the issues and does not give scope to the fundamentals of gambling regulation that need to change to achieve this goal. Consequently, our submission provides evidence for why such fundamental change is needed and proposes a new approach to gambling regulation. It addresses the key questions in the Call for Evidence, focused on online gambling, but shows how these fit together in a new coherent regulatory system, rather than addressing each one in isolation.

Chapter 1 looks at the nature and scale of the problem – gambling participation, problem and disordered gambling, gambling harm, economic benefits, and socio-economic costs. This is to provide an understanding of what the problem is that needs to be addressed.

Chapter 2 proposes a new approach to gambling regulation, for consumer protection and public health. This includes proposes to the objectives of gambling regulation in law and the use of economic incentives and disincentives to influence commercial behaviour.

Chapter 3 looks at the state of gambling studies in the UK, the problematic funding and institutional arrangements that undermine the production of evidence on gambling and make recommendations for independent funding and the use of consumer data.

Chapter 4 explains the characteristics that make gambling products cause excessive gambling and addiction, the challenges of providing transparent product information for gambling, and outlines the basis of a coherent regulatory regime for safer products.

Chapter 5 examines the evidence base on the efficacy of existing safer gambling tools, their current regulation and implementation and finally makes recommendations for improvements. The chapter showcase a need to shift away from safer gambling tools as an optional add-on, to systems built into each customer's experience.

We have focused on using reviews of evidence, with the addition of recent evidence published in the last two years. This document draws out key themes, developments and trends and aims to make these more generally accessible – to cut through the misinformation and diversion away from evidence inconvenient to vested interests, that characterises this field.

Use of terms

Responsible gambling: this is the regulatory approach that has dominated since the Gambling Act. It is based on operators providing problem or disordered gamblers with voluntary tools they can use once they have developed difficulties. It is based on the view it is problem gamblers that cause difficulties, leaving gambling companies unaccountable for their commercial practices.

Safer gambling: the regulator has begun to talk of safer gambling, but largely still using a responsible gambling approach to regulation. Where this is the case, we have referred to responsible gambling still. Our use of the term safe and safer is to refer to the new approach to gambling regulation, products, and tools we set out, which would genuinely make gambling safer for all consumers.

Problem gambling and disordered gambling: Problem gambling is the measure that continues to be used in Great Britain to the impact of gambling, as opposed to measure of harm developed in other countries. This uses the Problem Gambling Severity Index (PGSI) which puts people into three categories depending on their scores, low, moderate and problem gambler. The DSM IV is also used. This is a clinical measure of disordered gambling. By in large, problem gambler and disordered gambling rates tend to be of the same magnitude. Those scoring at the low and moderate level are often grouped together into a category described as 'at risk'. Problem gambler is a term that is stigmatising for people and blames them for their difficulties, without recognising that they are suffering from a recognised mental health condition. When reporting on research, we have used the terms based on what measures were used in the research. However, we have added disordered gambling in practice to indicate this

refers to a group reaching the level of clinical diagnosis. In our own discussions, we have aimed to avoid the term problem gambler.

Digitally-aided gambling: refers to commercial gambling products and practices that are enabled by digital technology. This includes the design of products and ways to access gambling, online and using mobile devices.

Gambling product: these are the forms of gambling (slots, roulette, sports betting, lotteries etc).

Structural characteristics are the elements that the gambling sector designs into gambling products to get people to lose money. These are the features that make gambling products addictive - resulting in incidences of loss of control, habitual and enduring gambling, problem gambling and gambling disorder.

The gambling situation is the immediate location of a gambling product, such as a casino, betting shop, arcade, or remote gambling website.

Limit-setting is a harm minimisation tool where a gambler sets a formal arrangement through technology with a gambling operator to limit the use of either money or time.

Deposit limit is a tool whereby a gambler sets a formal monetary limit before engaging in a gambling session.

Self-exclusion is the act of an individual preventing themselves from being able to gamble though entering into an agreement with an individual operator or through a multi-operator scheme, i.e., 'Gamstop'.

In-play messaging are dynamic 'pop-up' messages that show on the screen with information during a gambling session. They are designed as a brief intervention to interrupt the game or modify gambling behaviour by having the consumer focus on a safer gambling message.

Chapter 1

The nature and scale of the problem

Introduction

When considering policy responses, it is important to understand the nature and scale of the problem to be addressed.

The gambling sector gives an account of gambling as an everyday leisure activity, providing consumer choice, economic growth, employment, and revenue for the state – with risky gambling, addiction, or harm resulting from an aberrant minority. The purpose of their account is to ward off the restriction of their commercial activities.

This is largely the narrative of the Department of Culture, Media and Sport (DCMS) Call for Evidence:

Gambling is a popular leisure pursuit in Britain. Last year, 47% of adults surveyed had taken part in at least one form of gambling in the previous four weeks.... Gambling can be entertaining and sociable, and enhance enjoyment of other activities, and the vast majority of gamblers take part without suffering even low levels of harm. The industry also makes significant contributions to the economy, employing nearly 100,000 people, paying approximately £3bn per year to the government in taxes, and accounting for £8.7bn or 0.5% of UK Gross Value Added (GVA). It also contributes significantly to other industries, including sport, racing and advertising.¹

This narrative is at the core of the current regulatory regime.

A central component of the narrative is that the liberalisation of gambling following the Gambling Act 2005 and digitally-aided gambling has made little difference in the amount of gambling and problem gambling, so there is no need for changes to regulation. In the Call for Evidence, the DCMS states:

¹ DCMS. (2020). *Review of the Gambling Act 2005: Terms of reference and call for evidence*. 8 December 2020. <https://www.gov.uk/government/publications/review-of-the-gambling-act-2005-terms-of-reference-and-call-for-evidence/review-of-the-gambling-act-2005-terms-of-reference-and-call-for-evidence>. para. 2, p.4

This steady industry growth and shift to online have seen neither a marked increase in overall gambling participation, which has remained broadly stable between 45 and 48% of adults for the past five years nor an increase in population problem gambling rates.²

This is added to by minimising the significance of the large populations of people experiencing low- or moderate-risk gambling – maintaining that the 1.4 million adults who are low-risk gamblers ‘are not likely to be experiencing harm’.³

The following section looks at the evidence that refutes these claims to provide an assessment of the nature and scale of the problem requiring new policy.

It is important to recall that the many gaps in evidence are a result of the Gambling Commission and DCMS not putting in place measures of the performance of regulation, making use of gambling company data, or investing in independent research on gambling.⁴

Participation

The overall gambling participation figures hide the shift to higher risk gambling among younger groups

The overall proportion of the population participating in gambling has remained largely constant. However, the nature of participation has significantly changed between older and younger generations. Older groups tend to gamble infrequently on low-risk products – largely the lottery. Younger groups tend to participate in the high-risk gambling that has burgeoned with liberalisation - continuous gambling, placing riskier bets, in higher-risk gambling situations, online and using mobile devices.

Older people are much more likely to participate in the lottery – and only the lottery – with younger groups much less so. When participation in the National Lottery is removed:

- Overall gambling participation has increased by 5% since 2015, and this has been driven by increased participation of those under 44.⁵

² DCMS. (2020). para.6, p.5

³ DCMS. (2020). p.5

⁴ Parliament. House of Lords (2020). *Gambling Harm—Time for Action - Select Committee on the Social and Economic Impact of the Gambling Industry*. (HL: 79, 2019-20) <https://publications.parliament.uk/pa/ld5801/ldselect/ldgamb/79/7902.htm>.; Public Accounts Committee (2020). *Gambling regulation: problem gambling and protecting vulnerable people*. (HC: 7, 2019-21).; National Audit Office (2020). *Gambling regulation: problem gambling and protecting vulnerable people*. (HC: 101, 2019-20).

⁵ Gambling Commission. (2021c). Gambling Commission. (2021c). *Gambling participation in 2019: behaviour, awareness and attitudes. Annual report (updated publication)* (February 2021) <https://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-participation-in-2019-behaviour-awareness-and-attitudes.pdf>. p.8-9

- Those aged 16-34 are more likely to gamble than other groups and participate in more risky forms of gambling, on slot machines, machines in bookmakers and casino table games, and on online slots, casino, bingo, and sports betting.⁶
- Participation in online slot machine-style games and instant wins is continuously increasing.⁷

There is a move to online gambling in general, but this is particularly so for younger groups. These groups are the highest users of mobile phones and multiple devices to gamble. In general, mobile gambling takes place mostly in the home. Younger groups are more likely to gamble on mobiles in pubs/clubs, at work, on the commute, or in a sports venue. Younger people tend to have a greater number of online accounts.⁸ As acknowledged by the Gambling Commission, these patterns of accessing gambling are linked to increased risk.⁹

Profit has disproportionately been made from people with mental health conditions, young people, and poorer people

Around the same proportion of people are participating in gambling. But the profits of the gambling industry have grown, largely due to growth in the remote sector. Another way to put this is that the public's gambling losses have steadily increased over recent years, largely due to growth in higher risk online gambling.¹⁰ It is the case if participation is broadly stable, the same total number of people are losing more money. Gambling harms extend beyond financial loss, but at its core, harm comes from financial loss, and harm increases the more money a person loses.¹¹ But losses are not spread evenly across those who participate in gambling. Gross Gambling Yield (GGY) comes from a minority of intensive, likely disordered gamblers. It comes, disproportionately relative to income, from young people and people in deprived areas. The gambling industry profit and Government tax revenue comes disproportionately from people who are younger, poorer, or suffering from mental ill-health.

The GGY in Great Britain increased from roughly 8.4 billion British pounds in 2011 to approximately 14.4 billion British pounds in 2018. Since legislation for remote gambling changed in 2014, the considered GGY for remote gambling accounts for the largest share of the market.

Total GGY for the industry was £14.2bn in the year April 2019 to March 2020. This represents a marginal decrease of £84.1m (-0.6%) on the previous reporting period. Remote (or online)

⁶ Conolly, A., Davies, B., Fuller, E., Heinze, N. and Wardle, H. (2018)., *Gambling behaviour in Great Britain in 2016 Evidence from England, Scotland and Wales*. NatCen Social Research prepared for the Gambling Commission. <https://www.gamblingcommission.gov.uk/news-action-and-statistics/News/gambling-commission-publishes-latest-combined-health-survey> p.16.

⁷ Gambling Commission. (2021c). p.10

⁸ Gambling Commission. (2021c).

⁹ Niel McArthur, former CEO of the Gambling Commission, verbal evidence to the PAC,

<https://committees.parliament.uk/work/193/gambling-regulation-problem-gambling-and-protecting-vulnerable-people/>

¹⁰ Muggleton, N., Parpart, P., Newall, P., Leake, D., Gathergood, J. and Stewart, N. (2021). The association between gambling and financial, social and health outcomes in big financial data. *Nature Human Behaviour*. p.2

¹¹ Markham, F., Young, M. and Doran, B. (2015). The relationship between player losses and gambling-related harm: evidence from nationally representative cross-sectional surveys in four countries. *Addiction*, 111(2), pp.320–330.

gambling is the largest combined sector by GGY. With £5.7bn GGY, it comprises 39.9% of the overall market. Remote sector GGY increased by £426.3m (8.1%). Online casino games dominate the sector, generating £3.2bn in GGY, mostly from slots games. GGY for remote betting totalled £2.3bn, led by football and horse betting. Remote bingo grew 0.9% to £176.8m.¹²

In March 2021, an interim report was released from research commissioned on behalf of the Gambling Commission, using a large consumer dataset from operators.¹³ This provides basic descriptive statistics on gambling online, using data on play from gamblers accounts, from seven major gambling operators, for a year. This includes analysis by age, gender, and Index of Multiple Deprivation (based on account information). The patterns evident in previous research are substantiated in this large dataset, using stratified random sampling. Individual losses are considerable in relation to typical income levels and spending commitments in Great Britain.

For betting:

- Most accounts were used infrequently with low stakes and low average spending over the year. 84.5% spent less than £200 over the full year.
- High annual stakes were concentrated in a minority of accounts. The 10% of accounts with the highest annual stakes delivered 79% of GGY.
- Measured by account spending, dependence on a small proportion of accounts was even more marked: the 5% of accounts with the highest spending generated 86% of GGY.
- 1.5% of accounts generated spending losses of £2,000-£4,999 over the year. 23% had addresses in the 20% most deprived areas.
- £10,000-£19,999 lost in a year, 0.2% of accounts, 15.4% in the most deprived areas. £5,000-£9,999 lost in a year, 0.4% of accounts, 21.5% in the most deprived areas.
- The average stake size increases with age, in general, in line with income. However, younger bettors lose more because they place more risky bets, at long odds, on unlikely events – that are more profitable to gambling companies.
- Likewise, stake sizes were lower in more deprived areas, in line with income. However, the riskiness of individual bets was highest for the two most deprived deciles and then decreased almost monotonically to the least deprived decile.

For online gaming:

- As in betting, a small group of accounts generated a large proportion of the GGY: 5% of virtual casino accounts with the highest annual stakes accounted for 82% of the GGY. For live casino and slots, the corresponding figures were 74% and 70%. For bingo, 5% of accounts with the highest annual stakes contributed 61% of the GGY.
- Most accounts used for gaming spent small amounts, but 3.2% lost more than £2,000 and 1.2% lost more than £5,000.

¹² Gambling Commission. (2020). Industry statistics for the period April 2019 – March 2020. November 2020. <https://beta.gamblingcommission.gov.uk/statistics-and-research/publication/industry-statistics-november-2020>

¹³ Forrest, D., McHale I., Dinos, S., Boreham, R., Ashford, R., Crowley, J. and Toomse-Smith, M. (2021). *Exploring online patterns of play*. University of Liverpool and NatCen Social Research. Commissioned by GambleAware on behalf of the Gambling Commission. <https://natcen.ac.uk/our-research/research/patterns-of-play/>

- Participation was highest in the 25-34 age group, which represented 16.9% of the British population, but which held 36.3% of accounts used for gaming and contributed 27.4% of GGY. Under 25s also held a disproportionately high share of accounts.
- Compared with betting, all gaming products were more likely to be used by players who lived in areas with higher levels of deprivation.
- 26% of those with spending losses between £5,000 - £9,999 and 20.3% of those with spending losses between £10,000 --£19,999 lived in the 20% of most deprived.

There are substantial increases in profit for the operator if the account holder takes place in both betting and gaming.

Like studies, it was not able to link player accounts across online operators (or gambling at land venues). The most engaged online gamblers may use several different accounts, spreading high spending across different operators, such that they are not identified as heavy gamblers in any of them. This means the estimates of how many players lose large sums of money while gambling online should be treated as lower-bound estimates. In addition, these are figures of prevalence, not incidence.

Regardless of annual spending, individual sessions ending in a very high spending loss for the player have the potential to cause financial stress and may sometimes reflect out of control, unplanned play. This demonstrates the possibility for harm in one session and the possibility of harm across overall levels of gambling.

- 2.2% of all gaming sessions resulted in a spending loss of £200 or more. Though a small fraction of sessions, this still means that, over the year, there were more than 2.3 million instances of a spending loss of at least £200. The research estimates that 396,910 customers (9.9% of all gaming customers) experienced such a loss at least once during the year.
- 4.1% of accounts used for gaming incurred a spending loss of more than £500 on at least one occasion during the year. Across the operators, this represented 164,000 accounts.
- 1.9% of accounts used for gaming had at least one session in the year where more than £1,000 was lost. This represented 77,000 accounts with these operators.

Problem gambling

General, cross-sectional, whole population surveys are a poor tool for monitoring prevalence of problem gambling

Problem gambling estimates are susceptible to potential biases in different survey instruments.¹⁴ The absolute number of problem (disordered) gamblers identified in any population survey is very small (30 to 40 people). This means that estimates are especially likely to be influenced by potential biases in survey instruments. In addition, the small absolute number identified in population surveys makes it hard to accurately discern changes over time. For these reasons, Sarah Healey, Permanent Secretary at DCMS, said that the rate of problem (disordered) gambling was an inappropriate and undiscerning measure of the success or failure of regulation.¹⁵ The estimates of low- and moderate-risk gambling also vary between survey instruments.

The official estimates of the prevalence of problem gambling come from the inclusion of gambling questions in whole population surveys about health in general. The Gambling Commission reports that in 2018, approximately 0.5% of the adult population were problem (disordered) gamblers. This equates to about 300,000 individuals. Additionally, 2.7% or 1.4 million adults were low-risk gamblers, and 0.7% or 440,000 adults were 'moderate-risk gambling'.¹⁶ There are also approximately 55,000 children problem (disordered) gamblers.¹⁷

The number of problem (disordered) gamblers by official estimates is not negligible. Forty-seven per cent of the population gamble and there are an estimated 300,000 problem (disordered) gamblers. By comparison, 80% of the population consume alcohol, and there are an estimated 586,780 are dependent drinkers.¹⁸

However, in their 2019 study, using a different study vehicle, YouGov reported a much higher prevalence: 7% low-risk gambling, 3% moderate-risk gambling and 3% problem (disordered) gambling.¹⁹

Until 2010, information about gambling in Great Britain was collected through the bespoke British Gambling Prevalence Survey (BGPS) series. Gambling Commission funding for this was withdrawn. From 2012, questions were included in the Health Survey for England (HSE) and the

¹⁴ Sturgis, P. (2020). *An assessment of the accuracy of survey estimates of the prevalence of problem gambling in the United Kingdom*. Prepared for GambleAware. <https://www.begambleaware.org/sites/default/files/2020-12/an-assessment-of-the-accuracy-of-survey-estimates-of-the-prevalence-of-problem-gambling-in-the-united-kingdom.pdf>

¹⁵ PAC p.12

¹⁶ DCMS. (2020). p.4-5.; Gambling Commission. (2021c). *Gambling participation in 2019: behaviour, awareness and attitudes Annual report (updated publication)* (February 2021) <https://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-participation-in-2019-behaviour-awareness-and-attitudes.pdf>.

¹⁷ <https://beta.gamblingcommission.gov.uk/statistics-and-research/publication/young-people-and-gambling-2020>

¹⁸ <https://alcoholchange.org.uk/alcohol-facts/fact-sheets/alcohol-statistics>

¹⁹ Gunstone, B. and Gosschalk K. (2020). *Gambling treatment and support*, YouGov on behalf of GambleAware and the Gambling Commission Research programme 2018-22 in support of the National Responsible Gambling Strategy. <https://www.begambleaware.org/media/2185/gambling-treatment-and-support.pdf>

Scottish Health Survey (SHeS) (and subsequently surveys in Wales). The methods and questions were the same, but the survey vehicle was not and produced different estimates of problem gambling prevalence.

- In HSE 2012, 0.8% of men were classified as problem (disordered) gamblers according to the DSM-IV and 0.6% according to the PGSI. Among women, 0.2% were categorised as problem (disordered) gamblers according to the DSM-IV and 0.1% according to the PGSI.
- For women, these estimates were similar to the BGPS.²⁰
- However, among men, the HSE 2012 estimates were significantly lower than the BGPS. The BGPS 2010 estimated that 1.5% of men in England were problem (disordered) gamblers according to the DSM-IV and that 1.3% were problem (disordered) gamblers according to the PGSI.

The researchers state this could be because:

- Non-gamblers are more likely to participate in studies presented as health surveys, whereas gamblers are more likely to participate in gambling studies, thus affecting the gambling prevalence rates.
- Those experiencing poorer health are less likely to take part in a health survey, and problem gamblers experience an array of adverse health conditions and may be less likely to take part in a survey aimed at understanding health and health behaviour.²¹

This means the regulator's discontinuation of a bespoke gambling instrument resulted in lower problem gambling prevalence estimates. The key point is that the small actual numbers of problem (disordered) gamblers in a population survey mean that estimates are likely to be inaccurate. Problem gambling estimates are susceptible to potential biases in different survey instruments.

Estimates based on an absolute number of 30 to 40 people are not a sufficient basis for the claims that the changed regulatory regime and online gambling have not had an impact on problem (disordered) gambling.

The risk of problem gambling is higher for different socio-demographic groups

The Government has not provided official estimates of changes in problem gambling *within* the population of those who participate in gambling. This is important to assess whether the risk from gambling to those who do take part is increasing as the gambling sector changes. It is also important to assess rates within the different socio-demographic group in a much more granular

²⁰ BGPS 2010 found 0.3% of women in England as problem gamblers according to the DSM-IV and 0.2% as problem according to the PGSI.

²¹ Health Survey for England 2012 (2013) Vol 1, *Chapter 7: Gambling Behaviour*, The Health and Social Care Information Centre.

way. Whole population rates hide considerably higher risk segments. For example, the estimate of problem (disordered) gambling for men aged 25-34 is 2.1%, compared to 0.5% for the adult population. Three out of every 100 young men (16 – 34) become a problem (disordered) gambler.²²

Even in the blunt instrument of population surveys, there are large differences in problem gambling by age and gender. Using the Health Survey data:

- Those with PGSI 1+ are significantly more likely to be in their 20s and 30s. Around a third of problem (disordered) gamblers (33%) and moderate risk gamblers (32%) were aged 25-34 years, compared with 16% in the overall population.
- Rates of problem gambling are higher among men than women.
- For men, there are 9.9% low-risk gamblers in those aged 16-24, 6.9% in those aged 25-34, declining to around 2.2% and below in those over 35 years.
- There are 2.4% moderate-risk gamblers in men aged 16-24, 3.6% for those aged 25-34, 3.1% for those aged 35-44, declining to around 1% and below over 45 years.
- In terms of problem (disordered) gambling, for men, there is 0.9% aged 16-24, 2.1% in those aged 25-34, 0.5% in those aged 35-44, and further decreasing in categories over 45.²³

There is also evidence that problem gambling rates are higher for those from Black, Asian, and Minority Ethnic (BAME) backgrounds.²⁴

At-risk gamblers matter

The nearly 2 million low- and moderate-risk gamblers must not be ignored. Intervention is necessary to prevent the development of entrenched problems with gambling, which become difficult to reverse and have life-long consequences. This at-risk group contributes overall to a greater burden of harm than problem gamblers – the harm per individual may be lower, but these groups are larger. This means at the community level, low- and moderate-risk gambling has a greater impact and is very concerning. Arguments that the concern should only be problem (disordered) gamblers, because the individual level harms to at-risk gamblers may be small, is contrary to the preventative, whole population public health approach adopted by Government for other issues.²⁵

²² Based on Health Survey data

²³ Tipping, S., Fuller, E., Kerr, J., Lynch-Huggins, S. and Thompson, B. (2019). *Secondary data analysis of the Data Reporting Framework and the Health Survey for England*, NatCen Social Research, on behalf of GambleAware and the Gambling Commission Research programme 2018-22 in support of the National Responsible Gambling Strategy. <https://www.begambleaware.org/media/2182/secondary-data-analysis-of-the-data-reporting-framework-and-the-health-survey-for-england.pdf>

²⁴ Gunstone, B. and Gosschalk, K. (2019). *Gambling among adults from Black, Asian and Minority Ethnic communities: a secondary data analysis of the Gambling Treatment and Support study*. On behalf of GambleAware. <https://www.begambleaware.org/sites/default/files/2020-12/2020-12-09-gambling-among-adults-from-black-asian-and-minority-ethnic-communities-report.pdf>.

²⁵ See Browne, M. and Rockloff, M.J., (2017). The dangers of conflating gambling-related harm with disordered gambling: Commentary on: Prevention paradox logic and problem gambling (Delfabbro & King, 2017). *Journal of Behavioral Addictions*, 6(3), pp.317-320.

DCMS and the regulator use the PGSI technical definition of the category of low-risk gamblers as those ‘gamblers who experience a low level of problems with few or no identified negative consequences’²⁶ to maintain that low-risk gamblers are not experiencing harm. However, as researchers shift focus from a responsible gambling emphasis on individual problem behaviour to harms, the PGSI categories are being used as measures of harm rather than to diagnose problem gambling. This is because most of the PGSI questions relate to harms (betting more than you can afford, borrowing money or selling things to gamble, feeling guilt, experiencing health problems and financial problems) as much as gambling behaviours (chasing losses, needing to gamble more).²⁷

This approach is supported by several international studies, which show that gambling harms affect not only problem (disordered) gamblers but also occur amongst low- and moderate-risk gamblers.²⁸ A study of the British population found that gambling-related harms were distributed across low- to moderate-risk gamblers (and not limited to just problem (disordered) gamblers) and were reported by the majority of gamblers who were ‘non-high time and spend regular gamblers.’²⁹

An Australian analysis of the distribution of gambling harms found that problem (disordered) gamblers shared around 15 per cent of the total harm from gambling, moderate-risk gamblers accounted for around 35 per cent, and half the harm was distributed among low-risk gamblers. At the population level, aggregate harms accruing to those not in the high-risk group exceed those occurring to problem (disordered) gamblers by about 6 - 1.³⁰

These researchers wanted to understand how the burden of harm from gambling at the community level compared to the burden from other mental health problems that receive attention from Governments. They found that the aggregated impact of gambling problems (combining low-risk, moderate-risk and problem/disordered gambling) was around two-thirds of major depressive disorder (combining mild, moderate, and severe cases) and alcohol use and dependence.³¹

The single biggest predictor of being a problem gambler in the future is experiencing at-risk or problem (disordered) gambling. For some people, the process from starting to gambling to problem (disordered) gambling is fast. For others, it can begin with at-risk gambling and take

²⁶ Gambling Commission. (2021c). p.14

²⁷ For discussion of this: Dowling, N.A., Youssef, G.J., Greenwood, C., Merkouris, S.S., Suomi, A. and Room, R. (2021). The development of empirically derived Australian low-risk gambling limits. *Journal of Clinical Medicine*, 10(167), pp.1-18. See also Browne et al. (2016).

²⁸ McMahon et al (2019). pp.380–388; Raisamo, S.U., Mäkelä, P., Salonen, A.H. and Lintonen, T.P., (2015). The extent and distribution of gambling harm in Finland as assessed by the Problem Gambling Severity Index. *The European Journal of Public Health*, 25(4), pp.716-722.; Browne et al. (2016).

²⁹ Canale, N., Vieno, A. and Griffiths, M.D., (2016). The extent and distribution of gambling-related harms and the prevention paradox in a British population survey. *Journal of Behavioral Addictions*, 5(2), pp.204-212. p.204

³⁰ Browne, M., Langham, E., Rawat, V., Greer, N., Li, E., Rose, J., Rockloff, M., Donaldson, P., Thorne, H., Goodwin, B. and Bryden, G., (2016). *Assessing gambling-related harm in Victoria: A public health perspective*. Victorian Responsible Gambling Foundation. <https://responsiblegambling.vic.gov.au/documents/69/Research-report-assessing-gambling-related-harm-in-vic.pdf> (p.3)

³¹ Ibid. (p.3)

time to develop. Over time, low-risk gambling increases the risk of developing problem (disordered) gambling.

People may move in and out of more harmful periods of gambling and relapse. However, the more problem gambling behaviour continues, the more likely it is that chronic problem gambling or disordered gambling develops.

Like any addiction, once entrenched, disordered gambling is very difficult to extinguish and tends to be life-long. Even if people succeed in recovering from serious gambling problems, consequences such as large debts, relationship breakdowns and health problems are often experienced for a long period afterwards. Disordered gamblers are a particularly vulnerable group in society.³²

No gambling is without the risk of harm

The narrative maintains that most people gamble without risk or harm. On this basis, it is asserted that gambling should be treated as an everyday leisure activity. It is possible for people to 'over-consume' any activity. However, gambling is an inherently risky leisure activity, in a way that swimming or watching a film is not, because it is based on losing money and has strongly addictive properties. Research shows that there is no gambling without risk of harm, and harm increases largely in line with the more you gamble, rather than increasing sharply when a certain threshold of gambling behaviour is reached. It is not that those gamblers who do not currently meet the criteria for at-risk or problem (disordered) gambling are 'safe'.

This narrative is used to argue that gambling cannot be compared to tobacco, where there is no 'safe' level of smoking. It is sometimes argued that a comparison between gambling and alcohol is more appropriate because people can consume alcohol at a safe level. This misrepresents that, for alcohol, low-risk drinking limits are statistically determined based on what policymakers decide are tolerable levels of absolute risk – rather than that there is no risk in drinking at low-risk levels. The low-risk drinking levels have been repeatedly revised downwards.

There have been international efforts to develop guidelines for low-risk gambling, using approaches that have been used for alcohol (and other such health-affecting behaviours). The low-risk guidelines for gambling are also based on a decision about a tolerable risk level. As gambling is not a substance, these studies use a combination of gambling behaviour

³² Williams, R., Hann, R., Limited, A., Schopflocher, D., McLaughlin, P., White, N., King, K. and Flexhaug, T. (2015). *Quinte longitudinal study of gambling and problem gambling*. Report prepared for the Ontario Problem Gambling Research Centre. <http://hdl.handle.net/10133/3641>. The Quinte Longitudinal Study (QLS) is a prospective study of gambling and problem gambling conducted in the Quinte region of Ontario, Canada from 2006 to 2011; Billi, R., Stone, C.A., Marden, P., Yeung, K., (2014). *The Victorian Gambling Study: A longitudinal study of gambling and health in Victoria, 2008–2012*. Victoria, Australia: Victorian Responsible Gambling Foundation. <https://responsiblegambling.vic.gov.au/documents/77/Research-report-longitudinal-study-gambling-and-health-victoria-20082012.pdf> ; Swedish longitudinal gambling study (Swelogs) 2008-2014 and 2015-2018. <https://www.folkhalsomyndigheten.se/livsvalkor-levnadsvanor/andts/vad-vi-gor-inom-andts/spel/swelogs-befolkningsstudie/>; Abbott, M.W., Romild, U. and Volberg, R.A. (2013). Gambling and problem gambling in Sweden: changes between 1998 and 2009. *Journal of Gambling Studies*, 30(4), pp.985–999.

dimensions, assessed against how well they predict harm.³³ The low-risk gambling guidelines are then based on judgements of an acceptable balance between sensitivity (identifying people experiencing harm) and specificity (not including many people who do not experience harm). Importantly, exceeding low-risk gambling guidelines conferred a higher degree of harm, but gambling lower than the limits also conferred a considerable amount of harm.³⁴

Previous descriptions of gambling risk dose-response curves have depicted these as J-shaped, whereby harm jumps when a certain threshold is reached. These studies show the risk curves for gambling expenditure are either r-shaped or linear. This indicates that increasing gambling expenditure increases the risk of harm even at relatively low levels of consumption. In an r-shaped curve, the risk increases more sharply as expenditure increases at lower levels.³⁵

Gambling difficulties impact many others beyond the gambler

The DCMS Call for Evidence appears not to consider affected others. An Australian study found that a typical problem (disordered) gambler affects six other people. On average, low-risk and moderate-risk gamblers affected one and three other people, respectively. Those most often affected were spouses and children.³⁶ There were large commonalities in the experience of harms reported by gamblers and affected others. Gamblers 'exported' about half of the harms they experienced to those around them.³⁷

As is the case for the gamblers themselves, there can be enduring, life-long consequences for those affected by another's gambling. Concern for children and young people tends to focus on their own gambling. As concerning is the impact on children and young people, and their life chances, of a family member or caregiver experiencing problems with gambling.³⁸

Incidence of problem gambling may be increasing and affecting new groups

There is international evidence that there has been an increase in the extent of problem gambling and changes in who is affected, coinciding with liberalisation and the burgeoning of digitally-aided gambling. There is a lack of evidence through a high-quality study of gambling

³³ For example, Dowling et al. (2021) produced the following low-risk levels in Australia:

- Below gambling frequency of 20–30 times per year.
- Gambling expenditure of AUD \$380–\$615 per year (USD \$240–\$388 per year).
- Gambling expenditure comprising 0.83–1.68% of gross personal income.
- Two types of gambling activities per year.

Exceeding the absolute expenditure threshold was the best predictor of harm.

³⁴ Dowling et al. (2021).

³⁵ Markham et al. (2015).

³⁶ Goodwin, B.C., Browne, M., Rockloff, M. and Rose, J., (2017). A typical problem gambler affects six others. *International Gambling Studies*, 17(2), pp.276-289.

³⁷ Li, E., Browne, M., Rawat, V., Langham, E. and Rockloff, M., (2017). Breaking bad: Comparing gambling harms among gamblers and affected others. *Journal of Gambling Studies*, 33(1), pp.223-248. p.223

³⁸ Browne et al. (2016)

over time in Great Britain, due to Government inaction. But this absence of evidence is not evidence of absence. Rather, there is indicative evidence that such trends also apply to the United Kingdom.

The cross-sectional surveys in Great Britain provide estimates of the prevalence of problem gambling. Prevalence is the number of people experiencing problem gambling at a single point in time. They do not provide incidence – the total number of instances of at-risk or problem (disordered) gambling suffered by people in Great Britain over the period.

A longitudinal study in Sweden found that from 1997/1998 to 2008/2009, the proportion of problem (disordered) gamblers in the population had remained unchanged at around 2 per cent, with 5% of the population being at-risk gamblers. While the proportion of the population with gambling problems remained the same, there was great mobility in and out of problem gambling. In one year, around 100,000 people become new problem gamblers, and at the same time, roughly the same number move out of the problem gambling category. The proportion of people who have had serious gambling problems at some time in their lives doubled between 1998/1999 and 2008/2009.

The Public Health Agency of Sweden concludes:

Greater availability and more intense marketing are two possible explanations. Of those who had had gambling problems earlier in their lives at the time of the 2008/2009 survey, 42% had gambled on the Internet the previous year compared to 7% of gamblers who had no problems. At the end of the 1990s, it was unusual to gamble on the Internet. More intense marketing of gambling products might be a further reason.³⁹

The study found that in a year, one in five of the ‘new’ problem (disordered) gamblers were relapsed gamblers, concluding: ‘a particularly vulnerable group has grown over the last ten years in terms of gambling harms and potential for relapse’. This group is suffering under a heavy burden of gambling harms due to ineffectively regulated commercial gambling over this period.⁴⁰

The fact that problem (disordered) gambling persists once established and that individuals can transition into (and out of) high levels of gambling within a few months is also evidenced in the UK. A study analysed gambling using data provided by a UK retail bank, aggregated for up to 6.5 million individuals over up to seven years. Focusing on 2015, and looking back to 2012 and forward to 2018, the research found that:

Three years earlier around half of the highest-spending gamblers were already gambling heavily, while only six months before, over 6.9% of these heavy gamblers were not

³⁹ Public Health Agency of Sweden. (2014c). *The proportion of people who have had serious gambling problems doubled*. Swelogs Fact Sheet No 17 <https://www.folkhalsomyndigheten.se/contentassets/3d9fca68cb8e4fdb4c16ca8a7e658fb/swelogs-facts-sheet-no-17-2014-proportion-people-serious-gambling-problems-doubled-webb-ver2.pdf>

⁴⁰ Ibid.

gambling at all, highlighting the fast acceleration with which some individuals can transition into heavy gambling. In contrast, six months later 4.6% of heavy gamblers were not gambling at all. This asymmetry shows that gambling expenditure represents sticky behaviour.⁴¹

The Swedish study also identified changes between different population groups over the period. Problem (disordered) gambling has doubled among men aged 18–24 and has increased among women aged 45–64. Approximately half of all new problem (disordered) gamblers in 2009/2010 were women. The researchers' comment that the number of men and women problem (disordered) gamblers may even out over time.⁴² There is evidence that similar trends may be occurring in the United Kingdom. For example, while men continue to make up most online gamblers and very high spenders, women taking part in online gaming typically engage more frequently and in longer sessions and spend more than men, on average.⁴³

Of note, the Swedish study was able to identify declining problem gambling among young people aged 16–17 in response to policy changes curtailing their access to gambling.

Economic benefit and socio-economic cost

Harms from gambling are wide-ranging and impact individuals, families, communities, and society

DCMS and the regulator have, of late, acknowledged that assessing the harm from gambling goes beyond counting the number of problem (disordered) gamblers. The DCMS Call for Evidence states 'a stable problem gambling rate does not necessarily indicate a stable quantum of harm'.⁴⁴ The Gambling Commission has produced a framework for understanding and measuring gambling harms. The framework defines gambling harms as 'the adverse impacts from gambling on the health and wellbeing of individuals, families, communities, and society'.⁴⁵ This framework shares many features in common with evidence and frameworks from other countries.⁴⁶

⁴¹ Muggleton et al. (2021). p.6

⁴² Public Health Agency of Sweden. (2014b); Public Health Agency of Sweden. (2014c); Public Health Agency of Sweden. (2014d). *100,000 new problem gamblers in one year*. Swelogs Fact Sheet No 10. <https://www.folkhalsomyndigheten.se/contentassets/3022af4c173e4365b910386c706e35e5/swelogs-facts-sheet-no10-2014-100000-new-problem-gamblers-in-one-year.pdf>

⁴³ Forrest et al. (2021).

⁴⁴ DCMS. (2020). p.5

⁴⁵ Wardle, H., Reith, G., Best, D., McDaid, D. and Platt, S., (2018). *Measuring gambling-related harms: a framework for action*. Gambling Commission. <https://www.gamblingcommission.gov.uk/PDF/Measuring-gambling-related-harms.pdf> p.4

⁴⁶ See: Browne, M., Langham, E., Rawat, V., Greer, N., Li, E., Rose, J., Rockloff, M., Donaldson, P., Thorne, H., Goodwin, B. and Bryden, G., (2016). *Assessing gambling-related harm in Victoria: A public health perspective*. Victorian Responsible Gambling Foundation. <https://responsiblegambling.vic.gov.au/documents/69/Research-report-assessing-gambling-related-harm-in-vic.pdf>

As set out in the regulator's framework, the harms from gambling are wide-ranging. Harms may occur in episodes. But they may also be enduring, with legacy harms damaging individuals and those around them long after the gambling behaviour has ceased. Harms occur at the level of the individual and families but also impact communities and society. The gambling harms in the framework include:

- Financial difficulties, debt, decreased productivity at work or study, loss of employment, housing insecurity, bankruptcy, and engagement in criminal activity.
- Erosion or breakdown of parenting, family relationships, friendships, wider social and connections and community cohesion.
- Physical ill-health, emotional or psychological distress (such as feelings of shame, stigma, and guilt), mental health problems (including anxiety and depression, and severe and enduring mental health conditions) and suicidal behaviour.⁴⁷

The UK study using consumer data from a retail bank allowed objective measurement of harm against gambling expenditure (rather than self-report), for a very large sample, over time. It found:

Gambling is associated with higher financial distress and lower financial inclusion and planning, and negative lifestyle, health, well-being, and leisure outcomes. Gambling is associated with higher rates of future unemployment, physical disability, and, at the highest levels, substantially increased mortality.⁴⁸

Economic benefit needs to be assessed against socio-economic cost

The Government produces statements on the gambling sector's economic contribution to employment, tax, and GDP. However, it has not quantified the socio-economic costs of harm to compare this against. There has been an almost complete lack of economic evaluations of interventions for gambling harm.⁴⁹ Instead, economic assessment has been of the impact of regulation on industry profit or state revenue. This is in distinction to other mental or public health issues, where the cost-effectiveness of interventions is assessed against socio-economic costs and provide clear evidence of savings to the state and society from prevention and early intervention.

In 2019, the regulator commissioned a study to recommend approaches to measuring gambling harm, from experts in the economics of mental and public health.⁵⁰ This found that gambling has been approached using an out-of-date 'welfarist' approach to economics. Such approaches see

⁴⁷ Wardle, H., Reith, G., Best, D., McDaid, D. and Platt, S., (2018). *Measuring gambling-related harms: a framework for action*. Prepared for the Gambling Commission. <https://www.gamblingcommission.gov.uk/PDF/Measuring-gambling-related-harms.pdf> p.4

⁴⁸ Muggleton et al. (2021). p.1

⁴⁹ Ibid.

⁵⁰ McDaid, D. and Patel, A. (2019). *Measuring gambling-related harms: methodologies and data scoping study*. Final Report. London School of Economics and Political Science prepared for the Gambling Commission. <http://eprints.lse.ac.uk/105219/>

societal welfare as made up of individuals making their own choices, acting rationally to best meet their own personal preferences, and who will stop gambling when the harms outweigh the benefits they enjoy. Consumer expenditure on gambling is seen as an expression of economic benefit.⁵¹

Other public health issues (including obesity, depression, psychosis, alcohol, smoking and substance abuse) have long been subject to social welfare and health approaches to economics, termed 'extra-welfarist'. It is understood that individuals' actions result from a wide range of factors, including socio-economic determinants, physical and mental health, behavioural influences from companies and products – rather than simply from rational choice in their own best interests. Measurement is approached according to societal values or goals – such as inequalities in the distribution of impacts and impacts on all affected and society, not just the individual.

The experts set out how to assess the full extent and distribution of socio-economic costs and economic benefits for gambling. These are well-established methods used in other areas of public and mental health. Importantly, costs of harm need to be apportioned to different parts of the state and population to enable assessment of the cost-effectiveness and impact on inequities of interventions to prevent or reduce harms. An assessment of the costs of gambling harm should include:

- Direct costs (such as health care, law enforcement and criminal justice related costs, loss of property and personal injury, and social welfare system costs).
- Indirect costs (such as lost productivity due to unemployment, reduced participation in work or non-work activities – e.g., household tasks or volunteering – and premature mortality).
- Intangible costs (reduced quality of life and well-being, emotional distress, pain, discrimination, and social exclusion).
- Attribution of the costs due to contribution to other mental health or physical illness (e.g., depression).
- Costs related to research, education, prevention.
- Costs not only to problem gamblers or disordered gamblers but also at-risk gamblers and affected others.
- Costs to an average person and estimates of variation based on age, patterns of gambling (e.g., online gambling) or socio-economic factors.
- Distribution of costs, for instance, among different socio-economic groups and geographical areas, to understand patterns of inequality in the distribution of costs.

There are two limited estimates of the costs of gambling harm in Great Britain.

The first took a narrow, conservative approach, including only direct costs to the state in health, welfare and employment, housing, and criminal justice, using a narrow definition of such

⁵¹ Ibid. p.30-31

impacts and limited data. Their illustrative analysis suggested an association between problem gambling and excess fiscal costs to the state of between £276 million and £1.23 billion (£260 million to £1.16 billion in 2015 prices).⁵²

The second estimated the monetary value of well-being losses associated with problematic gambling in the UK. This study costed estimates of the relationship between subjective well-being, problematic gambling, and income.⁵³ It produced an estimate of £101,898 (£100,000 in 2017 prices) per problem gambler per annum for lost well-being compared to individuals who were not problem gamblers. When added up by the number of 'problem gamblers' this produces a cost of over £30 billion per year. The authors comment this 'is the same order of magnitude as that often associated with alcohol abuse' and much more than the gambling sector's contribution to tax and GDP.⁵⁴

A fuller societal costing of problem gambling for Sweden for 2018 (including direct, indirect, and intangible costs) found:

The societal costs of problem gambling amounted to 1.42 billion euros in 2018, corresponding to 0.30% of the gross domestic product. Direct costs accounted only for 13% of the total costs. Indirect costs accounted for more than half (59%) of the total costs, while intangible costs accounted for 28%. The societal costs were more than twice as high as the tax revenue from gambling in 2018. Direct and indirect costs of problem gambling combined amounted to one-third of the equivalent costs of smoking and one-sixth of the costs of alcohol consumption in Sweden.⁵⁵

Economic benefit needs to be considered in terms of Government social goals, not only corporate profit, and tax revenue

In deciding it wishes to use commercial gambling for economic growth, the Government needs to consider who it is that is deriving benefit from this commercial activity and who is being harmed. The economic contribution of gambling needs to be considered in relation to wider Government policy goals, communities, and society – rather than in simple terms of profits to commercial companies and tax revenue.

Gambling has been described as an extractive industry in that gambling profit is a loss to individual and communities and moves to global corporations rather than generating value within the community.⁵⁶

⁵² Thorley, C., Stirling, A. and Huynh, E. (2016). *Cards on the table: the cost to government associated with people who are problem gamblers in Britain*. IPPR Report. <https://www.ippr.org/publications/cards-on-the-table>

⁵³ Making use of data from the 2010 British Gambling Prevalence Survey, which included a question on the happiness of respondents.

⁵⁴ Pryce, R., Walker, I. and Wheeler, R. (2017). *How much of a problem is problem gambling?* Economics working paper. Lancaster University. https://eprints.lancs.ac.uk/id/eprint/86079/1/LancasterWP2017_011.pdf p.1-2

⁵⁵ Hofmarcher, T., Romild, U., Spångberg, J., Persson, U. and Håkansson, A. (2020). *The societal costs of problem gambling in Sweden*. BMC Public Health, 20(1).

⁵⁶ Cassidy, R., (2020). *Vicious games: Capitalism and gambling*. Pluto Press.; Orford, J., (2019). *The gambling establishment: Challenging the power of the modern gambling industry and its allies*. Routledge.

Commercial gambling contributes to health and social inequities, and this is contrary to the Government's wider policy goals. Multiple studies have found evidence of a social gradient in gambling and gambling-related harm.⁵⁷ Lower-income individuals have higher average gambling expenditure relative to net income, and lower socioeconomic status is associated with greater gambling harm. Gambling profit in Great Britain comes from a small number of disordered gamblers and disproportionately from poorer and younger groups relative to income.⁵⁸

Gambling exacerbates inequalities. This means that difficulties with gambling and gambling harm are social and health inequity – contributing to avoidable, unfair, and systematic differences in health and well-being between different groups of people. The Gambling Commission's current framework for defining and measuring gambling harm states that gambling harm exacerbates inequalities.⁵⁹

The Government's use of revenue from gambling is a form of regressive taxation on those with mental health problems, the poor, young and vulnerable. The same criticism applies to the use of gambling profits for other sectors. That gambling sector profits benefit the public purse, and other industries (sports, advertising, broadcast) should not be an excuse.

Gambling operators are avoiding paying tax in the United Kingdom

The gambling sector emphasises the contribution it makes to state revenue. Estimates have been made of the amount of tax currently being avoided by the big remote gambling operators, as well as how much has been avoided historically. This analysis covers the five years 2015 to 2019.⁶⁰ Overall, the calculations suggest that the six online gambling operators with the largest market share in the UK⁶¹ and the leading supplier of remote gambling software⁶² have avoided almost £900 million of corporation tax payments by virtue of being registered for corporate tax in tax havens outside the UK. In addition to this, there is evidence that these companies have avoided up to £75m of UK income tax and National Insurance contributions by staffing their online gambling operations with employees based outside the United Kingdom.

⁵⁷ See McMahon, N., Thomson, K., Kaner, E. and Bamba, C., (2019). Effects of prevention and harm reduction interventions on gambling behaviours and gambling related harm: an umbrella review. *Addictive Behaviors*, 90, pp.380-388. p.381

⁵⁸ Forrest et al. (2021)

⁵⁹ Wardle, H., Reith, G., Best, D., McDaid, D. and Platt, S., (2018). Measuring gambling-related harms: a framework for action.

Gambling Commission 2018. <https://www.gamblingcommission.gov.uk/PDF/Measuring-gambling-related-harms.pdf> p.4

⁶⁰ Reed, H. (2020) *Estimating the amount of tax avoided by online gambling operators*. Landman Economics. Prepared for Clean Up Gambling.

⁶¹ William Hill; GVC Holdings (which includes Ladbrokes and Coral); Flutter Entertainment (which includes Paddy Power and Betfair); Bet365; Stars Group; Kindred.

⁶² PlayTech

The causes of gambling harm

Continuous gambling products and intensive gambling are the greatest direct risks

The direct causes of problem gambling, and those most amenable to being addressed by gambling regulation, are high-risk gambling products and gambling intensity.

A wide range of mental and physical health, socio-economic, stress and life event vulnerabilities contribute to the risk of experiencing problems with gambling. Gambling difficulties exacerbate these vulnerabilities, and their persistence is associated with the continuation of gambling problems or relapse.⁶³ Such vulnerabilities provide the context or are the 'distal' factors that, in general, increase the risk of experiencing difficulties with gambling.

However, it is high levels of gambling expenditure, frequency, time, number of forms/products, and/or involvement in continuous gambling forms/products that create the greatest direct risk for problem gambling.⁶⁴ This kind of risky gambling and gambling products are further enabled and enhanced by digital technology and access on the internet via multiple and mobile devices.

Gambling on high-risk forms of gambling can lead to gambling problems. Some forms of gambling entail a greater risk of developing gambling problems than others.⁶⁵ Participants with a moderate-risk or problem (disordered) gambling status are significantly more likely to participate in riskier, continuous forms of gambling (e.g., EGMs and casino games). This is true after taking occupation, lifetime gambling risk, and having psychological distress or depression into account.⁶⁶ This means that playing such gambling products creates the risk of experiencing difficulties with gambling, in and of itself, aside from any vulnerabilities a person may have. However, no gambling is risk free, and as such there is no amount of gambling that is free from potential harm.

In the Swedish longitudinal study, 7% of non-problem gamblers who gambled on high-risk forms of gambling developed gambling problems a year later. The corresponding proportion of gamblers on medium risk forms of gambling was 3%, and of those who gambled on low-risk forms of gambling, less than 1%.⁶⁷

⁶³ Williams et al. (2015); Billi et al. (2014); Abbot et al. (2013);; Browne et al. (2016).

⁶⁴ Williams et al. (2015); Billi et al. (2014); Abbot et al. (2013).

⁶⁵ Public Health Agency of Sweden. (2014a). *What are the features that make gambling risky?* Swelogs Fact Sheet, No 16, April 2014. <https://www.folkhalsomyndigheten.se/contentassets/d225745561374cbc904924b71cab98c0/swelogs-facts-sheet-no16-2014-what-are-the-features-that-make-gambling-risky.pdf>

Public Health Agency of Sweden. (2014b). *What do we know about gambling problems in Sweden?* Swelogs Fact Sheet No 20. <https://www.folkhalsomyndigheten.se/contentassets/d17b1189058e4edbb6cc1e6f702f0775/what-do-we-know-about-gambling-problems-in-sweden-2014-eng.pdf>

⁶⁶ Bill et al. (2014).

⁶⁷ Public Health Agency of Sweden. (2014a).

New gamblers are more likely than other gamblers to develop gambling problems if they gamble on high-risk forms of gambling. Of those who move from gambling regularly on low to medium risk forms of gambling to gambling regularly on high-risk forms of gambling, the proportion who developed gambling problems is not as high. In Sweden, of those who went from not gambling at all in 2008/2009 to gambling regularly on high-risk forms of gambling a year later, 20% developed gambling problems. Of those who went from gambling less than once a month to gambling regularly on high-risk forms of gambling, 10% developed gambling problems.⁶⁸

However, for those who report a lifetime risk of problem or pathological gambling, the impact of increased frequency of play on risky products was larger than those without.⁶⁹

The more problem gambling continues, the more gambling tends to expand across forms/products. On average, new problem gamblers gamble on a more limited range of gambling forms than those who continue to have gambling problems.⁷⁰

Different gambling products are associated with different patterns in the progression of problem gambling. For example, in Victoria, increasing the frequency of gambling on EGMs over time is associated with a monotonic (or dose-response) increase in PGSI score. This means that the more someone plays EGMs, the more their problem gambling increases, at around the same rate. In contrast, increasing the frequency of race betting over time is associated with a threshold or stepped increase in PGSI score. This means that playing race betting leads to a jump in PGSI scores.⁷¹ In Canada, proximity to electronic gambling machine (EGM) venues was a predictor of problem gambling continuation and relapse.⁷²

For riskier products, the proportion of people who gamble on them who experience gambling problems is high. For example, in Sweden, almost one in ten people who gamble on bingo, poker, casino games and/or gambling machines are problem gamblers⁷³

A longitudinal study of children and young people in England, which included a few questions on gambling, found a small number who develop gambling problems pre-16, but a new, significantly larger group develop problems as they reach 18. The researchers attribute this to full access to gambling as they reach the legal age,⁷⁴ showing a need for significantly more protections for young adults on entry into gambling.

⁶⁸ Ibid.

⁶⁹ Williams et al. (2015). p.7

⁷⁰ Ibid.

⁷¹ Billi et al. (2014).

⁷² Williams et al. (2015). p.7

⁷³ Public Health Agency of Sweden. (2014b).

⁷⁴ Forrest D., and McHale, I. (2018). *Gambling and problem gambling among young adults: insights from a longitudinal study of parents and children*, University of Liverpool for GambleAware. <https://www.begambleaware.org/sites/default/files/2020-12/gambling-and-problem-gambling-among-young-adults-revision-10818-final-publish-002.pdf>

Implications

The account of the gambling sector, and to a large extent the regulator and DCMS – that deregulation and digitally-aided gambling have had no negative impact but have generated profit and economic growth – is not based on evidence. Rather, profits to the industry have come through increasing losses to around the same number of people participating in gambling and have disproportionately been generated by higher risk online gambling, by a group of disordered gamblers experiencing mental ill-health, or younger and poorer people. The socio-economic costs of gambling harms are uncouned.

The wider health and socioeconomic factors contributing to problem gambling are not easily amenable or within the scope of gambling regulation. However, most of the modifiable risk factors for problem gambling are gambling-related,⁷⁵ and the most direct risk factors for problem gambling are gambling forms/products and patterns of gambling behaviour. This means that the approach with the greatest likelihood of directly preventing or reducing gambling harm is the control of commercial practices and limits on high-risk forms of gambling and gambling behaviour patterns that are addictive and harmful.

An effective strategy to reduce gambling harm is to invest in the prevention of at-risk gambling, causing harm, while at lower levels, to a larger number of people - and to stop entrenched addiction. A focus on prevention would benefit not only the individual gambler and those close to them but also the wider community.⁷⁶ This means that 'a preventative population approach consisting of general gambling control policies is warranted to shift the distribution of risk and harm across the entire population'.⁷⁷

The nature and scale of the problem warrant a significant change to the approach to regulation.

⁷⁵ Williams et al. (2015).

⁷⁶ Williams et al. (2015); Billi et al. (2014); Abbot et al. (2013); Browne et al. (2016).

⁷⁷ McMahon et al. (2019).

Chapter 2

A new approach to gambling regulation

Introduction

This chapter sets out a new approach to gambling regulation appropriate to the nature and scale of the problem. It discusses the regulatory regime in terms of public health and consumer rights and protections – which are highly complementary approaches - and makes recommendations for change. Such measures are not new to gambling and have been present in early regimes of land-based gambling regulation and now need to be applied online.

Those calling for reform are accused of being anti-gambling prohibitionists or interfering with consumer choice and economic freedoms. Such a 'public health' approach is by no means limited to products such as tobacco, alcohol, or drugs. It is applied to education, social welfare, crime and violence, environment, transport, housing, and utilities. However, not to gambling.

A glaring question is why, having promoted gambling as a consumer good, DCMS and the regulator have failed to achieve the very basics of consumer protection and good practice in regulation. Comparing gambling to other everyday consumer goods and services, such as financial services, utilities, or cars, reveals just how significant the failures of the current regulation are.

Good practice in regulating markets

Regulation adjusts market dynamics for the benefit of consumers, businesses, and the economy

Government policy recognises that markets, left alone, do not necessarily always deliver the best outcomes. Understanding the underlying dynamics of a market is basic to effective regulation for the design of levers to move commercial behaviour in the direction desired by Government policy. The CMA states:

When markets are working well, firms compete to win business by achieving the lowest level of cost and prices, developing better products and services, or exploiting their strengths, skills, and other advantages to meet consumers' needs more effectively than their rivals.

This encourages innovation and provides consumers with increased choice. Competition is enhanced when consumers are empowered to shop around through access to readily available and accurate information about products and services.

Markets that are not working well can result in negative effects for consumers, businesses, and the economy.⁷⁸

The inherent market dynamic of commercial gambling is to increase risk of harm to consumers and society

The following section describes the inherent market dynamics of commercial gambling. This is not anti-gambling or an attack on commerce. It is a well-evidenced description of how the commercial gambling market necessarily functions when left alone, and the nature of the product that is being sold.

Commercial gambling makes money through gamblers losing money, and all commercial gambling products are designed so that, in the long run, all gamblers lose. When gamblers win, they do so because other gamblers have lost. This is a leisure pursuit based on losing money, with financial loss, at the core of potential harm to consumers.

The size of turnover determines gross profit, which accounts for the potential dangerousness of commercial gambling. Gambling companies do not compete based on price or consumer discernment, or selective participation but on turnover - frequency of staking and the amount staked. The gambling company must persuade consumers not only to lose once but to continue participating and losing – and participate more and lose more. This is the driving motive for product innovation and all commercial practices in gambling. Thus, increasing the profitability of a product inherently means an increased risk of harm and addiction to consumers.

The result are markets subject to oligopolist control where companies consolidate and compete based on total extraction of money.⁷⁹ Oligopolist markets are a competitive situation in which there are only a few sellers (of products that can be differentiated but not to any great extent); each seller has a high percentage of the market and cannot afford to ignore the actions of the

⁷⁸ <https://www.gov.uk/guidance/tell-the-cma-about-a-competition-or-market-problem#what-to-tell-us-about-and-why>

⁷⁹ Livingstone, C., Rintoul, A., de Lacy-Vawdon, C., Borland, R., Dietze, P., Jenkinson, R., Livingston, M., Room, R., Smith, B., Stooze, M. and Winter, R., (2019). *Identifying effective policy interventions to prevent gambling-related harm*. <https://responsiblegambling.vic.gov.au/documents/640/Livingstone-identifying-effective-policy-interventions-June-2019.pdf>. p12

others.⁸⁰ This means that any more profitable practice is rapidly adopted by others – in gambling, profit meaning any riskier product or practice.

Market logic means that gambling product innovation, evolution and promotion is always in the direction of increased risk of harm and addiction to the consumer when unregulated. It is well-evidenced that the evolution of gambling products over time is to higher and higher risk. New features innovated in one product category are adopted across all the products in that category, and features from one product category are used in a different product category in a way that can change aspects of their structure and risk. At the same time, gambling companies seek to attract participants in one kind of gambling to take part in others by putting different types of gambling in proximity and promoting higher-risk products.⁸¹

Gambling products are built around the most powerful behavioural reinforcer of all, an intermittent, unpredictable pattern of rewards – occasionally winning money. To this is added a range of carefully constructed elements (structural characteristics) that modify fundamental aspects of human decision-making and behaviours, making use of classical and operant conditioning, cognitive biases, physiological arousal, and dopamine signals. Through their design, gambling products hijack behavioural, cognitive, emotional, and physiological dynamics of human psychology, to get people to continue to gamble and lose money.⁸²

Product design modifies behaviour within a gambling session, increasing the likelihood of losing control, difficulty quitting the game and increased loss of money. The design features of the game increase the likelihood of repeated gambling, that play becomes an engrained as a habit, and the development and maintenance of problem gambling and gambling disorder.⁸³

Basic psychological processes common to all humans underpin gambling product design. Gambling is studied in the field of psychology as an example of how human behaviour can be manipulated in ways that are predictable, according to the makeup of human psychology, and which are not necessarily rational or in the person's best interests. The product characteristics involved in difficulties with gambling and disordered gambling are the same as those that result in any player continuing to gamble.

Those in more privileged positions are more likely to have internal and external resources, which place limits on the influence of gambling products and commercial practice. However, those who are more vulnerable, due socio-economic position, education, life events, mental and physical ill-health, have fewer such internal and external resources and are more susceptible to

⁸⁰ <https://www.monash.edu/business/marketing/marketing-dictionary/o/oligopolistic-competition#:~:text=a%20competitive%20situation%20in%20which,the%20actions%20of%20the%20others>

⁸¹ Cornish, D.B. (1978). *Gambling, a review of the literature and its implications for policy and research: A Home Office research unit report*. Her Majesty's Stationery Office. Available at: <https://prism.ucalgary.ca/handle/1880/539>; Newall, P.W.S. (2018). Dark nudges in gambling. *Addiction Research & Theory*, 27(2), pp.65–67; Delfabbro, P. and King, D.L., (2019). Play dynamics on electronic gaming machines: A conceptual review. *Journal of behavioral addictions*, 8(2), pp.191-200; Cassidy. (2020); Schüll, N.D., (2014). *Addiction by design: Machine gambling in Las Vegas*. Princeton University Press.

⁸² Livingstone, C., (2017). *How electronic gambling machines work*. AGRC Discussion Paper 8). Melbourne: Australian Gambling Research Centre, Australian Institute of Family Studies. p.5-6

⁸³ Yücel, M., Carter, A., Harrigan, K., van Holst, R.J. and Livingstone, C., (2018). Hooked on gambling: a problem of human or machine design? *The Lancet Psychiatry*, 5(1), pp.20-21. p.20.

harm. This also means the bulk of profits come from a relatively small number of highly disordered gamblers – people suffering mental ill-health, and disproportionately from younger, poorer, and more vulnerable groups relative to income.

Recent evidence from neuroscience demonstrates that in gambling disorder, gambling products function in the same way as addictive substances, causing modification to the risk and reward structures in the brain, associated with intense cravings. The American Psychiatric Association has reclassified gambling disorder from a disorder of compulsion or impulse control to an addictive disorder, recognising the way gambling disorder is an addiction to an addictive process, with the same dynamics as addiction to a substance such as drugs or alcohol.⁸⁴

The product being sold in commercial gambling is, in essence, a construct of psychological tricks developed to encourage the loss of money. Consequently, gambling companies do not wish to transparently provide gambling product information – on price, the probability of winning, how gambling works and the risks of different products.⁸⁵ Rather, market dynamics drive operator behaviour to the provision of misinformation, which exaggerates the chances of winning, encourages false beliefs about skill and luck, confuses players about the facts regarding gambling products, and which push people towards riskier, more profitable products or bets.

In other sectors, promotions, bonuses, loyalty, and VIP schemes may provide a genuine benefit to consumers while ultimately having the purpose of increasing profit for the company. But in commercial gambling these are always risky for consumers, as increasing profit for commercial gambling equals persuading gamblers to lose more money.

Given these inherent market dynamics, voluntary development and adoption of ‘responsible’ gambling products and commercial practices are, simply uncompetitive, running directly contrary to profit.⁸⁶

The current gambling regulatory regime ignores what it is regulating

Researchers and policymakers have extensively described this market logic of commercial gambling and the nature of gambling products for a century. These formed the basis of policy in Great Britain – rules on products, type of license, venues, and access, to control exploitation

⁸⁴ <https://www.psychiatry.org/psychiatrists/practice/dsm>

⁸⁵ See: Revealing Reality. (2017). *Collaborative Innovation Identifying good practice and inspiring change*. <https://www.revealingreality.co.uk/work/responsible-gambling-collaborative-innovation-identifying-good-practice-inspiring-change/>; Newall, P.W., Walasek, L. and Ludvig, E.A., (2020b). Risk communication improvements for gambling: House-edge information and volatility statements. *Psychology of Addictive Behaviors*; Newall, P.W., Walasek, L. and Ludvig, E.A., (2020c). Equivalent gambling warning labels are perceived differently. *Addiction*, 115(9), pp.1762-1767; Livingstone et al. (2019); Beresford, K. and Blaszczynski, A., (2020). Return-to-player percentage in gaming machines: Impact of informative materials on player understanding. *Journal of Gambling Studies*, 36(1), pp.51-67.

⁸⁶ Cornish (1978); Newall (2018); Livingstone. (2019); Heidhues P, Kloszegi B, Murooka T. (2016a). Exploitative innovation. *Am Econ J*. 8:1–23.; Heidhues P, Kloszegi B, Murooka T. (2016b). Inferior products and profitable deception. *Rev Econ Stud*. 84:323–356.

and excessive gambling. Many of these features can still be seen in land-based gambling regulations. In the current regulatory regime and for online gambling, Government and the regulator appear to have been persuaded to forget the nature of what they are regulating. A *laissez faire* approach to the gambling market has been adopted, in which responsible gambling measures have, in effect been left up to the gambling companies.

The Gambling Commission is a non-departmental public body sponsored by the DCMS and is tasked with regulating commercial gambling in Great Britain. Every gambling operator is required to have a licence, with the Gambling Commission setting the licence conditions and codes of practice and monitoring and enforcing compliance with them.

The Gambling Act 2005 gives the Gambling Commission its statutory objectives and powers. The default position is that it should 'permit gambling, in so far as the Commission thinks it reasonably consistent with the pursuit of the licensing objectives.'⁸⁷ The licensing objectives are preventing gambling from being a source of crime, ensure gambling is conducted fairly and openly, and protecting children and other vulnerable persons from being harmed or exploited by gambling.⁸⁸

The various reports leading up to the Gambling Act 2005, including the Budd report, maintained the approach of previous regulation, that gambling should be tolerated, not encouraged. The recommendations for reform envisaged cautious liberalisation. It focused on improved regulation for consumers and to protect children and vulnerable people and establishing a more effective regulator with a specific mandate to address problem gambling.⁸⁹

However, the Government of the day decided it wanted the British gambling industry to become successful in the domestic and global marketplace and to increase its contribution to the UK economy. A key change with the Gambling Act 2005 was that the Government decided it wanted to use the gambling sector to contribute to economic growth, and so the gambling sector should be able to stimulate demand. This resulted in the change from previous regulation, in which gambling was to be tolerated, not encouraged, and demand should be 'unstimulated', to 'permit' gambling. gambling was repositioned as an everyday mainstream leisure industry, rather than a harmful one, justified, in part, by proclaiming this was an end to 'looking down' on a working-class pastime.⁹⁰

The Gambling Act 2005 gives the Gambling Commission wide-ranging powers to establish licensing conditions, codes of practice, monitor and enforce, including requiring gambling companies to provide data and to institute criminal proceedings. It provides for the DCMS to create secondary legislation to control advertising and marketing and institute a statutory levy.

⁸⁷ Gambling Act 2005. <https://www.legislation.gov.uk/ukpga/2005/19/contents>. Section 22.

⁸⁸ Gambling Act 2005, section 1

⁸⁹ Gambling Review Body. *Gambling Review Report*. Chaired by Sir Alan Budd. Department for Culture, Media and Sport.

<http://www.homepages.ucl.ac.uk/~uctyjow/Gambling/gamblingreviewcontents.pdf>

See also reports of the Gaming Board for Great Britain (predecessor to the Gambling Commission)

<https://www.gov.uk/government/publications/report-of-the-gaming-board-for-great-britain-2001-to-2002>

⁹⁰ Cassidy (2020)

This was not necessarily what the gambling reviews and Act had necessarily envisaged, but the regulatory regime DCMS and Gambling Commission implemented has been *laissez-faire*. The Gambling Commission's statement of principles for regulation explains:

In deciding what action to take, and whether action should be taken at all, the Commission will have regard to the desirability of promoting economic growth and its duty to permit gambling in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives.⁹¹

The Gambling Commission maintains it applies 'a range of regulatory tools and levers to make gambling safer, which include both requirements for and restrictions on product, place and provider, from the start of the customer journey'.⁹² It explains that this consists of:

At the universal level, gambling businesses are required to offer safer gambling information to customers and a range of preventative tools to limit time or money spent or to take time-outs from gambling.⁹³

The regulator has focused exclusively on gambling business providing information and voluntary tools for gamblers to 'be responsible' and control themselves. It has placed little to no controls on the drivers of behaviour in the other direction and towards harm and addiction – gambling products and commercial practices. As commercial gambling expanded, people were told it was individual responsibility to manage themselves and their fault if they were harmed. The source of risk was transferred from gambling products and gambling companies onto consumers.⁹⁴

Besides being inappropriate given the nature of the gambling product and market, such an approach is evidenced as one of the least effective tools in public health in general. This approach tends to exacerbate rather than address inequities. Those of higher socio-economic positions and with fewer vulnerabilities have the resources to make different 'choices' that those in more vulnerable positions do not.⁹⁵

⁹¹ Gambling Commission. (2017). *Statement of principles for licensing and regulation*. <https://www.gamblingcommission.gov.uk/PDF/Statement-of-principles-for-licensing-and-regulation.pdf>. (para. 2.11)

⁹² Gambling Commission. (2019). National strategy to reduce gambling harms 2019-2022. <https://beta.gamblingcommission.gov.uk/about-us/guide/rgh-strategy-approach-and-delivery>

⁹³ Ibid. p.9-10

⁹⁴ Reith, G., (2007). Gambling and the contradictions of consumption: A genealogy of the "pathological" subject. *American behavioral scientist*, 51(1), pp.33-55.; Young, M., 2013. Statistics, scapegoats and social control: A critique of pathological gambling prevalence research. *Addiction Research & Theory*, 21(1), pp.1-11.; Cassidy, R., (2020).

⁹⁵ Nuffield Council on Bioethics. (2007). *Public health: Ethical issues*, UK: Cambridge Publishers.

Campos, S., J. Doxey and D. Hammond (2011), Nutrition labels on pre-packaged foods: A systematic review, *Public Health Nutrition*, 14(8): 1496–1506.; Newall, P.W., Walasek, L., Hassaniakalager, A., Russell, A.M., Ludvig, E.A. and Browne, M., 2020a. Statistical risk warnings in gambling. *Behavioural Public Policy*, pp.1-21.; H. Rutter et al., Balancing Upstream and Downstream Measures to Tackle the Obesity Epidemic: A Position Statement from the European Association for the Study of Obesity, *Obes. Facts*, vol. 10, no. 1, pp. 61–63, 2017, doi: 10.1159/000455960.; J. Adams, O. Mytton, M. White, and P. Monsivais, Why Are Some Population Interventions for Diet and Obesity More Equitable and Effective Than Others? The Role of Individual Agency, *PLOS Med.*, vol. 13, no. 4, p. e1001990, Apr. 2016, doi: 10.1371/journal.pmed.1001990. ; Hobin, E., K. Vallance, F. Zuo, T. Stockwell, L. Rosella, A. Simniceanu, D. Hammond (2017), 'Testing the efficacy of alcohol labels with standard drink information and national drinking guidelines on consumers' ability to estimate alcohol consumption', *Alcohol and Alcoholism*, 53(1): 3–11. Wogalter et al (2002) *Research-based guidelines for warning design and evaluation*; <http://www.pcori.org/>;

There is clear evidence that voluntary user-directed tools for responsible gambling, the focus of gambling regulation, have not been effective. The most recent and comprehensive review of evidence reaches the following conclusion:

...modifications that undo features of games that promote excessive gambling likely have efficacy... There are evidence-based reasons to doubt that user-directed tools are sufficient to prevent risky gambling'.⁹⁶

The Gambling Commission claims it is using outcomes-based and co-regulation approaches to regulation. Ostensibly, this is in line with wider Government policy on best practice in regulation. The Department for Business, Energy and Industrial Strategy (BEIS) sets out an 'outcome-focused, flexible regulatory system that enables innovation' to support the UK's industrial strategy, to realise the potential of the Fourth Industrial Revolution of 'unprecedented scale, speed and complexity', brought about by the 'fusion of technologies'.⁹⁷ However, different regulatory strategies are appropriate to achieve different regulatory objectives and in different market conditions. It is important when deciding on a regulatory approach to do so based on a systematic analysis of market structure, functioning and levers for change.

Broadly, regulatory approaches can be divided into:

- Rule-based approaches: regulators set very specific rules (such as a speed limit). These are important in contexts where clear, distinct rules are required, where it is necessary to have minimum standards all producers must comply with.
- Outcome-based approaches: regulators set broad objectives and require companies to use their expertise to best meet these objectives. This is appropriate to industries of rapid change and innovation, and where companies tend to have more knowledge and expertise than regulators. Regulators do not dictate how outcomes are to be achieved, and producers are able to use their expertise to develop innovative ways to achieve the outcomes.

In practice, most regulation is a hybrid of both, sitting on a continuum. Rules and minimum standard tend to be enforced with compliance monitoring, enforcement, and hard sanctions. To obtain outcomes, regulators must ensure there are – and if not, put in place - a variety of incentives and disincentives to modify producer and consumer behaviour towards the outcome.

The Gambling Commission's approach has verged on self-regulation, in which the onus is on industry to develop and evaluate its own responsible gambling practices. It is left up to gambling companies to decide how to implement vague conditions, with no standards or independent assessment – when getting gamblers to gamble less is directly contrary to profits. This approach has not been effective, as strong regulation – using rules, incentives, and disincentives - is the only mechanism to modify commercial behaviour towards safe practices.

⁹⁶ McAuliffe, W., Louderback, E.R., Edson, T., LaRaja, A. and LaPlante, D., (2020). Responsible Product Design to Mitigate Excessive Gambling: A Scoping Review.

⁹⁷ BEIS. (2019). Regulation for the Fourth Industrial Revolution. White Paper, June 2019. <https://www.gov.uk/government/publications/regulation-for-the-fourth-industrial-revolution>

There are no inherent market levers that do so, rather, market dynamics drive strongly in the opposite direction. In a gambling market, the inherent push of innovation is to increase profit and risk, not benefit consumers and as such, should not be encouraged in an unchanneled way.

The regulator has not made use of licensing to ensure that sound businesses have access to the market or to manage market structure. It has not made use of league tables to rank gambling companies according to performance against regulatory objectives to influence consumer choice towards safer companies. It has not harnessed big data or put in place effective mechanisms to monitor compliance or whether its regulation is effective. There has been an increase in the use of financial sanctions. But the regulator does not have evidence that this has gone far enough to incentivise positive behaviour in the sector or their shareholders. The question is whether the amounts are adequate in the context of how severe the failings were or sufficient in size relative to profit to change operator behaviour. In addition, such sanctions demonstrate that regulation has not prevented failings and associated harm.⁹⁸ Additionally, the regulator has not made full use of its powers to withdraw licenses or institute criminal proceeding.

The HOL, PAC and NAO describe the regulator and DCMS as reactive to obstructive, putting in place minimal changes only in response to years of campaigning and public outcry. These reports provide multiple examples of the length of time it has taken to achieve basic action, such as on misleading bonus offers, gambling companies preventing customers from withdrawing funds accounts, stake limits on FOBTs and ending the use of credit cards online. They describe a situation in which DCMS and the regulator act as if beholden to gambling companies and appear to have lost control of the market. The opening statement from the Public Accounts Committee put it succinctly:

"The Department for Digital, Culture, Media & Sport and the Gambling Commission have failed to adequately protect consumers at a time of considerable change in the sector, as gambling increasingly moves online and new games become popular."

It is only in the last six months, in the face of criticism and prospect of this review, that the regulator has considered putting in place some minimal rules on products and gambling companies – limited controls on online slots, banned reverse withdrawals and is considering affordability checks. Much as with the gambling sector's actions, the Gambling Commission's flurry of consultations and regulations, such as they are, are reactions to the realisation that public opinion is turning against it and to Parliament and Government's attention to its ineffectiveness.

The DCMS Call for Evidence, despite being a review of the Gambling Act 2005, does not propose a single change to the Act but consults on a raft of areas that are all possible with the current powers of the Department and regulator. This demonstrates the extent to which the absence of effective regulation has resulted from a lack of will or capability rather than the lack of legal power.

⁹⁸ See: HOL (2020) p. 61; PAC (2020) p.7; NAO (2020) p.30, 40.

DCMS has not used its powers to further effective regulation

The Gambling Commission is funded almost exclusively by licence fees from gambling operators, which totalled £19 million in 2018–19 – down from £19.93 million the previous year, or less than 0.2% of the £11.3 billion gambling yield in 2018-19. The Secretary of State is responsible for setting the fees, with the last review in 2016. The procedure for changing fees is lengthy and so is not undertaken frequently. Typically, fees are reviewed every four or five years, although there is no set period for these reviews.⁹⁹ The regulator is vulnerable to large jumps in income between years, as companies merge, as could be seen in the substantial difference between 2017-18 and 2018-19 – where the regulator warned that a recent merger could result in a reduction of £400,000 in its budget.¹⁰⁰ Since the last fees review in 2016, the Commission's work has increased in complexity and scale, notably in online and mobile gambling. With no clear structure for the review, the regulator is left without adequate means to adapt resources to face new challenges.

Section 123 of the Gambling Act 2005 provides for a mandatory levy on gambling companies to fund research, education, and treatment (RET) to address problem gambling or gambling harm, which the Secretary of State can activate. Thus far, funding for RET has depended on voluntary contributions from gambling operators. Historically, each time there has been a threat of activation of the Levy on the gambling sector, the gambling sector has incrementally increased their voluntary donation to stave off regulation.¹⁰¹ Following the Gambling Commission's RET Review in 2008, DCMS determine the 'voluntary levy should continue unless the voluntary approach failed to generate sufficient funding to sustain a programme of research, education and treatment.'¹⁰²

The support for a levy has also been growing from researchers, the third sector, parliamentarians, the Commission's independent advisory board, the treatment providers and even from within the gambling sector. In their 2018-21 strategy, the Gambling Commission itself recommended a mandatory levy.¹⁰³

In June of 2019, the UK's top five gambling firms announced they would increase voluntary funding to RET. This move would increase their funding commitment from 0.1% of their Gross Gambling Yield (GGY) to 1%, raising an additional £60m a year, from the current around £10m per year. It appeared that DCMS had bypassed the regulator to engage gambling companies to increase the voluntary Levy instead. Jeremy Wright, Secretary of State at the DCMS, was quoted in the media as saying: "I have met the major players in the sector recently, and my department is in discussions with them on a strong package to increase their financial contribution, as well as make meaningful commitments on other measures to help ensure

⁹⁹ HOL p.55

¹⁰⁰ PAC p.15

¹⁰¹ HOL p.57

¹⁰² DCMS, Memorandum to the Culture, Media and Sport Select Committee on the Post-Legislative Assessment of the Gambling Act 2005, (Cm 8188, October 2011):

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/238137/8188.Pdf

¹⁰³ Gambling Commission. Strategy and business plan. <https://www.gamblingcommission.gov.uk/about/Corporate-governance-and-business-plan/Strategy-and-business-plan.aspx>.

people gamble safely.”¹⁰⁴ In a parliamentary statement on 2 July 2019, he welcomed the industry’s voluntary commitments as a significant step forward and as part of the progress Government was making to address gambling harm.¹⁰⁵

DCMS has vacillated on the basis that the objective was to ‘ensure the right balance between a sector that can grow and contribute to the economy, and one that is socially responsible and doing all it should protect consumers and communities’.¹⁰⁶ DCMS stated it would monitor the situation, and the efforts to strengthen the voluntary system should have an opportunity to show results – ignoring the fact that the current voluntary funding system has been in place since 2007 with unsatisfactory results. The Department and the Secretary of State defer from implementing the Levy, stating that ‘legislating for this would take time – in all likelihood more than a year to complete’.¹⁰⁷

The five gambling operators who made the commitment reached out to Lord Chadlington, a vocal campaigner for safer gambling, to establish an ‘independent committee’ to recommend how best to administer the substantially increased funds.¹⁰⁸ The committee recommended creating a new, fully independent charity, with safeguards against industry influence, that would manage the fund and oversee how they were used.

The announcement of the new charity, Action Against Gambling Harms (AGH), was followed by silence from the five companies. It was finally broken in June 2020 with the announcement that the companies would not fund AGH and instead redirect most of the funding to GambleAware, which would be used to treat those experiencing problem gambling. GambleAware is an organisation with its origins in the gambling industry and whose independence from the industry and capability has been continuously questioned over the years.¹⁰⁹

In the meantime, it has been well over a year since June 2019, when the five biggest operators pledged to increase their contribution to stave off the imposing Levy, and the money has yet to manifest. As aptly described by the HOL:

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.¹¹⁰

¹⁰⁴ Jack, S. (2019). Bookmakers pledge £100m to avoid crackdown. BBC News. [online] 19 Jun. Available at: <https://www.bbc.co.uk/news/business-48690743>; Financial Times. Bookies offer to raise charity levy to fend off regulation| Financial Times.<https://www.ft.com/content/a8574f5e-9293-11e9-aea1-2b1d33ac3271>

¹⁰⁵ Jeremy Wright’s Oral Statement on Gambling. <https://www.gov.uk/government/speeches/jeremy-wrights-oral-statement-on-gambling> [Accessed 16 Mar. 2021].

¹⁰⁶ DCMS (2018) *Government response to the consultation on proposals for changes to Gaming Machines and Social Responsibility Measures*. p.53. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707815/Government_response_to_the_consultation_on_proposals_for_changes_to_gaming_machines_and_social_responsibility_measures.pdf.

¹⁰⁷ HOL p.139

¹⁰⁸ Davies, R. (2019). UK gambling firms’ offer to boost levy branded a bribe. The Guardian. [online] 20 Jun. Available at: <https://www.theguardian.com/society/2019/jun/19/top-uk-gambling-firms-offer-increase-voluntary-levy-fund-treatment-problem-gamblers> [Accessed 16 Mar. 2021].

¹⁰⁹ Industry decision to not fund AGH and instead fund GA - 24 June, (2020), <https://www.theguardian.com/society/2020/jun/24/uk-betting-firms-move-to-redirect-problem-gambling-funds-raises-concerns>

¹¹⁰ HOL p.7

The behaviour of the gambling sector over the last two decades demonstrates the inherent problems with a voluntary system. The gambling sector can choose which organisations to fund and move funding to those organisations considered more amenable to their interests. The sector can direct funding to those areas that are the least threatening of the status quo, focusing on treatment rather than preventative measures such as research and education.

As important, a voluntary system does not build costs of harm into gambling operations and so does not incentivise gambling companies to prevent or reduce harm. Rather, it incentivises them to increase profits through harmful practices to cover any costs of voluntary donations.

Regulation that does not consider the nature of the market has predictably harmful consequences

We have seen the predictable consequences of failure to deploy regulation appropriate to market dynamics. Yet the Gambling Commission has repeatedly expressed apparent surprise and disappointment when the gambling companies have not voluntarily acted to curtail their own profits.

Through mergers and acquisitions, the market is dominated by a few, increasingly large gambling companies, containing many subsidiaries, and white labels. These offer the same gambling products, and run on the same systems, made by the small number of business-to-business suppliers. This is hidden behind a multitude of skins and websites, with various colour schemes, logo, and brand, which may give the illusion of consumer choice, but which are only superficially different. Market competition has been cut-throat effort to extract as much as possible as fast as possible from consumers. This has been through increasingly complex, opaque, risky bets and products, misleading and aggressive marketing, and promotions, pushing consumers to riskier, more harmful, and addictive forms of gambling that generate more profit. It is the 'super-consumers' and risky products which generate 'super-profit'.¹¹¹

As the HOL concluded:

“We are...persuaded that the current legal and regulatory context does not sufficiently deter gambling operators who stand to benefit from allowing problem gamblers to lose money. There is an obvious and acute conflict between, on the one hand, complying with regulatory obligations such as those relating to self-exclusion and affordability checks and, on the other hand, the natural commercial desire to maximise profit”.¹¹²

¹¹¹ See HOL. (2010). p.6

¹¹² HOL p.100

Consumers rights

Government policy is to protect vulnerable consumers

The Government's focus in modernising consumer markets is helping those members of society who are at the greatest risk of suffering from poor market outcomes.¹¹³ Government has given the Competition and Markets Authority (CMA) a steer that its principal focus should be making markets work well for vulnerable consumers. Previously, the CMA has looked at vulnerability specific to a particular market. The CMA is now addressing dimensions of consumer vulnerability that means people may face severe, persistent problems across a range of markets. Such vulnerabilities include age, low income, debt, financial problems, physical or learning disability, poor physical or mental health, low literacy, or educational attainment. All these difficulties occur at significantly higher levels for those in lower socio-economic positions.¹¹⁴

The Consumer Protection from Unfair Trading regulation prohibits unfair, misleading, and unfair commercial practices that materially distort or are likely to distort the average consumer's economic behaviour. Importantly:

Where a 'clearly identifiable group of consumers is particularly vulnerable to the practice or to the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee' and 'where the practice is likely to materially distort the economic behaviour of only that group'; then it is the average member of that group that is the relevant average consumer.

This offers protection to consumers who may be particularly vulnerable either to a commercial practice or to the underlying product and whose economic behaviour may, as a result of the commercial practice in question, be distorted... A commercial practice will be assessed from the perspective of an average member of that group whose vulnerability the trader could reasonably be expected to foresee. The test is objective. It is not necessary that the trader actually foresees the effect (or likely effect) on vulnerable consumers, only that he could reasonably have been expected to do so.¹¹⁵

A comparable approach comes from the CMA solutions for consumer vulnerability, inclusive design:

¹¹³ BEIS. (2018). *Modernising consumer markets: green paper*. GOV.UK. <https://www.gov.uk/government/consultations/consumer-green-paper-modernising-consumer-markets>.

¹¹⁴ CMA. (2019). *Consumer vulnerability: challenges and potential solutions*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/782542/CMA-Vulnerable_People_Accessible.pdf.

¹¹⁵ BERR. (2008). *Consumer protection from unfair trading: Guidance on the UK Regulations (May 2008) implementing the Unfair Commercial Practices Directive*. p.70

Consumer vulnerability is multidimensional, and the challenges that individuals face in engaging with markets are varied and complex. When it comes to designing remedies and providing broader support for vulnerable consumers, we therefore need to be mindful of the needs of a broad range of consumers. The principle of ‘inclusive’ or ‘universal’ design is helpful here. This involves designing products or services, so they are accessible to, and usable by, as many people as possible.¹¹⁶

There can also be a need for bespoke remedies or additional protections for different groups of vulnerable consumers. The CMA also supports ethical sharing of data across companies in a sector and even across sectors to support vulnerable consumers.¹¹⁷

A requirement to protect vulnerable consumers is not unique to gambling. For example, regulators of energy (Ofgem), water (Ofwat) and communications (Ofcom) have a comparable statutory duty, and the Financial Conduct Authority has a particular regard to vulnerable consumers. The regulators have well-developed guidance and practice for vulnerable consumers. In general, these take from the CMA principle of designing products, services and communications with vulnerable consumers in mind and providing additional help tailored to vulnerable consumers.¹¹⁸

A multitude of vulnerabilities are linked to gambling harm

A significant body of evidence exists on the many vulnerabilities associated with gambling difficulties and gambling harm. The causation is multi-dimensional and multi-directional. Vulnerabilities increase the risk of experiencing gambling harm, are exacerbated by gambling, and caused by gambling. This includes low socio-economic position (whether measured by employment, occupation, education, housing), financial stress, social isolation, poor general health and physical disability, poor mental health (common mental health problems, anxiety and depression, PTSD, ADHD and autism in particular, but including severe and enduring mental health problems and suicidality), substance dependence drugs, alcohol and tobacco), stressful life events and exposure to abuse and violence.¹¹⁹ Disordered gambling is a recognised mental health condition, in the category of addictive disorders, comparable to addiction to a substance.¹²⁰ Multiple studies have found evidence of a social gradient in gambling and

¹¹⁶ CMA. (2019). p.29

¹¹⁷ Ibid. p.30

¹¹⁸ <https://www.fca.org.uk/publication/finalised-guidance/fq21-1.pdf>
https://www.ofwat.gov.uk/wp-content/uploads/2016/02/pap_tec20160218vulnerabilitypract.pdf
https://www.ofgem.gov.uk/system/files/docs/2020/01/consumer_vulnerability_strategy_2025.pdf

¹¹⁹ Wardle, H., John, A., Dymond, S. and McManus, S. (2020). Problem gambling and suicidality in England: secondary analysis of a representative cross-sectional survey. *Public Health*, 184, pp.11-16.

For a summary of international evidence see Browne et al. (2016). *Assessing gambling-related harm in Victoria: A public health perspective*. Victorian Responsible Gambling Foundation. <https://responsiblegambling.vic.gov.au/documents/69/Research-report-assessing-gambling-related-harm-in-vic.pdf>.

¹²⁰ APA. (2013). *Diagnostic and Statistical Manual of Mental disorders: DSM-5*. 5th ed. Arlington, VA: American Psychiatric Association.

gambling harm.¹²¹ As acknowledged by the Gambling Commission, gambling harm exacerbates inequalities.¹²²

Those with characteristics increasing vulnerability to gambling harm constitute populations of significant size. For example:

- Around 25% of the population in England experience a mental health problem each year, and one in six report experiencing a common mental health problem (such as anxiety or depression) in any given week.
- 22% of the UK population (around 14 million people) report having some form of disability.
- 22% of the UK population (around 14 million people) live in low-income households (i.e., with income below 60% of the median income).¹²³
- Over 5 million people are aged 18-24.¹²⁴

Further, any consumer may move into a vulnerable situation. As acknowledged by the Gambling Commission, 'A vulnerable situation can be permanent, temporary or intermittent'¹²⁵. The vulnerabilities to gambling harm include characteristics that will make consumers vulnerable across markets – for example, practices of financial services and payment methods may contribute to gambling harm by enabling access to funds for gambling when consumers are vulnerable.

Gambling regulation has allowed the exploitation of vulnerable people

The Gambling Commission is one of the regulators with a statutory duty in relation to vulnerability – 'to protect children and other vulnerable persons from being harmed or exploited by government'.¹²⁶ Regulatory standards regarding consumer vulnerability have not been achieved for the gambling sector. The evidence is that regulation has allowed gambling operators to exploit younger people, people experiencing mental ill-health and with socio-economic difficulties, rather than protecting them. As stated by the CMA in its discussion of consumers with poor mental health:

¹²¹ See McMahon et al. (2019)

¹²² Wardle et al. (2018). p.4

¹²³ Cited in CMA. (2019). p.7

¹²⁴ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/jn5q/lms>

¹²⁵ Gambling Commission. (2020a). *Remote customer interaction - Consultation and Call for Evidence*. <https://www.gamblingcommission.gov.uk/news-action-and-statistics/Consultations/remote-customer-interaction-consultation-and-call-for-evidence>. (21 December closing 9 February 2021). p.26

¹²⁶ Gambling Act 2005.

<https://www.legislation.gov.uk/ukpga/2005/19/contents>. <https://www.legislation.gov.uk/ukpga/2005/19/contents>

Compulsive behaviour and addiction can make it difficult for consumers to engage safely and effectively in a market. The CMA's consumer enforcement investigation into online gambling showed in stark terms how firms can sometimes attempt to exploit such behaviour.¹²⁷

Over a decade since the Gambling Act 2005 came into force, the Gambling Commission has yet to 'publish a statement on how it approaches vulnerability as part of its wider work'.¹²⁸ There was criticism from the National Audit Office and recommendation that the regulator: 'build on its high-level definition of vulnerability to articulate clearly how it interprets which consumers may be vulnerable under what circumstances and how its work is intended to address this.'¹²⁹

The Gambling Commission states that the main way a gambling company should identify vulnerability is through indicators of problem gambling or disorder – once the person has already begun to experience harm, rather than seeking to prevent addiction and harm.¹³⁰

Governments' definition of a well-functioning market is one where commercial activity benefits consumers and the vulnerable. The Government's primary focus for modernising the market, to help those members of society who are at greatest risk of suffering from poor market outcomes, should apply as much to the gambling market as any. Those experiencing difficulties with gambling are an identifiable group of vulnerable consumers whose behaviour is distorted by gambling companies' actions, and who should be regarded as the average rather than the minority, aberrant consumer. In contrast to other sectors, in gambling, vulnerabilities have been used to blame the individual for being the 'problem', getting in the way of the enjoyment of the majority and economic growth, to justify minimal regulation. It is hard to conceive any other legal sector where overt exploitation of a mental health condition has been allowed in this way. It can be argued that regulation has failed to protect the human rights of people with disabilities, and to fulfil the public sector equality duty. Gambling disorder is a recognised complex and enduring mental health condition, and disability is a protected characteristic.

Gambling products are not fair and open and distort economic behaviour

The regulations on Consumer Protection from Unfair Trading define commercial practice as unfair if they are not professionally diligent or materially distorts the average customer's economic behaviour. Prohibited are commercial practices which are misleading (whether by action or omission) or aggressive and which cause or are likely to cause the average consumer to take a different decision.¹³¹ Aggressive practices include the use of harassment, coercion, or undue influence.

¹²⁷ CMA. (2019). p.10

¹²⁸ Gambling Commission. (2020a). p.28

¹²⁹ NAO. (2020). p.11

¹³⁰ Gambling Commission. (2020a). p.26

¹³¹ BERR. (2008). p.10

Undue influence is when a trader exploits a position of power, so as to act in such a way as to significantly limit the consumer's ability to make informed choices. A trader may be in a position of power because of the particular expertise he has, or as a result of the particular circumstances of consumers.¹³²

As noted above, where a particular group of consumers is particularly vulnerable to the practice or the underlying product, the average member of that group is the average consumer.

The Gambling Act 2005 gives the objective of 'ensuring that gambling is conducted in a fair and open way'. The Gambling Commission has put this into its regulation by referring to consumer protection regulation, but without regard for the specific factors that apply to gambling information and products. The Gambling Commission's regulations regarding 'fair and open' are as follows:

- License condition 7.1.1 'Fair and transparent terms and practices', defined by referring to the Consumer Rights Act 2015 and Consumer Protection from Unfair Trading Regulations 2008.¹³³
- Code of practice 4 "'Fair and open"' provisions' are about the display of rules – for remote, that 'a players guide to each gambling opportunity, bet, game or lottery, made available by the operator'.¹³⁴
- Operators must implement this code using the requirements in the Remote Gambling ad software technical standards (RTS3) 'To enable customers to make informed decisions about whether to gamble based on their chances of winning, the way the game, lottery or event works, the prizes or payouts on offer and the current state of multi-state games or event'.¹³⁵
- The code of practice on marketing (5) also states license holders must comply with the Consumer Protection from Unfair Trading Regulations 2008 in marketing, communications, advertisement, and invitations to purchase.¹³⁶

The Competition and Markets Authority conducted a consumer law investigation into online gambling companies from 2016, with the Gambling Commission, concluding in 2019. The CMA found widespread use of misleading terms and practices relating to online bonus promotions and obstacles preventing customer funds withdrawal. The CMA action was limited to specific terms and practices at a player account level and in promotional offers.

¹³² Ibid. p.67

¹³³ Gambling Commission. (2020b). *License conditions and codes of practice*. (31 October 2020). <https://beta.gamblingcommission.gov.uk/licensees-and-businesses/lccp/print>

¹³⁴ Ibid.

¹³⁵ Gambling Commission. (2021a). *Remote gambling and software technical standards*. (February 2021). https://assets.ctfassets.net/16ev64qv6l/1KdHggC205yZOnZbKKhioz/a18598c19de61ef1f515c4dc98fe7d06/Remote_gambling_and_software_technical_standards_Feb21_.pdf. p.11

¹³⁶ Gambling Commission. (2020b).

The Gambling Commission has not acted in what should be its special area of expertise, the provision of information about gambling products. This is despite the extensive evidence that consumers do not understand the information as currently provided by gambling companies. This information has been hidden and made inaccessible – as sludge, while gambling companies promote misinformation and use dark nudges. This misleads or obscures the operation of the game, the extent a player can exercise control, the likelihood of winning, the price or cost to the player, the amount of profit to the company and the risk of harm and addiction.¹³⁷

It is very evident that gamblers have not been provided with information on price, product features, the likelihood of winning and risk of harm, to make 'informed choice' to gamble, and which products to gamble on – arguably, instead, gamblers have been aggressively misled, in ways which have distorted their economic behaviour.

The Gambling Commission acknowledges:

To help inform consumers about how products operate there needs to be better communication of key gambling concepts to help consumers to understand their chances of winning. Research has found that consumers often struggle to understand 'industry jargon' and associated mathematical concepts and this is also apparent in customer complaint data...¹³⁸

Importantly, the Gambling Commission seems only to have considered consumer rights – fair and open – at the level of (some) commercial practices in the sale of gambling products, rather than relation to gambling products themselves. Commercial gambling products deploy techniques that manipulate human cognitive and behavioural factors to increase time and money spent and profit to the gambling companies, increasing the risk of any consumer experiencing loss of control and harm and addiction.

The Gambling Commission has acknowledged:

We also know the success of content creators and games designers depends on their ability to establish and maintain the engagement of their consumers. We know that this can be done by behavioural techniques which has the potential to unconsciously change consumer behaviour.¹³⁹

In the changes to the rules on slot machines, announced during the period of this review, the Gambling Commission says, in the context of Losses Disguised as Wins (LDW):

¹³⁷ Revealing Reality. (2017); Newall (2018). Newall (2017). Behavioral complexity of British gambling advertising. *Addiction Research & Theory*, 25(6), pp.505–511; Newall et al. (2020b). Newall et al. (2020c). Livingstone et al. (2019). HOL. (2010).

¹³⁸ <https://beta.gamblingcommission.gov.uk/manual/national-strategic-assessment-2020/the-gambling-product-what-do-we-know>

¹³⁹ Gambling Commission. National Strategic Assessment 2020. <https://beta.gamblingcommission.gov.uk/manual/national-strategic-assessment-2020/the-gambling-product-what-do-we-know>

‘We are concerned with the fairness of these celebratory effects, as we consider it important that consumers are empowered to use information about their play to make informed decisions. This includes whether the outcome was a true ‘win/ in the sense that it returned more than their ‘total’ stake.’¹⁴⁰

However, the new regulations do not require gambling companies to show LDW for what they are – loses, but only place some limits on the sound that can accompany them.

Commercial gambling products are unfair, misleading, and aggressive in using established psychological techniques and data to subject consumers to undue influence, to make an economic decision they would otherwise not have, materially distorting the economic behaviour of vulnerable consumers (to be regarded as the average consumer).

The gambling sector seem exempt from the usual requirement that goods and services sold be reasonably safe

Section 9 of the Consumer Rights Act 2015 specifies: ‘Goods to be of satisfactory quality’ and that ‘Every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory’. The Act stipulates that the quality of goods includes safety.¹⁴¹

The Government’s favoured approach, and used in many other areas of regulation, is to build in safety for all consumers (as well as measures to manage specific risks or risks for any specific group). Parliament has long imposed statutory duties of care upon property owners or occupiers in respect of people using their places and employers in respect of their employees, for example, in Health and Safety legislation. It is a “‘duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there’”. This puts an obligation on the person controlling the space to ensure visitors’ safety – within the ‘limits of reasonableness’.¹⁴²

This has been the case for physical places, and more recently, Government is introducing a statutory duty of care as the basis of its new regulation of online spaces for online harm reduction.¹⁴³ Digital platforms (e.g., social media platforms) are a public space made use of by many people, comparable to shopping malls, cafes, sports stadia, parks, children’s playgrounds. On this basis, digital platform providers will be subject to a duty of care, as any other provider of a public space.

¹⁴⁰ Gambling Commission. (2021b). Online games design and reverse withdrawals: Responses (February 2021).

<https://beta.gamblingcommission.gov.uk/consultation-response/online-games-design-and-reverse-withdrawals>

¹⁴¹ Consumer Rights Act 2015. <https://www.legislation.gov.uk/ukpga/2015/15/enacted/data.pdf>

¹⁴² Woods, L. and Perrin, W., (2019). Online harm reduction -a statutory duty of care and regulator. Carnegie UK Trust.

https://d1ssu070pg2v9i.cloudfront.net/pex/carnegie_uk_trust/2019/04/08091652/Online-harm-reduction-a-statutory-duty-of-care-and-regulator.pdf

¹⁴³ DCMS and Home Office. (2019). *Online Harms White Paper*. (8 April 2019) <https://www.gov.uk/government/consultations/online-harms-white-paper>

Importantly, this duty of care is for the design and implementation of systems. A comparable approach is present in data protection legislation. This requires protection of data and of personal data to be 'designed in', as a default property of systems and services. Such an approach prevents harm rather than only redress instances after harm has occurred. It seeks safety for all consumers, as opposed to protection for a limited group of vulnerable people, which relies on categories of vulnerability which are hard to define and identify and may only become apparent once the harm is done to an individual. Where administered by an effective regulator, such a duty is also future proof, in that it requires all new innovations to be built on standards of safety, as opposed to a regulator seeking to keep up with and identify risk in a plethora of new innovations once they are already being used by the public.

The DCMS TOR states the aim for gambling regulation as: The government wants all those who choose to gamble in Great Britain to be able to do so in a safe way'.¹⁴⁴ Since its 2018-2021 strategy,¹⁴⁵ the Gambling Commission has begun to talk about safer gambling, committing to making gambling fairer and safer, and replacing the term responsible gambling with safer gambling. However, it is not clear what this means or how its achievement is to be assessed or measured.¹⁴⁶ The use of the term 'safer' rather than 'responsible' appears to be an acknowledgement that gambling companies also need to be 'responsible', in addition to the consumer. However, the underlying approach to regulation and what safer means in practice seems very much the same as when it was called responsible gambling.

For example, the 'aspirations for a fairer and safer gambling market' set out in the Gambling Commission's strategy are for: consumers to be empowered to make informed choices about gambling and for operators to reduce and manage risk, identify, and intervene in harmful play, and innovate to protect, as much as for profit.¹⁴⁷ This continues with the approach in which consumers are responsible for exercising rational choice and remaining in control, and operators can have unsafe products and processes, and then build on token protections, and 'manage' risk and harm when they happen.

When placing a wager, there is always the risk of losing. But there is no reason why, if gambling is offered as a leisure activity, there should not be a requirement on the gambling sector to design safety into gambling products and practices ensuring a reasonable level of safety from harm for all consumers when participating. The average consumer should be defined taking the requirement to use the vulnerability associated with the market and the principle of inclusive design.

¹⁴⁴ DCMS. (2020). para.14, p.24.

¹⁴⁵ Gambling Commission. (2018). *Strategy 2018-2021: Making gambling fairer and safer*. <https://www.gamblingcommission.gov.uk/PDF/Strategy-2018-2021.pdf>.

¹⁴⁶ NAO (2020).

¹⁴⁷ Gambling Commission. (2018). p.8

Unlike other consumers, gamblers do not have redress when companies violate regulations

In the current regulatory system, an individual consumer has little recourse when gambling operators violate the social responsibility codes or other regulations and cause them harm.

The Gambling Commission is meant to protect consumer interests, but this refers only to the body of consumers. It can only take an interest in individual consumer cases to the extent that they are evidence of a failure, of an operator or the system, towards the body of consumers.¹⁴⁸ The system currently relies on eight different dispute resolution providers funded by the gambling sector to resolve these complaints. Such dispute resolution is focused on violations of terms and conditions. Social responsibility requirements are not within operator terms and conditions. This means there are no regulatory arrangements for redress for the consumer in the case where when an operator has violated a license condition or codes of practice.

Consumers are left in an impossible situation with nowhere to turn. There is no direct accountability from the Gambling Commission. There is no accountability from the gambling operators. Instead, there is a practice of pressuring consumers to sign non-disclosure agreements in return for minimal compensation. Consumers usually do not have money and cannot afford a solicitor to go to court.¹⁴⁹ Furthermore, the Commission receives thousands of complaints each year, which are left unresolved.¹⁵⁰

The Gambling Commission and DCMS have prevaricated on whether there should be individual consumer redress for gamblers. The then CEO of the regulator, Neil McArthur, gave evidence on the question of a consumer ombudsman, stating there were special considerations for gambling. The DCMS Call for Evidence states:

...in cases which end in a regulatory settlement agreed with the Gambling Commission, operators typically agree to divest money so they do not benefit from their breaches, and this money is often paid to identified victims such as victims of crime where stolen money has been used to fund gambling.... Individual redress is often equated with financial compensation for gambling losses. However, there may be risks associated with providing financial lump sums to problem and recovering gamblers, or risks of creating a sense that gambling can be 'risk free'.

It is the case that an ombudsmen and redress system should consider the vulnerability of its consumers. However, it is egregious to use a mental health condition to deny consumers the kind of redress that would be expected in other sectors, where the commercial practice has been in breach of regulations. Disordered gamblers suffer severe and potentially life-long consequence of financial harms due to commercial exploitation and regulatory failings. This is

¹⁴⁸ HOL (2020) p. 63

¹⁴⁹ HOL (2020) p.63

¹⁵⁰ PAC (2020) p.7

as much a hindrance to 'recovery'. In addition, if gambling companies follow social responsibility regulations, and these are strengthened, there is no reason a disordered gambler should be allowed by an operator to harmfully gamble away their compensation.

The stigmatising and placing of blame on solely gamblers continue, obscuring the role of gambling companies. DCMS and the regulator have supported the promotion of gambling as a safe, every day, mainstream leisure activity, yet believes consumer redress will result in a rush of gamblers trying to get their money back illegitimately. The gambling companies can extensively promote gambling in such a way as to obscure risk and harm, but an ombudsman will lead to consumers believing gambling is risk-free.

Importantly, this is another area of failure to use regulatory mechanisms to drive positive commercial practices. There are no mechanisms by which gambling companies are directly accountable to the consumer for complying with regulation. It remains in the interest of profit to continue to exploit disorder gambler 'super consumer' to generate GGY, against the possibility of general financial penalties later.

Unregulated gambling

When launching the review of the Gambling Act 2005, the Government set out to make gambling regulation fit for a digital age. In the Call for Evidence, DCMS aims to: 'examine whether changes are needed to the system of gambling regulation in Great Britain to reflect changes to the gambling landscape since 2005, particularly due to technological advances.'¹⁵¹

However, glaring by its absence, is emerging technologies that blur the line between gaming and gambling. Instead, this was deferred to a separate inquiry on 'loot boxes'. However, the call for evidence on loot boxes is limited in its scope – where it looks at loot boxes in video games in a vacuum, seemingly ignoring the wider convergence between gambling and gaming and all chance-based elements in other forms of gaming. This means that neither the call for evidence on loot boxes nor the review of the 2005 act covers social casino games, chance-based elements in games outside of the loot box format, or emerging gambling that takes after gaming, i.e., virtual reality gambling or video games with a stake.

With the Gambling Commission, in their review 'Virtual currencies eSports and social casino gaming' stating that when a virtual item can be traded or sold for money's worth, it is to be considered gambling under the current regulation. With in-game items constantly being traded, bought and sold at open marketplaces - such as the Steam marketplace - we must raise the question as to why no regulatory action has been taken?

¹⁵¹ Para 15.1 – objectives of the review

Empirical evidence shows that loot boxes are linked to problem gambling, regardless of whether one can cash out and obtain ‘money’s worth’.¹⁵² Examinations of the psychological features of loot boxes in games found that half had systems akin to traditional gambling.¹⁵³ Research looking at the prevalence of loot boxes found that 58% of the top games on the Google Play store, 59% of the iPhone games and 36% of the top Steam games contained loot boxes. More worryingly, almost 95% of mobile games that featured loot boxes were suitable for children aged 12+.¹⁵⁴ Already back in 2019, the Children’s Commissioner, in their report ‘Gaming the System’ called for a redefinition of gaming to include loot boxes as gambling. The report notes that the children themselves are worried they are gambling when buying loot boxes and make it clear that some children spend hundreds of pounds trying to ‘chase their losses’.¹⁵⁵

We must then ask the question that if these features look like a duck, swims like a duck and quacks like a duck, should it not then be treated as one by the law?

In their review document, the Gambling Commission highlights that while according to them, loot boxes do not currently fall under gambling regulation, they still need to be looked at. They go on to say that the notion that loot boxes do not formally qualify as gambling does little to a parent who is worried about their child.

Additionally, conventional gambling operators would not make claims that their game is beatable, that one could win or that their game is the best game ever. Whereas, in video gaming, everybody can win, the games are marketed as the new best thing and the purpose of playing is inherently to win or beat the game. This cultural distinction could be dangerous if the purpose of gambling in these games becomes to win.

To effectively build regulation for the future and ever-increasing advancement of technology, the definition of ‘gambling’ needs to be reviewed. The absence of a potential redefinition of gambling in the Gambling Act review is a missed opportunity that will limit any potential changes.

The Online Harms White Paper¹⁵⁶ made numerous references to gambling, including identifying the regulation of gambling as part of an insufficient fragmented regulatory environment of which Online Harms is partially seeking to rectify, and as gambling being an example of ‘designed addiction’ which the online harms regulator would seek to give guidance on. However, in the Government initial consultation response¹⁵⁷ and the full consultation response¹⁵⁸, gambling does not get mentioned.

¹⁵² Zendle, D., Cairns, P., Barnett, H. and McCall, C., 2020. Paying for loot boxes is linked to problem gambling, regardless of specific features like cash-out and pay-to-win. *Computers in Human Behavior*, 102, pp.181-191.

¹⁵³ Drummond, A, & Sauer, J, D. (2018) *Nat. Hum. Behav.* 2. 530-532

¹⁵⁴ Zendle, D., Meyer, R., Cairns, P., Waters, S. and Ballou, N., 2020. The prevalence of loot boxes in mobile and desktop games. *Addiction*, 115(9), pp.1768-1772.

¹⁵⁵ <https://www.childrenscommissioner.gov.uk/publication/gaming-the-system/>

¹⁵⁶ <https://www.gov.uk/government/consultations/online-harms-white-paper/online-harms-white-paper>

¹⁵⁷ <https://www.gov.uk/government/consultations/online-harms-white-paper/public-feedback/online-harms-white-paper-initial-consultation-response>

¹⁵⁸ <https://www.gov.uk/government/consultations/online-harms-white-paper/outcome/online-harms-white-paper-full-government-response#part-1-who-will-the-new-regulatory-framework-apply-to>

Arguments against reform

The gambling sector puts forward a couple of oft-repeated arguments against regulation, and at times these are repeated by the DCMS and the regulator.

The public is not demanding high-risk gambling, but supports reform

The gambling sector claims there is consumer demand for high-risk gambling and that if regulation were to place limits on risky products and play, this would reduce consumer enjoyment and drive consumers to the black market. The Gambling Commission and DCMS emphasise the importance of consumer choice and enjoyment. The Gambling Commission's strategy states: 'We need to balance consumer choice and enjoyment against the risks gambling can create and its impact on wider society'.¹⁵⁹

Such responsible gambling reasoning is that the pleasure of the majority cannot be compromised for a flawed minority of problem gamblers. These arguments involve many generic statements about the experiences and desires of consumers in general without any evidence.¹⁶⁰ A further strand of this argument is that research has not been able to prove which specific factors or characteristics of products cause disordered gambling and differentiate these from other characteristics. So, there is insufficient evidence to warrant modification. This is because the characteristics of products involved in problem gambling and gambling disorder are the same as those that result in any player continuing to gamble. Consumer 'demand' is not something 'innate' but is generated by business products and practices. It is not the case that there is a need or demand for high-risk gambling among the British public, which gambling companies must meet. Evidence from industry data shows that the vast majority of gamblers gamble at low levels.¹⁶¹ Instead, consumer behaviour is formed by business practice and consumption, become enduring, habitual and for some, move to addiction; these are hard to break and lead to harm. Rather, decreasing the risk of commercial gambling in general for all consumers will reduce the likelihood of harm and development of problem and disordered gambling – and the extent to which people are driven to pursue dangerous gambling opportunities by addiction. Innovation in gambling products is for extraction of losses and increased risk and is justifiably regulated rather than encouraged unchanneled.

By contrast, data indicates consumer 'demand' is not towards more high-risk gambling, but for reform. The Gambling Commission reports:

¹⁵⁹ Gambling Commission. (2018). p.4

¹⁶⁰ For examples of these arguments, see: Blaszczynski, A., Parke, A., Parke, J. and Rigbye, J., (2014). *Operator-based approaches to harm minimisation in gambling: summary, review and future directions*. Prepared for the Responsible Gambling Trust
Parke, J. (2020). *Future-Proofing the Industry: Towards the safer design and situation of games*. Prepared for the New Horizons in Responsible Gambling Conference <https://www.northstargp.org/wp-content/uploads/2020/05/j-parke-nh2020.pdf>

¹⁶¹ Forrest et al. (2021)

- In 2019, 29% of people believed that gambling was fair and can be trusted, and there has been a significant decline in agreement over the past ten years. While this decline has been seen across the population, the most marked change has been among gamblers, with direct experience of gambling companies. For gamblers, trust has dropped dramatically, from around 60% believing gambling is conducted fairly and be trusted in 2010, to around 30% in 2019.
- In 2019, 82% of people thought that there are too many opportunities to gamble, 73% that gambling is dangerous for family life, 62% that gambling should be encouraged, and 29% that it would be better if gambling were banned. These numbers are growing year on year.
- By contrast, 60% think people have the right to gamble when they want, 36% that most people who gamble do so sensibly, 26% that gambling livens up life, and 13% that, on balance, gambling is good for society. These numbers are declining yearly.¹⁶²

A poll by Gambling Health Alliance demonstrated overwhelming public support for wide-ranging reforms to make gambling safer. Less than 10% of gamblers and non-gamblers said they would oppose:

- A £2 limit to online slots in line with the Fixed Odds Betting Terminal maximum bet amount that was cut from £100 to £2 in 2019.
- A ban on VIP schemes, which can encourage gamblers to bet more than they would otherwise.
- For gambling products to only be allowed to enter the market once the level of harm they cause has been assessed and found to be below a certain level.
- A new levy on the gambling industry, so a proportion of their profits go towards independent research, education, and treatment of gambling harms.

Many gamblers and non-gamblers also said they would support:

- A ban on all gambling advertising in or near sports grounds or venues, which normalises gambling, particularly for young people.
- Affordability checks for anyone who gambles to prevent unaffordable play that could be harmful.
- A ban on all gambling for under-18s (who are currently able to access low-stake fruit machines, coin pushers and crane grabs).¹⁶³

¹⁶² Gambling Commission. (2021c). p.36-37

¹⁶³ Gambling Health Alliance. (2021). *Overwhelming public support for action to make gambling safer*. March 2021.
<https://www.rsph.org.uk/about-us/news/overwhelming-public-support-for-action-to-make-gambling-safer.html>

Effective regulation decreases illegal gambling

The gambling sector argues that regulation will force consumers to gamble illegally, which will be more dangerous for them. The Betting and Gaming Council issued press statements using findings of a report commissioned by gambling operators from PwC: *A Review of Black Market Online Gambling in the UK*. The report was not made public, but Landman Economics conducted a review of a copy. The review shows this is a ‘fundamentally flawed and misleading piece of research’ and is ‘designed to deliberately mislead’.¹⁶⁴

PwC provides a cross country comparison that claims to show that there increased burden of regulation/taxation on the legal gambling market results in an increase in the size of the black market. Its assignment of countries to high or low regulation/tax regimes is arbitrary, and they only consider the relationship between regulation/taxation and the black market as a share of online gambling, not the size of the gambling market. Instead, the data presented shows that, across countries, the offshore online gambling market's share has been falling when looked at as a percentage of the total market across countries, during a period of increasing regulation.

The report bundles together the black market (operators not licensed in any jurisdiction), illegal operators (licensed in another jurisdiction) and offshore operators (in countries such as the UK where operators are subject to point-of consumption licensing, this is not illegal).

It estimates the size of the illegal market in the UK with the amount staked rather than as is usual, with GGY, which exaggerates the size of the online market. In any event, according to PwC own data, the illegal market in the UK is only a very small proportion of the total market.

PwC is concerned that high stakes gamblers are more likely to be incentivised to use unlicensed gambling sites because ‘regulatory frictions’ make it more time-consuming to use licensed gambling websites. While undertaken to prove demand for ‘frictionless’ gambling without measures such as affordability checks, a PwC survey instead found that looking at all respondents, ‘ease/speed of withdrawal’, ‘trust in operator’, ‘good odds/return to player’ and ‘quality of website’ were the four most important criteria for selecting an online operator.¹⁶⁵

Instead, the evidence presented suggests that better regulation, including specific measures targeting illegal operators, are the main factor in reducing offshore gambling as a share of the online market, not less regulation and lower taxes. The Gambling Commission has refuted the gambling industry claims about the growth of illegal gambling as being unsupported by credible evidence¹⁶⁶ – although there is potential for the regulator to take tougher action against unlicensed operators.

¹⁶⁴ Reed, H. (2021). *A review of the PricewaterhouseCoopers Report A Review of Black Market Online Gambling in the UK*. January 2021. Landman Economics. Prepared for Clean up Gambling.

¹⁶⁵ Ibid.

¹⁶⁶ Rob Davies. (2021). UK gambling firms accused of exaggerating scale of black-market betting. *The Guardian*. (18 January 2021). <https://www.theguardian.com/society/2021/jan/18/uk-gambling-firms-accused-of-exaggerating-scale-of-black-market-betting>

The review of the PwC report comments that the best policy action to curb the illegal and unlicensed market is to design effective regulation and licensing protocols, not to abolish regulation so that the legal market becomes as dangerous as the black market. Using the analogy of the motor industry:

The operators' argument is analogous to saying that speed limits and road signs create an incentive for drivers to drive across fields in off-road vehicles rather than using the public highway. In this context, the BGC and operators' prescription of needing to reduce regulation of online gambling to prevent growth of unlicensed online gambling sites is a bit like saying that Highways England needs to get rid of road signs and speed limits to discourage off-road driving. The BGC's argument would be nonsensical in most other contexts, but it is being presented as a serious prescription for the online gambling industry.¹⁶⁷

The tobacco industry used these arguments for decades to argue against taxation. However, increased regulation and anti-smuggling measures significantly reduced illicit tobacco expenditure during the time as new restrictions on tobacco consumption were enacted – showing the idea that tax/regulation inevitably drives an increase in the size of the black market is erroneous.

Commercial interests need to be balanced against public good

Fundamentally, the gambling sector's opposition to reforms such as limits on stakes and speed or affordability checks is that they are likely to be much more effective than the current regulatory 'responsible gambling' measures. They are, therefore, more likely to impinge on profits within the current business model and market dynamics. They will not impact most gamblers, who play at low levels, besides protecting them from harm and addiction. However, they will curtail gambling companies' extraction of profit through high-risk products and from problem and disordered gamblers.

Across sectors, the Government place limits on products and activities to balance commercial profit with harm. The market dynamics of gambling drive commercial practices to increase risk and harm to consumers, and there are no inherent market drivers to counter this behaviour. Strong, effective regulation is in the long-term interests of gambling companies, as it creates a 'level playing field', which ultimately prevents extremes of exploitation that harm public opinion and the sustainability of the sector. It opens the possibility for new, safer business models to be competitive.

Given the current economic climate, the Government may be reluctant to put in place measures that will reduce tax revenue from gambling, at least using the current model and in the short term. There is the possibility of reform preventing tax avoidance or generating tax differently. However, as with other sectors, Government needs to consider the nature of gambling, public

¹⁶⁷ Reed, H. (2021) p.16

health and wider socio-economic policy goals, and the socio-economic cost of gambling harm – and whether it considers an unfettered commercial gambling sector truly desirable for economic growth.

Implications and recommendations: a new regulatory regime

Regulation is the core of a public health approach

Over the past decade, in the UK and internationally, there has been increasing criticism of this ‘responsible gambling’ approach to regulation – an approach that had little evidence for its efficacy to start with and which has evidently failed. Across the world, the recommendation is for a public health approach to gambling. Recently, under pressure, the Government and the regulator have agreed that gambling should be addressed as a public health issue. However, they are unclear what this entails. The DCMS TOR appears to believe public health consists of actions by other Government departments outside of the gambling review and regulation and reduces public health to the treatment of addiction.¹⁶⁸ Rather, effective regulation to prevent harm is at the core of public health.

The Gambling Commission’s National Strategy to Reduce Gambling Harms 2019-2022 strategy ‘sets out the approach needed across a range of stakeholders and delivery bodies to have the maximum impact on reducing gambling harms.’ The Commission explains: ‘To drive this faster progress, we are putting the full weight of regulation behind this strategy by taking on ownership of it from our advisers¹⁶⁹ ¹⁷⁰ A public health approach does require action from a wide range of stakeholders. But there is irony in the regulator exhorting other parts of Government and civil society to act on harm resulting from its regulation, which has been reactive to negligent.¹⁷¹ The regulator needs to put its full weight into effective regulation for public health.

The following are the key components of a public health approach.

- Public health is about using systemic interventions, that address the *determinants* or *causes* of disease and health.
- Its purpose is to *create conditions* in society that *prevent disease*, but more than that, *enable* and *improve health and wellbeing*. It is fundamental that the focus of efforts should be on preventing ill-health and enabling health, as this is, in general the most effective and cost-effective.
- The focus is on whole populations, not individual patients.

¹⁶⁸ ‘The government also recognises the essential public health elements to any discussion of gambling, and separately to this Review the Department for Health and Social Care will continue work to expand and improve the treatment of gambling-related harms alongside other addictions like drugs and alcohol’. DCMS. (2020). p.4

¹⁶⁹ Advisory Board for Safer Gambling, previously Responsible Gambling Strategy Board

¹⁷⁰ <https://beta.gamblingcommission.gov.uk/about-us/reducing-gambling-harms/action-map>

¹⁷¹ See: PAC (2020); NAO (2020); HOL (2020).

- An important component of public health is addressing *health inequalities* - avoidable, unfair, and systematic differences in health between different groups of people.¹⁷² This is statutory duty of health bodies in the UK, and part of the mandate of Public Health England.¹⁷³

An often-used public health framework is that of universal, indicated, and targeted interventions:

- Universal measure reduce risk and enable health for the population, moving all people in a positive direction.
- Selected interventions are for those sub-groups at greater risk of experiencing harm, who need additional preventative or other measures.
- Indicated interventions are for individuals at risk of or those experiencing harm.

The call for a public health approach to gambling is a call to:

- Acknowledge that commercial gambling is not a leisure activity commensurate with joining a sports club. It is not one for which the Government should wish to stimulate demand, any more than alcohol, tobacco, or speeding.
- Make the primary focus of gambling regulation public health, achieving wider socio-economic policy goals, and preventing harm and socio-economic costs of harm – as opposed to commercial profit and tax revenue.
- Recognise that commercial gambling is a market and product in which the inherent dynamic is risk and harm, and increasing risk and harm to consumers and society, when left unregulated. Significant regulatory intervention is justified and required.
- Deploy systematically the full range of regulatory levers – rules, outcomes, disincentives, and incentives – in a way appropriate to gambling market dynamics to effectively impact producer and consumer behaviour. The regulation of markets is fundamentally about influencing the behaviour of companies and consumers to achieve wider goals. To do so effectively, the nature and extent of regulation must be based on understanding the product, market dynamics and drivers.
- Adopt a universal and preventative approach, which makes gambling safer for everyone. This involves limiting harm from gambling, in one or a few episodes, the likelihood of developing problem or disordered gambling and limiting harm to those experiencing problem or disordered gambling.
- Given the wide range of vulnerabilities associated with gambling difficulties, the difficulties of identifying such vulnerabilities, that anyone can become vulnerable, and that there is a clear and defined group of vulnerable consumers, disordered gamblers,

¹⁷² World Health Organisation. <https://www.euro.who.int/en/health-topics/Health-systems/public-health-services>

¹⁷³ <https://www.gov.uk/government/organisations/public-health-england>

the vulnerable consumer should be taken as the average consumer. Products, services, and communication should be designed with the vulnerable consumer in mind, with additional measures where necessary. This will not impinge on most gamblers, who play at low levels, but will make all gamblers safer.

- Rebalance regulation from an almost exclusive focus on voluntary measures for consumers, to requirements placed on producers to the limit risk generated by commercial practices. Given the very clear evidence that the greatest direct risk for gambling harm is intensive gambling and high-risk products, this includes changes to factors that make forms of gambling or products risky and addictive and implementing rules to prevent customers from engaging in risky gambling practices.
- Achieve the consumer rights and rights under the Equalities Act that would be expected of any market or public body. This includes ending the stigma and discrimination towards people with a mental health condition – disordered gamblers. It includes regulation that reduces rather than exacerbates inequities and the exploitation of younger and poorer groups. This means structural changes rather than the provision of information, which is of most use to people with more resources to make ‘informed choices.’

Recommendations

Changes to the objectives of regulation and consumer redress in law

The Government committed to a review of the Gambling Act 2005. But the Terms of Reference do not set out any proposed changes to Act. To achieve a new regulatory regime requires changes to the licensing objectives and additional duties on the regulator gambling companies. It is important these are contained in legislation to ensure avoidance of any doubt as to how gambling needs to be regulated and conducted by the Gambling Commission and gambling companies.

- That gambling should *not* be permitted save for meeting the licensing objectives, codifying a preventative approach.
- The addition of a licensing objective to promote public health and well-being, prevent harm, and redress inequalities.
- The addition of a duty on the regulator and operators to ensure consumers are reasonably safe, so they must build safety into gambling products and practices.

- The addition of a duty on operators to return money to a consumer if they have let them gamble when they should not have, so operators have a direct legal duty to individual consumers to ensure rules about how consumers can gamble are followed, and legal liability if they are not. Making the operator liable would create a stronger incentive for them to comply with regulation and statutory obligations.¹⁷⁴
- Establish a transparent and independent consumer ombudsman system. This should include processes for paying compensation to those harmed by gambling companies violating regulations over the last decade, with funds from a mandatory levy.

It does not appear that the Gambling Commission requires additional powers, so long as its mandate and statutory duties are clear. The Gambling Commission evidently requires an overhaul in leadership, capability, and funding. The regulator needs to make strategic and full use of its powers and should work with and learn from other regulators and adopt best practices—especially those regulators in the digital, big data and financial services.

Bring new gambling and gambling-like products in new digital spaces into the scope of regulation

To effectively build regulation for the future and ever-increasing advancement of technology, the definition of ‘gambling’ needs to be reviewed. The absence of a potential redefinition of gambling in the Gambling Act review is a missed opportunity that will limit any potential changes. There needs to be a coherent regulatory approach across gambling regulation and regulation on online harms.

Mandatory, harm-based levy or tax

According to wider government policy on markets, the gambling sector is a market that is not working well. Consequently, mechanisms to reduce market concentration and to generate competition that is consistent rather than in opposition to consumer benefit and rights, harm prevention and minimisation are required.

Experience suggests that, as with other sectors and in other countries, very large gambling operators are difficult to regulate effectively, and have significant influence over markets, policy, and regulators, and can undermine the capacity or willingness of regulators and policymakers to pursue effective reform.¹⁷⁵ Oligopolist control is also counter to new entrants to the market and companies seeking to deliver safer gambling business models.

The costs of research, education, and treatment to address gambling harms should be paid from gambling sector profits through a mandatory system. Most importantly, this must build the

¹⁷⁴ HOL (2020) p. 63

¹⁷⁵ Livingstone, et al. (2019). p.12-13

costs of harm into companies' operation, so there is an incentive to reduce harm to reduce costs.¹⁷⁶ This is the approach taken for environmental protection in a variety of sectors. 'The most harmful gambling products should be subject to highly progressive tax systems to discourage operators from pursuing the super-profits that such products frequently yield.'¹⁷⁷ Operators could also be subject to higher tax if profits are generated from a small proportion of consumers.

Funding raised for public awareness, education, and treatment should be directed to the existing relevant government departments and agencies, to 'mainstream' the issue, and use existing capacity and expertise, and be in line with public sector procurement. It is not appropriate for a regulator to be controlling such funding. Its efforts should be focused on the use of regulation for prevention and public health.

There have been objections to a levy on the basis that it is a hypothecated tax. However, given the inattention to gambling harms by the Government and low base compared with other public health issues, there is justification for raising dedicated funds, ring-fenced by statute, for a defined period.

Priority areas for the development of license conditions and codes of practice

The duty to ensure that gambling is reasonably safe needs to be realised through changes to license conditions and codes of practice. Importantly, given the gambling market's nature, outcomes need to be added to with rules, fundamental or minimum standards that define a basic level of reasonable safety. The priority areas for development are:

- Online product safety.
- Regulation of online play with improve protections for players.

The evidence and recommendations for regulation in these two areas are contained in chapters 4 and 5.

¹⁷⁶ Woods and Perrin. (2019).

¹⁷⁷ Livingstone, et al. (2019). p.9

Chapter 3

Research and data

Introduction

The DCMS has issued a Call for Evidence on gambling regulation. In this context, it is important to draw attention to the state of evidence for policy – the state of gambling research and data in the UK. This is impinged by a profoundly unsatisfactory set of funding and institutional arrangements – of which DCMS has repeatedly been made aware and repeatedly refused to change.

The Call for Evidence's narrative repeats the misrepresentation of evidence that exists, using the problem gambling narrative favouring the gambling sector and commercial interests. It again puts the burden of evidence on those harmed by gambling, while the power to enable the production of such evidence sits with the DCMS and the regulator.

The account of the field of gambling research and data provided here comes from the experience of trying to deliver research within GambleAware and is supported by reviews of the field of gambling studies, research outputs and administrative documents.

This is not to criticise the professionalism and integrity of any researchers or staff members attempting to work in this environment but to draw attention to the extremely compromising set of funding and institutional relationships which makes this impossible. This has negative consequences for the field of gambling studies and the availability of evidence for sound evidence-informed policy.

The state of evidence in the UK

There have been multiple recent reviews of the state of evidence on gambling difficulties and gambling harm in the UK and internationally.¹⁷⁸ These reach the same conclusions. A medical

¹⁷⁸ Gambling Research Exchange Ontario (2020). Research Expertise and the Framework of Harms: Social Network Analysis, Phase One. Prepared for the Gambling Commission, in support of the National Strategy to Reduce Gambling Harms. https://www.greo.ca/Modules/EvidenceCentre/files/GREO_12_2020_NSSocialNetworkAnalysisP1_Final.pdf; Hesketh, R., Moxham-Hall, V., Norrie, C., Strang, L. and Wilkinson, B. (2021). *Identifying research priorities on gambling related harms: A rapid evidence assessment for Action Against Gambling Harm*. Kings College London. March 2021; <https://www.kcl.ac.uk/policy-institute/assets/identifying-research-priorities-on-gambling-related-harms.pdf>; McHahon et al. (2021); Blank, L., Baxter, S., Woods, H.B. and Goyder, E., (2021). Interventions to reduce the public health burden of gambling-related harms: a mapping review. *The Lancet Public Health*, 6(1), pp.e50-e63. p.e63; McAuliffe, W., Louderback, E.R., Edson, T., LaRaja, A. and LaPlante, D. (2020). Responsible Product Design to Mitigate Excessive Gambling: A Scoping Review. in press.

model perspective has dominated gambling research. The focus is the identification and treatment of a small percentage of people with clinical gambling problems. Research concentrates on identifying individual psychological level factors and psychopathology that are seen as causing people to become disordered gamblers and comorbidities like alcohol, substance abuses, depression, and anxiety. Policy-making is also focused on the prevalence rates of people with gambling problems. Research into interventions is predominantly on responsible gambling tools for the minority of problem gamblers to modify their behaviour and research on treatment, specialised therapies, counselling and psychiatric services.

However, there is a new direction in recent years toward a public health approach to prevent, reduce, and mitigate harm. This takes a whole population approach, with the aim of healthy communities, resilient and healthy individuals. Attention moves from identifying and treating people with gambling problems to preventing and reducing harm across the population. This is achieved by addressing the many contextual factors that can contribute to harm from a social determinants of health perspective. The onus moves from the individual to changing the gambling environment and the characteristics of gambling products and situations.¹⁷⁹

The historical emphasis on a medical model means that research from a public health perspective in gambling is less well developed internationally than in other fields. However, in this new direction, the reviews find that research in the UK is lagging behind other countries.

A review commissioned by Action Against Gambling Harms found:

There is a real lack of empirical research on gambling harms in the UK... The UK appears to lag behind other countries in empirical research into gambling harms. In comparison with other countries such as Australia, Canada and the US, we found relatively little research on gambling harms in the UK context.¹⁸⁰

This includes gaps on the occurrence of harms and approaches to measure such harm. It includes ‘a very significant gap on the costs of gambling to the public purse in the UK context...despite the fact that studies of this kind have been conducted in other countries (for example, Australia and New Zealand).’ Compared to other countries, there was also a relative lack of research on the effects of gambling over a long timeframe to understand the wider effects that gambling causes over time.¹⁸¹ Other countries have had longitudinal studies to evidence the impact of the expansion of commercial gambling, Canada, Australia, and Sweden.¹⁸² The UK has not.

A review commissioned by the Gambling Commission finds the same. Of the total peer-reviewed output for gambling in the UK from 2008-2019, the percentage of harms-related

¹⁷⁹ Wardle, H., Degenhardt, L., Ceschia, A. and Saxena, S., (2021). The Lancet Public Health Commission on gambling. *The Lancet Public Health*, 6(1), pp.e2-e3; Abbott, M.W., 2020. Gambling and gambling-related harm: Recent World Health Organisation initiatives. *Public health*.

¹⁸⁰ Hesketh et al. (2021) p.2

¹⁸¹ Ibid, p.3

¹⁸² Williams et al. (2015); Billi et al. (2014); Abbot et al. (2013).

publications was 34.3% in comparison to 65.7% for other gambling papers not focused on harm. Of the publications that were on harms, these were dominated by papers on health, specifically mental health, with most research capability in the UK focused on this area. The review suggests funding should be directed to apply the newer measures that are better at capturing harm at the population level, developed in other countries, rather than measures of problem gambling that continue to dominate in the UK.¹⁸³

Misuse of evidence to support commercial interests

The ways in which the gambling sector uses and misuses evidence to drive the direction of policy in its own interests, internationally and in the UK, is well documented.

Analyses of the development of gambling research over time trace the ascending of the medicalised framework for research from within psychology, through the 1980s, with the concept of 'problem gambling'. This eclipsed early research and policy across the century, which had paid attention to how gambling was organised, gambling products, access, and social factors. The field of gambling studies as we know it today developed alongside the growth of the commercial industry.

By the mid-1990s, the gambling industry had already grasped (like the alcohol industry had some decades earlier) that a medical diagnosis linked to the excessive consumption of its product could serve to deflect attention away from the product's potentially problematic role in promoting that consumption, and onto the biological and psychological vulnerabilities of a small minority of its customers.¹⁸⁴

By describing gambling that damages health and well-being as 'problem gambling' or 'pathological gambling', the causal factors are located within individual behaviour or physiological or psychological makeup. The 'largely structural factors such as the industry's role in society, social influences on individual choices, and the adequacy of regulation are overlooked. Such framing is conducive to industry expansion and lends legitimacy to gambling taxes as a source of government revenue'.¹⁸⁵

In the UK, the gambling sector's use of research to create doubt and divert attention from the role of products and commercial practices in causing harm has been documented. These are the same as the documented actions of the tobacco and alcohol industries. This includes selective funding of research and the capture of third parties, such as charities and researchers,

¹⁸³ Gambling Research Exchange Ontario (2020)

¹⁸⁴ Cassidy, R. (2016). How Corporations Shape our Understanding of Problems with Gambling and their Solutions. In: Nora Kenworthy; Ross MacKenzie and Kelley Lee, eds. *Case Studies on Corporations and Global Health Governance Impacts, Influence and Accountability*. London: Rowman and Littlefield. <http://research.gold.ac.uk/id/eprint/18867/> 7.8-7.10

¹⁸⁵ Cassidy (2016); Schull (2014); Reith (2007); Orford, J., 2019. *The gambling establishment: Challenging the power of the modern gambling industry and its allies*. Routledge. Livingstone, C., Adams, P., Cassidy, R., Markham, F., Reith, G., Rintoul, A., Dow Schüll, N., Woolley, R. and Young, M., (2018). On gambling research, social science and the consequences of commercial gambling. *International Gambling Studies*, 18(1), pp.56-68.

to present their views,¹⁸⁶ as well as vicious, sometimes personal attacks on researchers that produce evidence inconvenient to commercial interests.

The vested interests of governments in commercial gambling also impact research.¹⁸⁷ An analysis of research outputs from three countries with different gambling regulatory environments (Canada, Australia, and New Zealand) showed that that the focus of gambling research in each country was shaped by the different ways the government regulated gambling and the government's relationship with the gambling sector.¹⁸⁸

Funding and institutional arrangements for gambling research in the UK

In 2013, the report *Fair Game* was published, a critique of the field of gambling studies in the UK. Gambling studies was found to be closed, tightly controlled, strongly influenced by the gambling industry and the state, and largely functioning outside of usual academic structures.¹⁸⁹

Access to data and research participants depended on individual researchers' relationships with gambling companies and treatment providers (which are funded by gambling companies).

Funding was limited, and there were no neutral sources of funding. The research field was highly dependent on funding from the gambling sector. This funding was provided on a voluntary basis and channelled through a charity with origins in the industry and with a Board made up of representatives of gambling companies. The funders' vested interests influenced the questions prioritised in calls, how applications were assessed, and how the research was communicated. The gambling companies conceptualised voluntary contributions to commission research as a gift, rather than a cost of doing business, allowing the industry to maintain a sense of ownership over research.

The gambling sector was adept at discrediting research, leading some researchers to self-censor or opt-out of publishing, with researchers finding themselves either co-opted or strongly criticised. A small number of researchers delivering 'safe' research dominated the production and review of research and did not collaborate with other relevant fields of study, reproducing homogenous views. Such safe research functioned to 'enable the existing relationships between research, the industry and the state to endure while meeting public expectations that research should take place'.¹⁹⁰

¹⁸⁶ Cowlishaw, S. and Thomas, S.L., (2018). Industry interests in gambling research: Lessons learned from other forms of hazardous consumption. *Addictive behaviors*, 78, pp.101-106.

¹⁸⁷ Cassidy (2016); Schull (2014); Reith (2007); Orford (2019); Livingstone et al. (2018)

¹⁸⁸ Baxter, D.G., Hilbrecht, M. and Wheaton, C.T., (2019). A mapping review of research on gambling harm in three regulatory environments. *Harm Reduction Journal*, 16(1), pp.1-19.

¹⁸⁹ Cassidy, R., Loussouarn, C. and Pisac, A., (2013). *Fair game: Producing gambling research*. Goldsmiths, University of London. <https://www.gold.ac.uk/gamblingineurope/report/>

¹⁹⁰ Cassidy et al. (2013) p.8

The result was:

A research culture that is suspicious, sometimes hostile, and even paranoid. This creates inefficiencies including unproductive rivalries and duplication. It makes it difficult to retain good researchers and to attract new recruits to the field... Gambling studies is not a prestigious field when viewed from other disciplines including anthropology, sociology, law, geography, and economics. It is behind studies of tobacco, alcohol, and drugs in terms of analysis, methods used, ethical transparency and dealing with conflicts of interest. There is a lack of collaboration between gambling studies and related fields and a reluctance to accept alternative methodologies and wider definitions of evidence.¹⁹¹

The consequence was that for gambling studies in the UK, what counts as evidence was determined by commercial and political priorities, largely unmoderated by the usual checks and balances present in academia, to a greater extent than other fields.

The Fair Game report was critical of industry involvement in institutional arrangements to produce research. However, it was also highly critical of the role of the Government in the UK.

The state should not represent itself as the neutral referee between operators and their opponents. They are invested in commercial gambling as both operators and collectors of tax revenue. They also play a central role in sustaining the focus on 'problem gambling', an approach that obscures the relationships between the industry and the state. Critical studies of gambling should investigate a wider range of social processes, including not only individual behaviour but also problem games, problem products and problem policies...Policy makers should consult a wider range of experts and recognise a wider variety of evidence. By focusing exclusively on problem gambling and causal relationships they serve the interests of the industry, which is interested in limiting regulation and minimising change.¹⁹²

The *Fair Game* report's outcome was attention on the main recipient of voluntary industry contributions and the almost sole funder of gambling research in the UK, the then Responsible Gambling Trust (RGT). These criticisms are well-rehearsed. This brought various efforts by the charity to put distance between itself and industry and assert its independence, including overhauling its Board and rebranding as GambleAware. As noted by the HOL, these efforts have not had much success. The HOL remarked that the issue of perceived independence, or lack thereof, of GambleAware, was raised with them on multiple occasions and deemed it important enough to dedicate an entire section to it in their report.¹⁹³

The fundamental problem with such a body as the main source of funding for gambling research remains. The current system is beholden to the gambling sector by the very fact that the

¹⁹¹ Ibid. p. 8-9

¹⁹² Ibid. p. 10

¹⁹³ HOL (2020) p.146-148

gambling sector contributions are voluntary, meaning that gambling companies can withdraw or redirect funds if displeased. This means that there will always be a doubt as to the integrity of any research financed through these means. In addition, a small charity of compromised reputation does not have the capability to attract high calibre researchers and to commission high-quality research, especially when compared to the capability of the NIHR or the Research Councils.

However, the attention on RGT/GambleAware and the gambling sector focused attention away from the important critique the report provided of the role of the state in the UK. This has inadvertently resulted in the Gambling Commission asserting increasingly tight control over research and the direction of voluntary gambling sector contributions.

In 2012, a 'tripartite agreement' was put in place between RGT, the Gambling Commission, and the Gambling Commission's 'independent advisory board', the Responsible Gambling Strategy Board (RGSB) (now the Advisory Board on Safer Gambling – ABSG).¹⁹⁴ This made RGSB responsible for developing a research programme to support its National Responsible Gambling Strategy and research briefs and questions, which RGT would commission against. The role of the Gambling Commission was to advise on research priorities in consultation with the DCMS.¹⁹⁵

The rationale for this was that a body of independent experts (RGSB) would now set the research agenda and research questions, separate from gambling sector interests. RGT would perform the largely administrative role of commissioning research. However, RGSB and the Gambling Commission in particular, as well as DCMS, were also involved in commissioning decisions and research oversight. Members of RGSB, the Gambling Commission and DCMS would attend RGT board meetings and participate in the RGT research committee in an advisory role. This included commenting on tender documents, evaluating bids and commenting on research outputs before publication.¹⁹⁶

This new arrangement did result in the publication of a coherent research programme by the RGSB for 2017-2019, which included projects on harms, using gambling industry data to understand the interaction between gambling product, situation and consumer vulnerabilities and a longitudinal study.¹⁹⁷ However, the RGSB is appointed by and dependent on funding and secretarial support from the Gambling Commission. In addition, the role of RGSB resulted in a couple of gambling researchers on this body, appointed by the Gambling Commission, and prepared to work with GambleAware, having a large influence over where the small amount of funding available for gambling studies was directed. Given the small pool of researchers in the field willing to take money from GambleAware, many of the research projects commissioned from the research programme went to the researchers or organisations associated with the

¹⁹⁴ <https://www.rgsb.org.uk/Home.aspx>

¹⁹⁵ <https://www.begambleaware.org/sites/default/files/2020-12/statement-of-intent-document-final-with-logo-v2.pdf> ;
<https://www.begambleaware.org/media/1332/research-commissioning-and-governance-procedure-september-2016-final.pdf>

¹⁹⁶ <https://www.begambleaware.org/sites/default/files/2020-12/statement-of-intent-document-final-with-logo-v2.pdf> ;
<https://www.begambleaware.org/media/1332/research-commissioning-and-governance-procedure-september-2016-final.pdf>

¹⁹⁷ <https://www.rgsb.org.uk/PDF/Research-programme-2017-2019-May-2017.pdf>

researchers of the RGSB.¹⁹⁸ This led to perceptions that researchers on the RGSB deciding the research agenda and questions were then benefiting from the commissioning against these. To avoid such conflicts, AGSB is now made up almost entirely of people with no specific gambling expertise, which is equally unsatisfactory.¹⁹⁹

In 2018, the Gambling Commission decided to take over the leadership of both the National Strategy to Reduce Harms²⁰⁰ and the research programme from RGSB, on the basis the weight of the regulator would accelerate progress.²⁰¹ The secretariat staff, who until that point had dedicated roles to support RGSB and its research programme, were incorporated into a new safer gambling team within the Gambling Commission. This placed them in the difficult position of compiling advice on behalf of RGSB to give to themselves. It made the control of the Gambling Commission over research commissioning very direct, in tenders, commissioning decisions, on steering groups and the conduct and output of research.²⁰² The result was a situation where, in some respects, the Gambling Commission could be seen to be violating charity governance codes by making use of a charity (GambleAware) to deliver activities for a public sector body in an untransparent way.²⁰³

The outcomes of the RGSB/ Gambling Commission research programme have been mixed. It has produced some useful research, undoubtedly challenging to the current regulatory regime. But the influence of the Gambling Commission towards the status quo is also evident. For example:

- A framework on harms and paper looking at approaches to measurement have been published but not implemented, and measures that have been developed in other countries and which could be applied have not been.²⁰⁴ The work on harms has been used to exhort other governments and agencies to act on harm rather than to inform regulation to prevent harm.
- The Gambling Commission directed research on harm minimisation to responsible gambling tools, such as safer gambling messaging. The Behaviour Insights Team was tasked to deploy sophisticated randomised control type research to provide conclusive proof to operators that reducing friction (the number of clicks it takes) to access responsible gambling tools would improve uptake and that deposit limits should be anchored at reasonable levels rather than many thousands of pounds. These behavioural science experts were not tasked to look at modification of behavioural factors in products to make them safer.²⁰⁵

¹⁹⁸ <https://www.begambleaware.org/for-professionals/research-publications>

¹⁹⁹ <https://www.rgsb.org.uk/About-us/Board-members.aspx>

²⁰⁰ <https://beta.gamblingcommission.gov.uk/about-us/reducing-gambling-harms>

²⁰¹ <https://www.gamblingcommission.gov.uk/PDF/Research-Programme-2018-22.pdf>

²⁰² GambleAware now refers to the tripartite agreement as a framework agreement with the Gambling Commission, but the weblink is to the tripartite agreement from 2012, referring to AGSB as RGSB, and the changed role of the Gambling Commission in relation to the research programme is not reflected.

²⁰³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/586029/CC37.pdf

²⁰⁴ Gambling Research Exchange Ontario (2020).

²⁰⁵ https://www.begambleaware.org/sites/default/files/2020-12/gambleaware-phase-iii-report_updated-v1.pdf

<https://www.begambleaware.org/for-professionals/project/safer-gambling-messaging-phase-ii>

- Researchers were commissioned to analyse a large online operator dataset, the preliminary results of which have just been published.²⁰⁶ However, the regulator has not used its powers to require the provision of gambling operator data for the purposes of research or monitoring or regulation. In addition, the brief was to analyse how people play, rather than from the perspective of the impact of products on play.²⁰⁷

When the Gambling Commission took formal control of the National Strategy to Reduce Gambling Harms, it changed the license condition on voluntary contributions. Gambling company contributions would only count as a fulfilment of the license condition if directed to organisations on a list the regulator approved. With this change, the regulator remarks, ‘we do not specify an amount which may be contributed as this could be seen as imposing a levy, which is a power reserved for Parliament.’²⁰⁸ Simultaneously, in sanctioning industry, it makes use of voluntary settlements rather than fines. Fines would send the money to HMRC. The Gambling Commission retains control of voluntary settlements and has been directing the increasingly large sums to various organisations and projects for research, education, and treatment.²⁰⁹

In the context of constrained and reducing fees from licenses and the absence of a mandatory levy, both resting with the DCMS, the regulator could be described as imposing something of a levy via the backdoor. However, these arrangements are untransparent and do not positively incentivise gambling companies to reduce harm. Under these arrangements, the regulator cannot run competitive procurement, and, in addition, it is not an expert in research, education, nor treatment. This leaves it open to perceptions it is directing funding to research, pet projects and organisations it favours and is not in compliance with public sector procurement processes. It also creates a possible conflict of interest, in that funding becomes dependent on industry failings and enforcement action, rather than incentivising good practice, via a levy built into operating costs.

Via these arrangements, the Gambling Commission has effectively directed the research agenda, been heavily involved in research commissioning, the conduct and reporting of research projects, in ways that are opaque. In the current situation, conflicts of interest with the gambling sector are now largely declared, but the regulator's involvement in research is unclear to the public.

Meanwhile, DCMS has continually refused to use its powers to enable transparency and investment in research, to develop a diverse and independent field of gambling studies in the UK²¹⁰ – while saying it does not have enough evidence to act.²¹¹

²⁰⁶ Forrest et al. (2021).

²⁰⁷ <https://natcen.ac.uk/our-research/research/patterns-of-play/>

²⁰⁸ <https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/General-compliance/Social-responsibility/Research-education-and-treatment-contributions.aspx>

²⁰⁹ <https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/General-compliance/Social-responsibility/Destinations-of-regulatory-settlements-to-be-applied-for-socially-responsible-purposes.aspx>

²¹⁰ See Chapter 2

²¹¹ HOL (2020); PAC (2020); NAO (2020).

The result is that nearly a decade after the publication *Fair Game*, analysis of research publications demonstrates that the dynamics of gambling studies in the UK remains problematic. It finds that some authors do not collaborate with other UK-based authors. Research groups focusing on specific topics do not collaborate with others. A disproportionate, small number of researchers are involved in all manner of gambling research without collaborating with specialists from other disciplines.²¹²

If anything, there has been an increase in hostilities, in which those researchers who are willing to work within these difficult arrangements are dismissed or even attacked by those who will not, irrespective of the quality of their academic output or professional ethics. The field continues to be unattractive to researchers for fear of reputational damage. It is particularly difficult for early career researchers, who need to obtain funding from the limited sources available, and then find themselves under attack from all sides by gambling companies and hard-line researchers.

Misleading arguments and double standards in evidence-based policy for gambling

The extent to which DCMS and the Gambling Commission have a vested interest in perpetuating commercial interests can be seen in the extent to which their arguments about evidence mirror those of industry, perpetuating the ‘problem gambler’ narrative to deflect calls for stronger regulation of commercial practices. This has been seen in the analysis of the DCMS Call for Evidence.²¹³ But there are multiple examples.

Nothing can be done until everything is done, and everything cannot be done, so nothing can be done

One tactic is the ‘complexity’ argument, used in a variety of different industries that cause harm, to ward off unwanted curtailment of commercial activities.²¹⁴ Where a risk is identified in evidence, it is argued that if this risk were to be addressed, another worse one would take its place – without evidence that this will be the case. Alternately, it is argued that addressing one factor will not make a difference; nothing can be done until everything can be done, with research used to argue it is all too complicated for policymakers to do anything about it.

These arguments were used extensively in the context of the push for stake limits on FOBTs. It was argued that reducing stake would not be a difference unless speed was also reduced, or that reducing stake would lead to people spending the same money playing for longer or

²¹² Gambling Research Exchange Ontario (2020).

²¹³ See Chapter 1

²¹⁴ Petticrew, M., Katikireddi, S.V., Knai, C., Cassidy, R., Hessari, N.M., Thomas, J. and Weishaar, H., (2017). ‘Nothing can be done until everything is done’: the use of complexity arguments by food, beverage, alcohol and gambling industries. *J Epidemiol Community Health*, 71(11), pp.1078-1083.

faster.²¹⁵ This included arguing that people staking large amounts could not be considered an indicator of harm as people spend money on things they enjoy.²¹⁶

Responsible gambling researchers are deploying these arguments in a new guise, in the face of evidence that the responsible gambling tools they recommended have limited efficacy and the calls to regulate harmful commercial products. These appear to support reform, acknowledging that it is desirable to modify products, but then set out to demonstrate this is impossible to do. For example, it is argued that, as the characteristics of products all work together, it is too complicated to modify any of them. Instead, disordered gamblers should be given artificial intelligence self-monitoring devices, so they can identify when they are in a negative mood and avoid gambling.²¹⁷ Tools being developed to evaluate product risk are picked apart to show they are full of flaws and could never work.²¹⁸

Another example comes from the Gambling Commission's consultation on slots. The regulator proposed a requirement for gambling companies to prevent gamblers from playing more than one slot game simultaneously. The gambling companies said this would make gamblers open accounts with another operator to play more than one game at a time. This would increase risk as the operators would not be able to see all their play to intervene. The regulator agreed to roll back the reform for fear of the 'unintended consequences of well-intentioned regulation' and to reconsider when the Single Customer View is achieved. This is even though, by their own evidence,²¹⁹ the greater the friction, the less likely a gambler is to perform an action, and thus this reform would reduce the risk for all. Those likely to go to the extent of opening another account to play many games at once would be those already influenced to habitual, problematic play or disordered gambling, and operators do not wish them to spend with competitors.

There is no evidence for a causal link with problem gambling

Here, clinical standards from medicine are inappropriately applied to complex social contexts to argue there is not enough evidence that the factor in question causes problem gambling. Medical research uses randomised control trials to isolate and establish whether a specific medicine or treatment causes an outcome. Public health involves addressing multiple determinants that work in complex ways, and research establishes risk factors that are independently associated with an outcome. It focuses on looking at real-world data on populations and includes mixed methods and qualitative research to understand interacting

²¹⁵ For examples of these arguments, see: Blaszczynski, A., Parke, A., Parke, J. and Rigbye, J., (2014). Operator-based approaches to harm minimisation in gambling: summary, review and future directions; Parke, J. (2020). Future-Proofing the Industry: Towards the safer design and situation of games. Prepared for the New Horizons in Responsible Gambling Conference <https://www.northstarg.org/wp-content/uploads/2020/05/j-parke-nh2020.pdf> Delfabbro and King (2019).

²¹⁶ Parke, J. and Parke, A. (2013). Does size really matter? A review of the role of stake and prize levels in relation to gambling-related harm. *The Journal of Gambling Business and Economics*, 7(3), pp.77-110.

²¹⁷ Delfabbro and King (2019).

²¹⁸ Delfabbro, P. and Parke, J., (2021). Challenges in the Measurement of Gambling Product Risk: A Critical Review of the ASTERIG Assessment Tool. *Journal of Gambling Issues*, (47). <http://jgi.camh.net/index.php/jgi/article/viewFile/4116/4666>

²¹⁹ <https://www.bi.team/publications/applying-behavioural-insights-to-design-safer-gambling-tools/>

factors. It is impossible, and not the way gambling difficulties work, to isolate and provide clinical types of proof that a specific factor is the cause of problem gambling.

This inappropriate evidence requirement is used to dismiss public health-based calls to address a wide variety of established risk factors. For example, in a discussion on harms, it is argued it is not proven whether poverty leads to gambling or gambling leads to poverty. This is a fallacious argument, as, in the real world, such causation is multi-directional. It is well established that lower socio-economic position is a risk factor that increases vulnerability to gambling difficulties, which then exacerbate the experience of poverty. The same argument is used extensively in the responsible gambling literature on structural characteristics of products. It has proved impossible to isolate a specific risk factor that affects problem gamblers alone because structural characteristics affect all gamblers, and so it is argued there is no evidence structural characteristics cause problem gambling.

A recent example comes from the Secretary of State for DCMS responding to a parliamentary question on plans to restrict gambling advertising to protect children and young people. He responded that there was no evidence that advertising causes gambling harm. This is despite the extensive evidence of children and young peoples' extensive exposure to gambling advertising, that this influences their attitudes and beliefs about gambling, and increased exposure increases gambling. In public health terms, this counts as a risk factor, which, in interaction with other factors, increases the likelihood of gambling harm and consequently warrants addressing.

Another approach is to dismiss research using well-established methods and analysis from the social sciences (such as sociology, politics, economics, geography, or cultural studies), which produces important insights about the operations and effects of gambling businesses, as ideologically motivated and lacking scientific rigour.²²⁰

International evidence cannot be applied in the UK

A further line of argument is that international evidence does not apply to the UK context, given the potential differences in socio-cultural factors and the gambling ecology (for example, legal gambling age, availability of gambling products and venues). Exact estimates do not apply to Great Britain, and there are differences in the gambling sectors across countries. But all have experienced an increase in legalised and digitally-enabled gambling. General patterns of addiction-related behaviour observed in other Western nations pertain to Great Britain.

²²⁰ Livingstone et al. (2018)

Those suffering harm need to provide proof, but Government and the regulator do not

Those seeking reform and suffering harm are required to provide impossible levels of evidence. By contrast, the recent reviews of the DCMS and Gambling Commission have made clear that the impact of regulation is not being measured, and these bodies do not know if what they are doing is having a positive effect on consumers or gambling companies.²²¹

Any regulator needs to have a good insight into their performance. This allows them to invest in what works, take corrective action, and above all, be held accountable. The Gambling Commission has set itself generic objectives that gambling should be fair and safe. However, it has failed to break these down into meaningful performance indicators or evaluate the impact of specific regulatory actions (such as the increasing use of financial penalties, or changes to license conditions and codes of practice). The NAO remarked that the objectives 'are not set against clear benchmarks to indicate overall performance and do not, for example, assess how effectively the Commission's work reaches consumers most at risk.'²²² The PAC stated that the lack of measurable indicators means a lack of measures to hold the regulator accountable.²²³ The failure to translate the high-level outcomes for gambling companies in the LCCP into clear and measurable performance indicators is a failing of the regulator that can have caused harm to the consumers it is meant to protect.

The Commission and the DCMS repeatedly state that they want to see the number of problem gamblers decrease but have given no indications as to 'what level of reduction, over what period of time, would indicate good progress'.²²⁴ They maintain the static number of disordered gamblers means the expansion of commercial gambling has had no negative effect. But when asked to set a target, maintain this is an inappropriate measure for the success of regulation.

Ignoring evidence

Looking through the Gambling Commission's various reports, it is astounding how much evidence has been ignored. Even where the regulator has clear evidence, it has not developed a response. The Gambling Commission continue to monitor consumer and industry developments. It has noted an increase in mobile phone usage to gamble from 23% in 2015 to 44% in 2018, and higher risk gambling in young people, but has yet to assess the impact or potential additional harm resulting from these developments. The Commission has access to information that could be used to gain further insight but chooses to ignore it. Examples of this can be seen in the 33,000 contacts that it receives from consumers each year that could be utilised to identify consumers problems.²²⁵ Another example is bank transaction data that the

²²¹ HOL (2020), PAC (2020), NAO (2020).

²²² NAO (2020) p.10

²²³ PAC (2020) p.7

²²⁴ NAO (2020) p.8

²²⁵ NAO (2020) p.8 and PAC (2020) p.5

Commission already collects for anti-money laundering purposes, which could be used to understand better how people are gambling to protect them better.²²⁶

The Gambling Commission has the powers to require online gambling companies to provide data – yet has seemed reluctant to subject such data to scrutiny. It has not required the gambling companies to provide such transactional data to understand risk from products, changes in consumer behaviour over time, or to monitor compliance.

The regulator justified the absence of controls on online gambling products through agreeing with the gambling companies that their access to consumer data enabled them to intervene with individual players. It has not made sure that gambling operators are not abusing consumer data to exploit gamblers. There is evidence gambling companies have used sophisticated big data techniques to profile and target high spending problem gamblers to keep gamblers hooked. However, exposing this has required exploited consumers to hire their own lawyers to penetrate the opaque data practices of gambling operators.²²⁷ Meanwhile, operators have repeatedly used data protection as an excuse not to allow the joining together of data across operators to help vulnerable consumers, as has been achieved for utilities.

The gambling sector invests in product design. They make use of established commercial practices of product innovation, prototyping with players, small tests, observing the effect in the market – now aided by transactional consumer big data, and learning from other areas of ‘addictive and immersive technology.’²²⁸ However, data from game design and play is hidden from researchers and not scrutinised by regulators. Instead, academics have spent time trying to simulate gambling products.

The Gambling Commission and the Department continue to argue that they need to establish a sufficient evidence base to make changes to regulation yet fail to use their powers to collect said evidence and drag their feet on making meaningful changes for research and data.

Implications and recommendations

Real-world research for policy

The recent international evidence reviews for gambling harm prevention and harm reduction show that the evidence-based is dominated by research into interventions targeting individual behaviour (responsible gambling type interventions). Furthermore, this demonstrates these interventions limited efficacy.²²⁹ The state of gambling research has been described as an instance of the ‘inverse evidence law’, the tendency for there to exist less evidence and

²²⁶ PAC (2020) p.5

²²⁷ <https://www.nytimes.com/2021/03/24/technology/gambling-apps-tracking-sky-bet.html>

²²⁸ Newall (2018). Cassidy (2020); Schüll (2014)

²²⁹ McMahan et al. (2019); Blank et al. (2021) McAuliffe et al. (2020)

research about interventions that are most likely to be effective.²³⁰ As stated by the recent review commissioned by the National Institute of Health Research:

Previous experience suggests that the gambling industry will strongly resist and argue against proposals to introduce interventions that might regulate or restrict their commercial activities. Common arguments from commercial interests include the suggestion that the complexity of the relationship between gambling activity and associated harms and the scarcity of robust evidence of effectiveness are rationales for delaying policy interventions until better evidence is available...It is, therefore, imperative to ensure that a scarcity of evidence is not used as a justification for inaction in addressing the growing burden of gambling-related harms. Instead, although action still needs to be based on the best available evidence, implementation needs to be accompanied by a comprehensive evaluation of both the intended and unintended consequences. This approach will, in time, allow the current deficiencies in the evidence base to be systematically addressed.²³¹

In addition, the 'burden of evidence' needs to be shifted from those who have experienced harm to prove they have, to the regulator to demonstrate its regulation is effective at making gambling safe and preventing harm – before commercial products and practices are allowed onto the market.

Big data

The Gambling Commission needs to enhance its analytical capability to better identify consumer harm and intervene quickly, including taking advantage of big data. It has recognised that it lacks expertise in digital and emerging technologies.²³² With gambling increasingly moving online and becoming ever more sophisticated, there is a need for a tech-savvy regulator that understands and can stay ahead of the curve on digital technologies and big data. Gambling is an online harm and needs to be approached through that lens. DCMS, which also has responsibility for digital, online harms and the information commissioner, has done nothing to join up or ensure that the gambling regulator is fit for a digital age.

At the same time, operators' online gambling datasets and communications with customers (and offline where available) should be made available to researchers, without the requirement for a relationship with the regulator or gambling companies. This is an essential resource, and data is one of the core costs of research. Open access to data will also go a long way to addressing the significant power imbalance between the gambling sector, with access to knowledge and information on products and play, and researchers, the Government, and the public, with very little to no access.

²³⁰ Nutbeam, D.E., (2004). Getting evidence into policy and practice to address health inequalities. *Health Promotion International*, 9(2), pp.137-140.

²³¹ Blank et al (2021) p.e63

²³² NAO (2020) p.10

Independent funding

Funding for research needs to be raised through a statutory levy or ring-fenced tax and should be primarily awarded and administered through independent research councils. This would mean that research into gambling harms is attractive for the best researchers no matter the discipline and make funding available within academic structures.²³³ This is preferable to directing funding to a central, standalone centre, which will inevitably represent a particular perspective – rather than enabling the diversity of competing, independent research across universities, academics, and disciplines necessary to advance knowledge.

²³³ BMJ p.2

Chapter 4

Safer gambling products

Introduction

The literature on the structural characteristics of gambling products (and situations) spans at least a century, and these were the basis of previous gambling regulation.²³⁴ The legacy of this earlier approach to regulation can still be seen in land-based gambling but was not applied to remote gambling. This section looks at the evidence on structural characteristics of gambling products, product information and the current regulation of these, with an online focus.

The approach is to make accessible the dense and technical research on gambling products, to explain how they work to keep people gambling and how this makes them addictive. This tends not to be understood by governments or the public and can lead to bewilderment and stigma amongst non-gamblers, and gamblers, as to why people persist in playing when they are losing money and even experiencing harm.

Commercial gambling makes money through gamblers losing money, and all commercial gambling products are designed so that, in the long run, all gamblers lose. When gamblers win, they do so because other gamblers have lost.

Gambling product terminology

Structural characteristics are the elements that the gambling sector designs into gambling products to get people to lose money and continue to gamble, repeatedly and at higher stakes, even when they lose. These are the features that make gambling products addictive - resulting in incidences of loss of control, habitual and enduring gambling, problem gambling and gambling disorder.

The gambling situation is the immediate location of a gambling product, such as a casino, betting shop, arcade, or remote gambling website. The structural characteristics of gambling

²³⁴ Cornish (1978); Griffiths, M., (1993). Fruit machine gambling: The importance of structural characteristics. *Journal of gambling studies*, 9(2), pp.101-120.; Newall, P., Russell, A. and Hing, N., Structural characteristics of fixed-odds sports betting products. (in press - a); Royal Commission. (1951) *Report of the Royal Commission on Betting, Lotteries and Gaming, 1949-1951*. Cmd. 8190. London: HMSO; Weinstein, D. & Deitch, L. (1974) *The Impact of Legalised Gambling. The Socioeconomic Consequences of Lotteries and Off-Track Betting*. New York: Praeger.

products extend into or are supported by the characteristics of gambling situations – in the way venues and websites are designed, communication means of depositing and availability of funds and access. The situation of a gambling product can reduce or add to its riskiness. The structural characteristics of gambling products are also reinforced by the wider advertising, marketing, and sponsorship activities of the gambling sector.

Product information is that which is provided to a gambler about the how a gambling product works, the chances of winning, prizes and payout, price and safety - rather than, for example, messages to a player about their account or play, or public health campaigns.

The structural characteristics of gambling products

Researchers may use different terminology, but there is consensus on the structural characteristics that make up gambling products. Some responsible gambling advocates have argued that it is impossible to generalise structural characteristics across types of gambling product.²³⁵ However, researchers have demonstrated that the same structural characteristics are found in gambling, from lotteries to casino games and slots, to sports betting.²³⁶ Each characteristic's specific parameters and how they combine generate the different gambling products and their level of risk.

Fast, continuous play

There are overwhelming consensus and evidence that a core element of risk in a gambling product is enabling fast, continuous play. This was acknowledged by the Gambling Commission in 2020.²³⁷

There are three components involved:

- Speed – the time between the bet, outcome and being able to gamble on the same game again. The shorter the time between the bet, the outcome and being able to gamble on the same game again, the higher the potential risk.
- Payout of winnings – the time between the outcome and payment of any winnings and being able to place a new bet. Where payout is rapid or immediate, this facilitates the re-staking of winnings in the game and continued play.
- Continuity – how long a session can be continued without stopping or being extended with a new type of game, the extent to which this rapid cycle of bets, outcomes and bets can continue without stopping.

²³⁵ Griffiths (1993)

²³⁶ Cornish. (1978). Newall et al. (in press - a)

²³⁷ <https://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2020/Gambling-Commission-publishes-first-National-Strategic-Assessment-alongside-its-latest-annual-Compliance-and-Enforcement-Report.aspx>

Research demonstrates fast and continuous gambling products produce harm because:

- Net expenditure increases because a greater number of bets can be placed over any given period. While losses are also affected by stake size, house edge, volatility and payout structure, if these other features are held constant, the faster the game, the more is lost.
- This provides a greater number of opportunities for loss chasing. Extremely fast games (e.g., less than half a second) may prompt larger bet sizes.
- Faster, more continuous games reduce the opportunity for reflection and engaged decision-making regarding the consequences of previous gambling and the likely effects of further gambling.
- Rapid payout of winnings from the game can create an immediate reinforcement for further gambling, and speed creates a very rapid pattern of reinforcements in general.
- Speed produces physiological arousal and difficulty inhibiting motor responses.
- This contributes to an experience of arousal and excitement, or alternately, immersion, dissociation, zoning out or flow, which become sought by gamblers to modify mood, along with difficulty quitting the game.
- This may be further facilitated by fast, continuous games supported by automated (e.g., 'auto-play') and expedited ('turbo-play') betting options.²³⁸

Concerns regarding fast, continuous play were originally focused on casino games (including slots). However, in sports betting, product innovations such as in-play wagering and micro-betting, cash-out opportunities, and expansions in the number and variety of betting markets extend opportunities for faster, more continuous play on sports.²³⁹

Nonetheless, responsible gambling advocates have argued that if speed is reduced, gamblers will simply stake more and lose the same amount of money or that games will become 'unplayable' for gamblers.²⁴⁰

Staking size and options

There is some complexity to the amount gamblers can lose, based on staking. In addition to what they stake, how much a gambler loses in a session is affected by:

- Speed - as outlined above.

²³⁸ Blaszczynski et al. (2014); Parke (2020); Harris, A., Gous, G., de Wet, B. et al. The Relationship Between Gambling Event Frequency, Motor Response Inhibition, Arousal, and Dissociative Experience. *J Gambl Stud* 37, 241–268 (2021). <https://doi.org/10.1007/s10899-020-09955-0>

²³⁹ Parke. (2020).; Parke, A. and Parke, J., (2019). Transformation of sports betting into a rapid and continuous gambling activity: A grounded theoretical investigation of problem sports betting in online settings. *International Journal of Mental Health and Addiction*, 17(6), pp.1340-1359; Newall, P., Russell, A. and Hing, N., Structural characteristics of fixed-odds sports betting products.

²⁴⁰ Blaszczynski et al. (2014).; Parke. (2020)

- The return to player or house edge – how much of the gamblers' stakes are retained by the gambling company and what proportion is returned to the players in winnings, with a higher house edge resulting in greater losses.
- Volatility – how the game achieves house edge and the extent to which this varies in the short term (i.e., between player sessions) due to pay-outs' frequency and size.

Responsible gambling advocates have used this interaction as a reason why stake limits are not effective or should not be imposed, an argument frequently advanced in opposition to the reduction of stakes on Fixed Odds Betting Terminals (FOBTs).²⁴¹

However, staking size and staking options are fundamental to financial loss, in a session or over time. Financial loss is at the core of gambling harms, and gambling-related harm increases as gamblers' total losses increase.²⁴²

There are four aspects of staking that contribute to risk:

- Stake size.
- Multiplier potential – the ability to increase stake size, the potential size of win from any given size bet, increase in the win with increasing stake size.
- Variable bet – the possibility for the gambler to choose how much to bet, with a variety of different stake-levels or kinds of bets.
- Multi-betting – the possibility to place several bets or be active in several games at the same time.

Fundamentally, the more a gambler can stake, the more they can lose. The ability to increase stake can result in gamblers making bets of increasing size to achieve higher wins, chase losses, or achieve free spin or bonus features. Placing multiple simultaneous bets increases the amount lost while contributing to potential loss of control and the tracking of time and money.²⁴³

Multiple, complex wagering options can increase the illusion of skill or control in an entirely random game, or alternately, in games with elements of skill, appeal to those overestimating their skill and its role. In fact, in both instances, the complexity of wagering hinders the ability of players to understand odds or the probability of winning.²⁴⁴

Primary behavioural reinforcement – payout

Gambling products have at their core the exciting experience of taking a risk and anticipating a potential reward. The primary behavioural reinforcement – the event that results in more of the

²⁴¹ For example: Parke and Parke (2013)

²⁴² Markham et al. (2014); Markham, F. and Young, M., (2016). Commentary on Dowling et al. (2016): Is it time to stop conducting problem gambling prevalence studies?; Livingstone, C.H., Woolley, R., Zazryn, T.R., Bakacs, L. and Shami, R.G., (2008). *The relevance and role of gaming machine games and game features on the play of problem gamblers*. Independent Gambling Authority.

²⁴³ Cornish (1978); Griffiths (1993); Newall et al. (in press – a); Livingstone (2017)

²⁴⁴ Livingstone (2017); Newall (2020a); Newall et al. (2020b); Newall et al. (2020c)

same behaviour – is winning money. In psychology, reinforcement means anything that increases the likelihood a response will occur. Instrumental or operant conditioning is the reinforcement of behaviour by using rewards. In the context of gambling, this is money or some form of prize.

It is extensively evidenced in psychology that people develop habitual behaviour, which is hard to extinguish when exposed to an unpredictable, irregular, variable, or random pattern of rewards in response to specific activities.²⁴⁵ Gambling is an activity that is inherently about intermittent, unpredictable rewards, the most potent of behavioural modifiers.

Different types of gambling products use this type of reinforcement in different ways, with different reinforcement schedules. This is often described in terms of volatility. As above, volatility refers to the extent to which a game conforms in the short term to its overall long-term house edge – how money is lost and won over the course of a session. This is related to the size of prizes and the frequency with which they are rewarded. A game that makes frequent small payouts, with smaller prize sizes, is less volatile, and the amount returned to a player is more predictable over a shorter period, such as a session of play. The opposite is the case for a more volatile game, with many losses and larger, infrequent wins.

Evidence shows that both intermittent reward patterns reinforce gambling behaviour, contribute to persistent, excessive play, and the development of disordered gambling, which has a neurological basis.²⁴⁶ The different patterns give rise to different experiences and appeal for gamblers. A volatile game with a risk of high loss and high reward produces excitement, anticipation, and suspense (often associated with casino table games). A game with many small wins produces flow or zoning out (often associated with slots).²⁴⁷

The literature describes games as having different profit-making strategies, increasing loss predominantly through higher staking or through increased 'time on machine'. Gambling companies often seek to include a mixture of such products to extract money from different kinds of gamblers. It is also the case that gamblers can vary the reinforcement schedules of games within the game parameters to suit themselves. It is possible to play slots at high stakes and casino games with low stakes, which varies the payout and hence the reinforcement.²⁴⁸

In addition to the power of reinforcement through the unpredictable winning of money, there is evidence of other ways that volatility can contribute to harmful gambling.

²⁴⁵ Cornish. (1978); Livingstone. (2017); Parke. (2020).

²⁴⁶ Parke. (2020); Zack, M., George, R.S. and Clark, L., (2020). Dopaminergic signaling of uncertainty and the aetiology of gambling addiction. *Progress in Neuro-Psychopharmacology and Biological Psychiatry*, 99, p.109853.

²⁴⁷ Abbott, M., Binde, Clark, L., Hodgins, D., Johnson, M., Manitowabi, D., Quilty, L., Spångberg, J., Volberg, R., Walker, D. and Williams, R. (2018). Gambling Types. Conceptual framework of harmful gambling: An international collaboration. Third edition. [https://www.greo.ca/Modules/EvidenceCentre/files/Abbott%20et%20al%20\(2018\)%20Conceptual%20framework%20of%20harmful%20gambling%20-%20third%20edition.pdf](https://www.greo.ca/Modules/EvidenceCentre/files/Abbott%20et%20al%20(2018)%20Conceptual%20framework%20of%20harmful%20gambling%20-%20third%20edition.pdf); Schüll, N.D., (2014). *Addiction by design: Machine gambling in Las Vegas*. Princeton University Press.

²⁴⁸ Delfabbro and King (2019)

- With volatile games, gamblers may learn, through experience, that large wins can sometimes follow long losing streaks, and so chasing losses sometimes (albeit infrequently) pays off. This reinforces the gambler's fallacy that a string of losses makes it statistically more likely that a win is more likely when outcomes are entirely random.
- There is some evidence that jackpots influence user behaviour, including persistent play increasing expenditure and bet size. The experience of a 'big win' early in a player's gambling experience is a very salient and powerful reinforcer whose power can persist despite ongoing losses.²⁴⁹
- Large upward spikes in available balance, caused by substantive wins, have the potential to incentivise chasing and sensitise players to losing money quickly.
- However, smaller, more frequent wins are associated with persistent play in a state of disassociation.
- As with speed, volatility patterns produce the experience of arousal and excitement, or alternately, immersion, dissociation, zoning out or flow, which become sought by gamblers to modify mood.²⁵⁰

Additional behavioural reinforcers – fake reward events, images, lights and sounds

Beyond the core mechanisms of randomly winning money, gambling products make use of other behavioural techniques. Classical conditioning is the association of outcomes with stimuli such as sounds or lights, or images. When the stimuli occur, the person comes to feel that a positive event had occurred. This positive reinforcement may even be the case where an event is not favourable.

Gambling products make use of a wide variety of upbeat and stimulating images, animations, and graphic effects, colours, sounds and lighting effects. Importantly, these are not only associated with winning but also with other, essentially losing events, such as near misses, or payout less than the original stake, and even outright losses. Any event, even losing, can become associated with positive stimuli and generate positive psychological rewards. This results in an additional set of reinforcements to gambling behaviour that are free to the gambling company and function to obscure that the gambler is losing money.²⁵¹

Usually, these stimuli are built around a theme. Game melodies are upbeat, use major chords, and conclude on a rising chord structure, and there are flashing lights and waves of colour. Games employ sounds such as animals galloping, engines revving, tyres screeching, simulations of coins dropping into a tray, railway engine whistles or horns, or some other sound effect. Animated effects include treasure chests opening to display jewels and gold, dolphins

²⁴⁹ Livingstone (2017); Parke (2020).

²⁵⁰ Livingstone (2017); Parke (2020).

²⁵¹ Livingstone (2017).

leaping, cars crashing through the screen, goddesses or other supernatural creatures appearing and smiling.

As gambling products became digital and moved online, the capacity for such effects and the mutability of a games' appearance has considerably increased and been transferred from being mainly associated with slots to now appearing in other games, such as roulette.

The two most studied examples of faked reinforcements are near misses and losses described as wins in electronic gaming machines (offline and online slots). Reels no longer consists of mechanical rows of three symbols. There are multiple reels (usually five), and reels may have 30 or 40 symbols. The extensive set of different combinations of symbols create many more events – for example, a combination of a few symbols, on diagonal, zigzags and other patterns, signalled by sounds, light and music – that pay back a small amount less than the stake. These are referred to as losses described as wins (LDWs).

There is considerable evidence that players experience LDW as exciting, enjoyable events, as opposed to losing (even though the player has actual lost), generate a physiological response similar to that exhibited from a win, and lead the gambler to overestimate how much they are actually winning. LDW increase the amount staked per spin, increasing expenditure per user and the overall level of gambling revenue. They deliver reinforcement at up to twice the rate possible via a single-reel game, establishing behaviour that is more difficult to extinguish than that achieved by a single-line game. The evidence demonstrates that the effect of LDW comes because players are led to falsely interpret these as winning rather than losing events.²⁵² Despite this evidence, responsible gambling advocates have suggested that LDW is good for gamblers as they return money to them, making the game more predictable.²⁵³

"Near misses" involve the display of a series of symbols that are perceived to come close to providing a reward but which do not, in fact, deliver this. Near misses are part of any gambling. By their very nature, slots must sometimes produce outcomes where a winning symbol is on the wrong line for a big win. In electronic slots, some jurisdictions may forbid the engineering of near misses via the game math. However, there is a practice of 'starving the reels' so that the number of winning symbols is not constant – e.g., there are fewer winning symbols in the early reels and more in the latter reels. The starving of the early reels reduces the odds of achieving a substantial win, but the player is much more likely to see various groups of the winning symbol that look like near misses, providing further reinforcement to play cost-free to the gambling company. The evidence shows that, while they have varying effects on players' emotional state or betting behaviour, they produce physiological arousal associated with reinforcement and reward and motivate continued play.²⁵⁴

²⁵² Livingstone. (2017); Barton, K.R., Yazdani, Y., Ayer, N., Kalvapalle, S., Brown, S., Stapleton, J., Brown, D.G. and Harrigan, K.A., (2017). The effect of losses disguised as wins and near misses in electronic gaming machines: A systematic review. *Journal of gambling studies*, 33(4), pp.1241-1260.

²⁵³ Parke (2020)

²⁵⁴ Parke (2020); Barton et al. (2017)

The multiple reinforcements in slots, associating stimuli with many different events, and the complexity of combinations of symbols, impossible to compute, are a key component in creating the pleasurable experience of flow or zoning experienced by players while losing track of time and money – and core to the addictiveness of these products.²⁵⁵ This experience is supported by the interface design which does not display how much a person has lost or even how much credit remains.

Cognitive distortions

In addition to behavioural learning, gambling products take advantage of various fallacies and heuristics built into how people think and process information.

The human tendency to believe that a certain event is more or less likely, given a previous series of events, is extensively evidenced in various contexts. It is termed the gamblers' fallacy – people, in general, tend to attribute meaning to random events and struggle with the concept of pure randomness. Gambling products take advantage of this aspect of human cognition by including elements that create an illusion of control – that gamblers actions can affect the outcome of a chance event. The greater the level of personal involvement, the more likely people believe their actions determine the outcomes. This illusion of control is associated with greater interest and involvement in the game and the persistence of gambling.

Gambling products can do this with messages reinforcing ideas about luck and superstitions or suggesting the gambler is beating the odds. They also do this through design features that mimic a skill-determined situation so that gamblers come to believe that skill applies to the gambling product. The most evident example of this is the display of previous numbers in roulette, hot and cold numbers, run on winning or losing numbers, which lead to players believing they have some influence over an entirely random event. This illusion of control is created in slots by features such as the choice to replace winning symbols with another kind, or features which whereby the player pushes a button, ostensibly to decide when to stop the reels spinning – when in fact the winning outcome has been predetermined by the game math. These actions make no difference to the outcome of the game.²⁵⁶

Even where there is a contribution of skills to outcomes, as in sports betting, gamblers still overestimate its importance. Sports bets are designed to take advantage of this, providing increasingly complex forms of bets and custom sports betting products where consumers can create their own bet, appealing to the priority placed on skill and knowledge in the sports betting community.²⁵⁷ However, the bets' complexity makes it increasingly difficult for bettors to understand or make calculations of probability with any accuracy.

²⁵⁵ Schull (2014); Livingstone. (2017).

²⁵⁶ Revealing Reality. (2017); Cornish. (1978); Griffiths. (1993); Livingstone. (2017).

²⁵⁷ Newall (2020a); Newall et al. (2020b); Newall at all. (2020c); Abbott et all., (2010).

The general difficulty of understanding how gambling products work, as well as the lack of or opacity of information on how they work, leads gamblers to develop their own 'heuristics' of how to play through experience, so that, over time, gamblers come to increasingly believe in their knowledge, skill and influence over the game the more they play.²⁵⁸

Gambling takes advantage of a further well-evidenced cognitive tendency in humans, the availability heuristic. This is the tendency to overestimate the likelihood of an event occurring based on whether it is something they can easily imagine, relate to, or recall examples of. This is most evident in the repeated emphasis on winners, winning and providing examples of other winners, leading to an overestimation of the probability of winning. Sports betting also takes advantage of this by constructing sports bets that players can imagine happening (for example, a star player scoring three goals), but that are extremely unlikely to occur.²⁵⁹

Gambling products also remove the everyday value of money and financial decision-making by converting money to chips or tokens or virtual credits of a different value than currency. In particular, online gamblers describe how 'digital' money deposited into gambling accounts and used to gamble stops feeling like money.²⁶⁰

Emotion modification

Gambling products are designed to produce experiences and emotions that gamblers find pleasurable, which motivates them to gamble. In this way, motivation to gamble moves beyond the goal of winning money. These pleasurable states can also remove the negativity from the experience of losing money.

This includes the experience of thrill and excitement, usually associated with 'high rolling' in casino games.²⁶¹ In sports betting, people may experience pleasure even in losing bets if they believe they have demonstrated their skill and knowledge in choosing or constructing a complex bet.²⁶²

Another kind of experience is evidenced in relation to slots. That of dissociation, or being 'in the zone', flow, or dark flow.²⁶³ Flow is a psychological state well-established in the wider psychological literature, 'of deep but seemingly effortless involvement, a distorted perception of time, and a sense of control'. Flow has been shown to elicit high levels of enjoyment and performance across various contexts, including sports and work, and usually has positive

²⁵⁸ Cornish (1978); Griffiths (1993).

²⁵⁹ Revealing Reality (2017); Newall (2020a); Newall et al. (2020b); Newall et al. (2020c)

²⁶⁰ Parke (2019)

²⁶¹ Schüll (2014)

²⁶² Griffiths (1993)

²⁶³ Schüll (2014); Oakes, J., Pols, R., Lawn, S. and Battersby, M., 2020. The "zone": A qualitative exploratory study of an altered state of awareness in electronic gaming machine problem gambling. *International Journal of Mental Health and Addiction*, 18(1), pp.177-194.; Lavoie, R.V. and Main, K.J., (2019). When losing money and time feels good: the paradoxical role of flow in gambling. *Journal of Gambling Issues*, 41.

consequences, contributing to achievement, happiness, and overall well-being. Where players on slots experience flow, it makes playing inherently enjoyable to them and difficult to stop.²⁶⁴

But being in a state of flow also results in 'autopilot' or 'dissociation', bringing a constriction of attention and awareness, inattention to memory and self-observation, a decreased capacity to exercise critical appraisal and make rational decisions, and a loss of sense of time.²⁶⁵ The result is a paradoxical situation when 'losing money and times feel good', a dangerous state wherein gamblers lose the ability to realistically appraise the use of money, the consequences of their actions, exercise the will to cease gambling or learn from harms – but which players are highly motivated to seek.²⁶⁶

Pleasurable experiences, such as those from gambling, are sought and used as a modifier of mood, by all people, in everyday life but may also be sought as an escape or to cope with more serious or enduring negative emotions, stress and situations.

Association with other leisure activities

Early literature and regulation included the extent to which gambling was associated with other leisure activities or social contexts (for example, sports) as a significant structural risk factor. This was because such associations were understood to increase people's interest in gambling because they are interested in the subject of the gamble.²⁶⁷

Techniques for increasing 'immersion' are incorporated into gambling products from other online activities and increase their appeal to wider audiences.

There has been a commentary on incorporating gambling and gambling-like elements into video-gaming, but gambling products also work vice versa by creating associations with video-gaming in the gamification of gambling. For example, gambling has begun to make use of 'levels' and virtual reward such as badges, trophies, skins or avatars, linked to the amount of gameplay completed, or how fast this is done, or the attributed 'rank of the user'. These use devices familiar to video-gamers to incentivise faster, more frequent play.²⁶⁸

Slots have begun to incorporate skill elements copied from video gaming. Early data suggests that these are most appealing to younger demographics familiar with such components from video gaming. The skill elements can lead to players potentially overestimating their level of control over the game.²⁶⁹

²⁶⁴ Lovie (2019). p.54

²⁶⁵ Okes (2020).

²⁶⁶ Lovie. (2019). p.53

²⁶⁷ Cornish. (1978).

²⁶⁸ Parke. (2020).

²⁶⁹ Delfabbro, P., King, D. and Gainsbury, S.M., (2020). Understanding gambling and gaming skill and its implications for the convergence of gaming with electronic gaming machines. *International Gambling Studies*, 20(1), pp.171-183. ; Pickering, D., Philander, K.S. and Gainsbury, S.M., (2020). Skill-based electronic gaming machines: A review of product structures, risks of harm, and policy issues. *Current Addiction Reports*, 7(2), pp.229-236.; Sally M. Gainsbury, Kahlil S. Philander & Alex Blaszczyński (2020)

Online gambling makes use of techniques from social media, chatrooms, user posting and commentary on a game, the implications of which are still unknown, and of considerable concern from a harm minimisation perspective.

Online gambling companies 'reskin' the same product with the same or marginal changes to game algorithms and create associations with popular culture (e.g., video games, television shows, cartoon characters, superheroes). In this way, operators increase play by providing what appear to be multiple options – at a marginal cost.

In addition, this allows gambling companies to circumvent rules on appeal to children and young people as they can associate gambling products with people and culture associated with youth and can then advertise and promote these products. Examples include superheroes (Batman, Catwoman), manga and anime, Alice in wonderland, Who Wants to Be a Millionaire, and Father Christmas.

The gambling situation

There is a considerable body of literature regarding how gambling situations are designed to support and add to the effect of gambling products' structural characteristics, suspend usual financial decision-making, and encourage people to play and spend more. This includes venue design, the 'choice architecture' of gambling websites, and in-situation messaging from gambling companies. This also takes place through wider advertising and marketing to the general population. There is considerable evidence that being placed online adds many situational features that increase the riskiness of products compared to offline.²⁷⁰

Here, two aspects are important to note:

Accessibility

The ease and extent of access increase the risk from a product, and conversely, controlling access is one way of managing the risk of a product – online, products are available 24/7, anywhere, on a personal device.

Payment

Ease and immediacy of access to money and depositing add to risk - The availability of multiple, instant, electronic forms of depositing creates risk, as does creating friction in withdrawals and

A qualitative study of participant experience with skill gaming machines in comparison to electronic gaming machines, *International Gambling Studies*, 20:3, 452-465

²⁷⁰ Griffiths, M. and Parke, A., (2008). Internet Gambling. In *Encyclopedia of Internet Technologies and Applications* (pp. 228-234). IGI Global.

reverse withdrawal, as this delay may result in the use of funds for continuing gambling – practices of online gambling companies that have been criticised for several years.²⁷¹

In addition, the situation of gambling online creates many of the risks identified in individual products, as it allows rapid, simultaneous gambling across multiple different games, with many staking options.

How gambling products cause harm and addiction

Through their design, gambling products hijack behavioural, cognitive, emotional, and physiological dynamics of human psychology to get people to continue to gamble and lose money.²⁷² Product design modifies behaviour within a gambling session, increasing the likelihood of losing control, difficulty quitting the game and increased loss of money. The design features of the game increase the likelihood of repeated gambling, that play becomes an ingrained habit, and the development and maintenance of problem gambling and gambling disorder.²⁷³ The evolution of design over time is to increase profitability. This means that gambling product innovation, evolution and promotion is always in the direction of increased risk of harm and addiction to the consumer when unregulated.²⁷⁴ Digitalisation considerably increases the malleability of products and the potential for addictive design.

Evidence for product controls to reduce harm

The recent, comprehensive reviews of interventions to reduce and prevent harm find that voluntary responsible gambling tools have little efficacy, whereas there is theoretical and empirical evidence for limiting game features that produce excessive gambling.²⁷⁵

...modifications that undo features of games that promote excessive gambling likely have efficacy... There are evidence-based reasons to doubt that user-directed tools are sufficient to prevent risky gambling'.²⁷⁶

Studies of the restrictions on EGM features show evidence of effectiveness. An Australian study evaluated the effectiveness of three proposed modifications to the structural characteristics of EGMs as harm minimisation strategies for non-problem and problem gamblers. Structural changes included reducing the maximum bet per spin, reducing reel spin and removing large

²⁷¹ Gambling Commission (2021)

²⁷² Insert references

²⁷³ Yücel, M., Carter, A., Harrigan, K., van Holst, R.J. and Livingstone, C., (2018). Hooked on gambling: a problem of human or machine design?. *The Lancet Psychiatry*, 5(1), pp.20-21. p.20.

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²⁷⁴ Cornish. (1978); Newall. (2018); Livingstone. (2019); Cassidy. (2020); Schüll. (2014); Heidhues et al. (2016a); Heidhues et al. (2016b)

²⁷⁵ Blank et al. (2021); McHahon et al. (2021); McAuliffe et al (in press).

²⁷⁶ McAuliffe et al. (in press). p.32

note acceptors. Those playing machines with a \$10 maximum bet spent more time, placed more individual bets, sustained greater losses, smoked more cigarettes and consumed more alcohol than those playing machines with a \$1 maximum bet. Patterns of play with faster reel spin speed (3.5 compared to 5 seconds) and for machines with and without the high denomination note acceptors did not differ. Problem gamblers were four times more likely to wager in excess of \$1 a spin compared to non-problem gamblers. This research informed the Australian Productivity Commission's recommendation for a 'Dollar Bet Limit' in 2010.²⁷⁷ Former chief economist and head of research at DCMS, Dr Stephen Creigh-Tyte, supported the conclusions of the Australian studies:

...binding limitations on wagers can limit the maximum session losses suffered by punters. The effect tends to be greater the higher the prize and the larger the probability of winning and the lower the time taken by each game.²⁷⁸

UK online casino games are not subject to any limitations on stakes or speed-of-play. Research in press investigated the proposal to ensure that no online casino game can be played quicker than its in-person equivalent, using an experiment with 1,002 UK online roulette players given £4 to play with. Participants played on a commercial online roulette game, which was slowed down to a limit of 60 seconds. There was no effect on participants' choice to gamble at all, an insignificant reduction of participants' probability to gamble everything, and a significant reduction in money gambled amongst the remaining participants. This took place because a reduction in the number of spins outweighed a marginal increase in per-spin bet sizes. This demonstrates that reducing speed reduces expenditure.²⁷⁹

Ranking product categories by risk

Scoring scales have been developed to evaluate the risk of available and planned gambling types. For example, the Public Health Agency of Sweden, together with German researchers, has developed scoring scales based on seven different factors (versions of the structural characteristics outlined above), weighed together, and assigned values according to the degree to which they affect the risk of developing problems with gambling. The different forms of gambling on the Swedish market have been divided into low risk, medium and high 'risk potential', as follows:

- Gambling forms with low-risk potential have a long time between bet and outcome, a short gambling time and few variations. An example is lottery tickets.

²⁷⁷ Sharpe, L., Walker, M., Coughlan, M.J., Enersen, K. and Blaszczynski, A., (2005). Structural changes to electronic gaming machines as effective harm minimization strategies for non-problem and problem gamblers. *Journal of Gambling Studies*, 21(4), pp.503-520.

²⁷⁸ Lepper, J. and Creigh-Tyte, S., (2008). Some results on the efficacy of methods of regulating machine gambling.

²⁷⁹ Philip W. S. Newall, P.W.S., Weiss-Cohen, L., Singmann, H., Boyce, W.P., Walasek, L. and Rockloff, M. (in press - b). An online roulette speed-of-play limit reduces gambling expenditure.

- Gambling forms with medium-risk potential have a shorter time between placing a bet and the outcome, and it is usually possible to extend the total gambling time with a suite of gambling rounds. Examples include most sports gambling, gambling on horses and live poker.
- Gambling forms with a high-risk potential have a short time between placing the bet and the outcome, fast payout of winnings, the possibility of long gambling sessions, use light and sound, and are available on the Internet. Examples include gambling machines and casino gambling.

The advance of this over previous product scoring systems is that the researchers can validate the risk scores using data from the Swedish longitudinal study. This shows a clear association between the risk potential products are assigned and problem gambling.²⁸⁰

Product information

In general, consumer regulation requires that consumers be provided with accurate information about products, their features, safety, and price so they can make informed purchasing choices. Health information and warning labels on products are one component of public health approaches and are used for alcohol, tobacco, and food. The evidence from other public health issues is that such information can 'nudge' behaviour and have some beneficial effect. However, these effects are minimal, favour more privileged people, and other structural interventions are also required, such as restrictions on price, product availability or product characteristics (e.g., the tax on sugar content).²⁸¹ In addition, to have an effect, this information needs to be implemented in forms easily grasped and acted on by the public. Evidence from other risk and health communication fields suggests that simple, uncomplicated presentation of risk information is more rapidly comprehended, and therefore more likely to stimulate behaviour change.²⁸²

Current gambling regulation is based on the idea of consumers making rational choices in their own interests. However, there is extensive evidence of the poor quality of gambling product information, and that price, the probability of winning, how gambling works and the risks of different products are very poorly understood by gamblers and the public.

In gambling, it is particularly difficult for gamblers to understand the price for the use of the product. As all commercial gambling games are constructed so that the gamblers will, on

²⁸⁰ Public Health Agency Sweden (2014). What are the features that make gambling risky? Swelogs Fact Sheet, No 16, April 2014. <https://www.folkhalsomyndigheten.se/contentassets/d225745561374cbc904924b71cab98c0/swelogs-facts-sheet-no16-2014-what-are-the-features-that-make-gambling-risky.pdf>. Meyer, G., Fiebig, M., Häfeli, J. and Mörsen, C., (2011). Development of an assessment tool to evaluate the risk potential of different gambling types. *International Gambling Studies*, 11(2), pp.221-236.

²⁸¹ Nuffield Council on Bioethics (2007).

²⁸² Wogalter et al (2002) Research-based guidelines for warning design and evaluation; <http://www.pcori.org/>;

average, lose money over time, the 'price' of gambling can be understood as the theoretical loss.²⁸³

In non-skilled gambling games (e.g., slots, roulette), where chance is the sole determinant of outcomes, the theoretical loss can be accurately calculated. This information is usually provided to consumers as a Return to Player (RTP) ratio. This is the proportion of each wager a game is designed to return on average to users (e.g., 85%), over the course of the game cycle. The converse of this is the average deduction from the gambler's wager, the 'house edge' (e.g., 15%).

But this theoretical return (or loss) is extremely unlikely to be achieved in the scale of an individual's interaction with the game. This is because of the many possible outcomes and the variability of outcomes over short periods. The actual RTP is also affected by the volatility, prize frequency and structure (e.g., less frequent and higher value wins).²⁸⁴ In addition, in games that allow immediate re-staking of winnings, the RTP applies to the total amount bet, not the amount the gambler has inserted.²⁸⁵

As outcomes over short periods are subject to significant variation, it is difficult for players to determine player returns and whether this is or is not in line with RTP with any accuracy when they are playing.²⁸⁶ RTP provides information on the cost of play only indirectly by highlighting the average payout, rather than the average amount kept by the house.²⁸⁷ Players tend not to be aware of or not to understand RTP messages. A common misconception is that they should leave the game with an amount consistent with the return to player ratio advertised.²⁸⁸

Also not understood or disclosed to players is that 'free' spins and bonus rounds are free to the house but not to players, as they are deducted from the overall RTP. This means a player that does not understand that free spins will have lower RTP. The same applies to progressive jackpots, whether stand-alone or linked across many machines or games online. The game makes a predetermined contribution to the jackpot pool, which is deducted from the RTP, so except for the winner, RTP is reduced for all players of the game, while motivation to play is increased.

The stark maths of price and the probability of winning in gambling products are not disclosed to consumers and certainly not in any form that can be easily grasped. This is demonstrated in simulations of EGM gambling from Australia:

- Slots can have 50 million possible outcomes. For a game with 35,640,000 outcomes, the time it would take to get all the possible outcomes would be 5.6 years of continuous use (at game intervals of 5 seconds per spin, for 24 hours per day, every day)²⁸⁹. However, the

²⁸³ Newall et al. (2020) p.4

²⁸⁴ Livingstone et al. (2019); Parke et al. (2016)

²⁸⁵ Newall et al. (2020a). Statistical risk warnings in gambling. *Behavioural Public Policy*, pp.1-21. p.4

²⁸⁶ Woolley, R., Livingstone, C., Harrigan, K. and Rintoul, A., (2013). House edge: hold percentage and the cost of EGM gambling. *International Gambling Studies*, 13(3), pp.388-402.

²⁸⁷ Newall et al. (2020b). 3

²⁸⁸ Revealing Reality. (2017); Newall (2020b); Livingstone et al. (2019); Beresford, K. and Blaszczyński, A., (2020)

probability that even this length of play would produce all possible results is very close to zero.

- A user operating an EGM with a house edge of 15% will, on average, lose 15% of their wager at each spin. The effect is cumulative. So, if a user inserts \$10 and wagers \$1 each spin, even if the game performs exactly as predicted (and this is extremely unlikely), the user will exhaust their funds in little more than five minutes (at the rate of one wager every five seconds). With \$5 bets, this process would occupy a little over one minute.
- It would require 24,703,765 spins to achieve a 50% probability (a 1 in 2 chance) of winning the major prize. Wagering a single line at 40¢ per spin at intervals of 5 seconds to achieve this 1 in 2 chance would cost nearly \$1.2 million and occupy 1,429.6 days (or 3.9 years) of continuous use.²⁸⁹

The calculation of theoretical loss (price) is more complicated with gambling games with an element of skill, as this is also influenced by the gambler's choices. At the current time, for such gambling forms, it is usual that no information is provided on price or house edge. For example, fixed odds sports betting is identified as an area of increased risk, with continuous in-play betting, gambling companies are developing and promoting bets with greater complexity, that manipulate cognitive bias regarding the probability of events and appeal to skill, and which have much higher house edge. There are identifiable patterns in the variation of the house edge in soccer betting, and the variation in the house edge across different soccer bets is large – for example, varying from a low of around 5% for home–draw – away bets to highs of over 50% for certain bets at long odds.

This high degree of variation in the house edge exceeds what can be found in any one non-skilled gambling form, providing a strong rationale for the provision of statistical risk warnings in sports betting.²⁹⁰

Current gambling product labels do not provide consumers with information that could be used to make an informed comparison of relevant products and an understanding of the specific risks of using them. Warning labels are generic. Studies show that the most common message used by the gambling industry in the UK, 'when the fun stops, stop', does not reduce gambling and has either no beneficial effect or a small backfire effect on gamblers' behaviour when tested across betting and casino products.²⁹¹ Other gambling warning labels warn gamblers only about the product they are currently using, an approach most often applied to electronic gambling machines. This 'product-specific approach fails to enable informed comparisons of relevant products by not providing comparable cross-product information'.²⁹²

²⁸⁹ Livingstone (2017) p.5-6

²⁹⁰ Newall et al. (2020a). p.6

²⁹¹ Newall et al. (2021). No credible evidence that UK safer gambling messages reduce gambling. <https://psyarxiv.com/hv6w9/>

²⁹² Newall et al. (2020a). p.2

Gambling companies' obscure price or theoretical loss information or 'safer gambling' messages in the way they implement messages. A field study of 363 online roulette games across 26 major UK online operators found that none used the house edge, while a return-to-player warning label was found on 98.3% of games. Furthermore, 95.5% of return-to-player statements used the smallest font size on the screen, 99.7% used the lowest level of text boldness from the screen, and 16.8% used acronyms in place of the term 'return-to-player' (e.g., 'RTP is 97.2973%').²⁹³ Players in the UK said product information was hard to find, lacks stand out, wordy, too long, complicated, contained confusing numerical concepts and was difficult to understand.²⁹⁴ This is a practice identified in the behavioural science literature as sludge.

Firms can help consumers by structuring choices in a way that helps them make better decisions --- via nudges. However, firms may instead prefer to profit by making it harder for consumers to make good decisions --- via sludge.²⁹⁵

The limited, ineffective, and obscured price, product and safety messages are drowned out by dark nudges – misinformation in the gambling situation, which encourages false beliefs and confuses players about the facts regarding gambling products, and which push people towards riskier, more profitable products or bets. This includes framing all information around winning, a 'surround sound' of stimulating exciting immediate communications showing others winning, and playing on the gambler's fallacy that gamblers have control over random outcomes through skill or luck.²⁹⁶

Improving product information

There have been various proposals and studies on improving gambling product information.

It has been proposed that theoretical loss could potentially be calculated for all gambling products – effectively extending house edge information to skilled products. The idea is based on the approach used in alcohol labelling, which uses units of alcohol so consumers can compare different drinks. The argument is that theoretical loss represents the expected price the gambler will pay over the longer term and that this 'is a useful metric for product harm given that actual losses represent a reliable predictor of gambling-related harm'.²⁹⁷

For example, this could be achieved for fixed-odds sports betting by using historical loss data over a recent time period. The house edge information would be supplied for each separate bet time (e.g., the house edge is higher on the correct score than home-draw-away bets). It could also be applied to subsets of bet type (e.g., longer odds have higher house edges). Information

²⁹³ Newall, P. W. S., L. Walasek, E. A. Ludvig and M. J. Rockloff (2020d), Nudge versus sludge in gambling warning labels.

<https://psyarxiv.com/gks2h>

²⁹⁴ Revealing Reality (2017)

²⁹⁵ Newall et al. (2020d); Pettigrew, M., Maani, N., Pettigrew, L., Rutter, H. and Van Schalkwyk, M.C., (2020). Dark nudges and sludge in big alcohol: behavioral economics, cognitive biases, and alcohol industry corporate social responsibility. *The Milbank Quarterly*.

²⁹⁶ Revealing Reality (2017)

²⁹⁷ Newall et al. (2020a) p.3

via interactive display or pop-up, notifying the bettor of a theoretical loss when choosing to place a bet, based on bet size and house edge for the type of bet.²⁹⁸

It has been suggested that providing comparable, understandable price information may drive consumer behaviour to products with lower price (or less loss) and therefore less risk, in the primary dimension of harm, financial losses. Doing so may also force gambling companies to compete on providing less risky products or bets with higher returns to players.²⁹⁹

However, gambling products have been regarded as having little price elasticity because gamblers appear not to change their behaviour when prices rise. Increased price appears not to reduce demand, and there seems to be a lack of substitutability (For example, even where lower-priced casino table games are available in the same venue, slots players will continue to play slots, even though they may cost as much as ten times the price). As a result, price signals (change in price to reduce demand), which is extensively used and has substantial evidence of efficacy for other public health fields, has been largely neglected in gambling. The extent to which consumer behaviour would change with increased transparency and understanding of price is unclear.³⁰⁰

Research has tested whether players' understanding of RTP can be improved by using different formats for messages. These show that the concept of RTP is not easily grasped by players, even when explained in accessible formats. A study in Australia found that the standard information as mandated by the government, and brief interventions (infographic, brochure, and vignette), were not effective in increasing understanding.³⁰¹

Qualitative research discussed prototypes of graphs and visual representations of cost of play and volatility with gamblers in gambling venues in the UK. Players struggled to understand the graphs and 'often interpreted them literally (e.g., seven loses before a win), meaning that the information could reinforce misunderstandings about how the game worked'. The researchers conclude that 'mathsy' communication forms may not necessarily improve player understanding. They comment:

Many players we interviewed also described themselves as struggling with maths (1/4 of the working population has below functional numeracy) and were immediately put off by even the sight of a percentage. Even for the more numerical players, evidence shows that knowledge of mathematics and probability does not necessarily protect one against numerical misunderstandings about confusing topics, such as randomness.³⁰²

Several studies, including in the UK and Australia, have shown that switching from the return to play to the house-edge format resulted in increased understanding by more gamblers and

²⁹⁸ Newall et al. (2020a); Hassaniakalager, A. and P. W. S. Newall (2019), 'A machine learning perspective on responsible gambling', Behavioural Public Policy, doi:10.1017/bpp.2019.9

²⁹⁹ Newall et al. (2020a)

³⁰⁰ Productivity Commission. (1999a). *Australia's gambling industries: Inquiry report*. Vol. 2: Report (part D). Canberra.

³⁰¹ Beresford, K. and Blaszczynski, A., (2020). Return-to-player percentage in gaming machines: Impact of informative materials on player understanding. *Journal of gambling studies*, 36(1), pp.51-67.

³⁰² Revealing Reality (2017). p.29

lowered the perceived chances of winning. However, around a quarter still did not understand. These studies are not real-world settings, and any impact on actual player behaviour is unknown.³⁰³

A Canadian study showed that the provision of more information on slot machines, including a categorical label for the house edge, had little effect on gambling behaviour. However, this could have been because of the way the information was presented.³⁰⁴

In the prototyping of communication tools with gamblers discussed above, those which showed the most promise to communicate the price, probability of winning and risk were:

- a traffic light system, as in that used for food labelling – although there using green could mistakenly imply there is no associated risk with certain games.
- Infographics showing the chances of losing (e.g., 9 in 10 lose).
- Average cost of playing for a time (e.g., £20 buys 10 minutes play). Gamblers found this helpful as it made gambling comparable with other familiar products or leisure activities, so they could better decide between spending money on gambling or going to a movie, for example.

Online gambling provides considerable opportunity to present product information in dynamic and interactive ways. The researchers also point out that it would need to be implemented in an effective way for such information to impact and would also require the control or removal of misinformation from gambling companies (preventing sludge and dark nudges).³⁰⁵

Current regulation

Product design

The Gambling Act 2005, sections 89 and section 97 gives the Gambling Commission the powers to 'establish, or provide for the establishment of, standards for systems used to generate results in a virtual game or event, any aspect of the process of remote gambling, and the manufacture, supply, installation, or adaptation of gambling software'.³⁰⁶ These sections also give the regulator powers to make arrangement for the testing of compliance with the standards.

³⁰³ Newall et al. (2020c); Newall et al. (2020b); Newall, P.W., Walasek, L. and Ludvig, E.A., (2020e). Percentage and currency framing of house-edge gambling warning labels. *International Journal of Mental Health and Addiction*, pp.1-8.

³⁰⁴ Harrigan, K. A., D. Brown and K. Barton, R. (2017), *Classification of slot machines in Ontario: Providing relevant information to players*, Guelph, Ontario, Canada: Gambling Research Exchange Ontario.

³⁰⁵ *Revealing Reality* (2017)

³⁰⁶ Gambling Act 2005.

The Gambling Commission's regulatory execution of these powers is contained in the Remote gambling and software technical standards and testing strategy for compliance.³⁰⁷ Until February of this year, the total of the regulators controls on product design for consumer safety were contained in remote technical standard (RTS) 14 - Responsible Product Design:

All gambling

RTS aim 14

To ensure that products are designed responsibly and to minimise the likelihood that they exploit or encourage problem gambling behaviour.

RTS requirement 14A

Gambling products must not actively encourage customers to chase their losses, increase their stake or increase the amount they have decided to gamble, or continue to gamble after they have indicated that they wish to stop.

RTS implementation guidance 14A

- a) By actively encourage, we mean the inclusion of specific features, functions or information that could reasonably be expected to encourage a greater likelihood of the behaviours described occurring. For example:
 - i. the amount of funds taken into a product should not be topped up without the customer choosing to do so on each occasion, eg when a customer buys-in at a poker table they should have to choose to purchase more chips to play at the table - automatic re-buys should not be provided.
 - ii. written or graphical information should not encourage customers to try to win back their losses.
 - iii. customers who have chosen to exit a game should not be encouraged to continue playing by, for example, being offered a free game.
- b) This requirement is not intended to prevent operators from offering special features or well-known games such as blackjack that allow customers to increase their stake on the occurrence of specific events (e.g., split).³⁰⁸

The use of 'actively encourage' means that gambling companies are free to use all the 'covert' structural characteristics discussed above to increase time and money spent, with no parameters or restrictions. Referring to our car analogy, this is the equivalent of the car industry having rules that they are not allowed to tell customers to drive too fast, but with no limitations on how fast they were allowed to make the cars or regulation on safety features such seat belts.

The other standards related to products are concerned with 'fairness' (as the Gambling Commission understand it), rather than whether product design is actually fair, open or harmful.

³⁰⁷ Gambling Commission. (2021) Remote gambling and software technical standards (RTS) under section 89 and section 97 of the Gambling Act 2005. Updated 2 February 2021, https://assets.ctfassets.net/j16ev64gvf6l/1KdHqgC205yZOnZbKKhioz/a18598c19de61ef1f515c4dc98fe7d06/Remote_gambling_and_software_technical_standards_Feb21_.pdf ;

Gambling Commission (2021) Testing strategy for compliance with remote gambling and software technical standards: Requirements for the timing and procedures for the testing of remote gambling products. Updated 9 February 2021 https://assets.ctfassets.net/j16ev64gvf6l/41wmDRzud9eJxa2Q0lajiN/cbf7de7d8061aba77b55e4964eda3a40/Testing-strategy-for-compliance-with-remote-gambling-and-software-technical-standards-Feb_2021.pdf

³⁰⁸ Gambling Commission (2021) p.27

It requires that RNG are indeed random and that gambling products operate according to the technical specifications decided by the game designer.

The testing strategy mirrors this priority. Independent third-party testing is required only to determine whether games' function is based on their specifications and information security. All measures related to responsible gambling player tools, information and product design are left up to licensees to test.³⁰⁹

For responsible product design, this only needs to occur 'where appropriate' prior to release. In the absence of any actual standards, good practice or clarity in these areas of how the Gambling Commission is monitoring or assessing this, what operators do is left up to them.

With product design, operators can 'innovate' how they wish and design for themselves if this is 'responsible'.

The regulator places no limits on the house edge.

Controls on slots – a small start, a long time coming

In response to public pressure, demands from Parliament and oversight bodies, and in the context of this DCMS review, in July 2020, the regulator noticed the evidence on harm from online slots and has included some controls for this product, for the first time.³¹⁰ These take effect in October 2021.³¹¹ This demonstrates that, contrary to the regulator's previous behaviour, it is indeed possible, and within the Gambling Commission's powers, to put in place specific restrictions for types of products.

The Commission proclaims these are 'a package of strict measures' which make online games safer by design. This statement shows the Commission's lack of insight into what safe design entails. Safer by design is ensuring products meet safety standards before they are released to the public. Scrutinising the Commission's recent changes shows the 'strict' rules amount, fundamentally, to reducing the speed of slots to parity with offline slots, putting into regulation that which industry had already proposed, and not much more. The Commission claims these are 'baseline' measures, and they may do more, but there are no targets to measure success or whether more is needed. Perhaps most remarkable is to consider that the regulator has deemed it appropriate for gambling companies to provide products enabling play faster than 2.5 seconds, on more than one game at a time, and at any stake, available 24/7 online.

³⁰⁹ Gambling Commission (2021)

³¹⁰ <https://consult.gamblingcommission.gov.uk/author/game-design-consultation/>; <https://www.gamblingcommission.gov.uk/news-action-and-statistics/News/gambling-commission-announces-package-of-changes-which-make-online-games-safer-by-design>

³¹¹ Gambling Commission (2021) Online games design and reverse withdrawals responses, February 2021

https://assets.ctfassets.net/j16ev64qyf6l/F1ZfKRkJE0UWSsyiXZs4i/7c00a6fc546f77abc7bb6d0acbd66a86/Online_games_design_and_reverse_withdrawals_consultation_responses.pdf

The main measures the regulator now requires for online slots are those already decided on by the gambling sector on a voluntary basis.³¹² These new regulations are:

- A minimum spin speed of 2.5 seconds on all slots. This is to bring parity between online slots and land-based machines (B3) – with the regulator commenting it does not know whether this is a safe or unsafe game cycle speed. This is what the industry working group had already committed to and less than the recommended 5- or 10-seconds speed recommended by researchers to reduce arousal and dissociation and is, by any assessment, still very rapid.

The removal of game features that speed up play (reduce the time until the next result is presented) such as quick spin and turbo play and slam stop. Demonstrating that RTS 14 has been ineffective in controlling game design, the regulator consulted on 'prohibiting features designed to deliberately speed up play, provide consumers with an artificial illusion of control or encourage dissociation from playing the game itself'.³¹³ In the end, the requirement imposed is 'the gambling system must not permit the customer to reduce the time until the result is presented'.³¹⁴ This is a measure that stops the industry from speeding up games beyond the 2.5 seconds by using additional features, nothing more. This is what the industry had committed to already.

The regulator explains that 'this proposal was not intended to remove any 'genuine' choice elements of gameplay, such as picking which box to open, or the number of steps to progress in a feature or bonus round'.³¹⁵ It does not apply to bonus/feature games where an additional stake is not wagered.

Because slots are entirely chance, and players do not rationally compute probabilities, there is no such thing as a 'genuine' choice in slots. Other features, such as choosing to replace symbols with other symbols, are also trickery creating an illusion of control.

The regulator believes that it is dissociation from playing the game that creates harm, whereas the evidence is clear that the reinforcement mechanisms in the design of slots themselves create immersion and dissociation, which is part of what makes them highly addictive products. Nothing is done to address design elements fostering this.

Bonus rounds emerge from evidence and Experts by Experience as a dangerous element of slots as they result in prolonging and increasing intensity of play to get the bonus. This is a feature overtly in contradiction with RTS 14 in an explicit feature that encourages loss chasing. In this and other areas of regulation,³¹⁶ the regulator appears

³¹² These measures were proposed by the game design working group led by Scientific Games and Playtech, in response to the Gambling Commission 'challenge' to the sector to come up with product controls. See Gambling Commission. (2020) XXX. October 2019 industry challenges: Progress update June 2020 <http://www.gamblingcommission.gov.uk/PDF/Challenges-Progress-Update.pdf>

³¹³ Gambling Commission (2021) p.13.

³¹⁴ Gambling Commission (2021) p.14.

³¹⁵ Gambling Commission (2021) p.14.

³¹⁶ VIP schemes or advertising

to believe bonuses are a benefit to the consumer. In the gambling sector, bonuses do not function in this way. In slots, 'free' spins are taken out of the return to player and are hence free to the gambling companies but paid for by the gamblers – to call them free is misleading.³¹⁷

- Operators must not offer specific functionality to play multiple slots games at the same time.³¹⁸ Again, the regulator pulled back to what the industry had committed to doing already. It dropped its proposal of requiring that operators prevent consumers from playing several different games at a time per account across multiple tabs/windows, browsers, applications, or devices. The regulator explains it was swayed by the industry's concerns that this could 'potentially encourage other riskier behaviours. This may encourage some players to open additional accounts to circumvent the proposals. We are alert to the unintended consequences of well-intentioned regulatory interventions...'.³¹⁹ This is the commonly used argument that risk should not be curtailed because it will lead to other risks. A preventative approach would be to stop most people easily playing many games simultaneously and learning to play multiple games – creating the motivation to overcome the additional friction involved in opening other accounts to do so. The fact that consumers can play multiple slots games with ease online highlights the increased dangers of this product in this gambling situation and the need for greater controls appropriate to this situation.
- The gambling system must not celebrate a return that is less than or equal to the total stake gambled. The Gambling Commission emphasises it went beyond the gambling industry sector code. This is only so far as the industry commitment allowed for a return equal to the stake (i.e., the consumer got their money back) to still be celebrated as a win. Games can still use 'Brief sound to indicate the result of the game and transfer the balance. The sound should be distinguishable to that utilised with a win above the stake'.³²⁰ Slots must 'must display 'the total amount awarded. Given the clear evidence these result in gamblers believing they are winning more than they are, this is not much of a change to LDWs.

Slots use various sounds for different events, and there are frequently also sounds for losses. These are all part of the reinforcement design, and designers still have the ability to create associations with LDW. Rather there should be no sound or stimuli associated with an LDW. As an operator remarked, 'the nature of enforcing this requirement in their development as a supplier will be very subjective as the line between information and celebration is vague'.³²¹

³¹⁷ Livingston (2017).

³¹⁸ Games that allow players to place multiple, different stakes on multiple slots games within a single gaming client will not be allowed.

³¹⁹ Gambling Commission (2021) p.10

³²⁰ Gambling Commission (2021) p.22

³²¹ Gambling Commission (2021)

Most astounding of all, the regulator does not require gambling companies to provide the *correct* information that these are losses, displaying the amount the gambler has lost and as a negative.

Nothing is done regarding the association with popular and youth culture and brands through visual or 'look and feel' of the product, creating a loophole for gambling companies to appeal to youth audiences as the product is its own advertisement.

Beyond industry proposals, the regulator has added:

- Auto-play is no longer permitted on online slots (as this can lead to players losing track of their play). The question may be why this was ever allowed and why it continues to be allowed on casino games online – the RTS specifically refer to auto-play stating how it should be implemented and limiting its uses.
- The requirements that: 'all gaming sessions must clearly display a customer's net position, in the currency of their account or product (e.g. pounds sterling, dollar, Euro) since the session started' and 'the elapsed time should be displayed for the duration of the gaming session'. Rather than specifying standards for how this should be done, the regulator's view is: 'The overall requirement must be kept at a high-level and principles-based allowing operators greater freedom in implementing the rules in a way which balances the need to be clear for consumers and their own individual set-up and suite of games'.

Currently, game design removes players from connection to their money as money by converting this to tokens and obscuring totals of money lost; all of this is exacerbated by being digital money online. The lack of specification for what is effectively a public health message means the gambling industry will continue to have discretion in design and placement – which, as we have seen with safer gambling messages, results in poor implementation.

The regulator has not made this a requirement for all online games, as responded to the consultation recommended, explaining this because they were only consulting on slots, which does not appear particularly strong.

The same consultation also puts in place a 'situational' (applying to wider online gambling processes) requirement for all remote operators banning reverse withdrawals, 'as well as the implementation guidance that operators should make the process to withdraw funds as frictionless as possible'. The Commission explains:

We note the suggestions that further restrictions of reverse withdrawal functionality would be possible, rather than a ban, and that some of the relevant research also considered or pointed to these options. However, some of these options would require the consumer to choose the restrictions and, as the evidence (from research and people

with lived experience) suggests, the functionality impacts on the most vulnerable and engaged gamblers, who may be least likely to apply voluntary restrictions or to maintain that voluntary application. Where the further restrictions would rely on the operator to identify and take action, we have seen no evidence of operators actively taking this step for individual consumers in spite of the fact that the use of reverse withdrawals has been widely recognised as an indicator of harm for many years. This would also risk inconsistent application of individual restrictions and the most vulnerable consumers slipping through the net.³²²

Here we have a very explicit recognition of the failure of its own regulatory approach. This includes voluntary responsible gambling measures from the point of view of vulnerable consumers. It includes that gambling companies, in part due to market drivers do not voluntarily implement such measures in an effective way, no matter how often exhorted to, unless they are hard rules for all.

The regulator has given an indication of how it will evaluate these changes - although unless they are assessing how well they are implemented and a longitudinal study, it will be difficult to attribute change. The Commission indicates they will assess the impact in the longer term on the proportion of online slots players who are problem and moderate-risk gamblers. This is not taking a preventative approach, which would include low risk, and proportion playing within low-risk guideline limits so that overall risk is reduced for the population as a whole. Note that the regulator uses the health Survey for England 2018 data as motivation for addressing online slots, citing the figure of 8.5% prevalence of problem gambling for online slots, casino or bingo games.³²³ They do not point out that for these products, 26.6% are low-risk gamblers and 13.8% moderate-risk gamblers - meaning nearly half of people playing these products are scoring on the problem gambling scale.

As intermediate outcomes, the regulator states it will look at:

- Number and proportion of sessions lasting >60 seconds.
- Number and portion of sessions which result in a sizeable loss to the player – not specifying what would count as a sizeable loss.
- Changes in staking patterns – not specifying what such changes might be.

For none of these measures, of problem gambling or play patterns, has the commission specified a target, leaving it open as to what would count as success and what would warrant additional measures, or what the regulator believes an acceptable or safe level would be. It also refers to getting feedback 'as to how the package of measures has impacted the experience of the majority of players who do not experience harm'.³²⁴ It is the vulnerable consumer who

³²² Gambling Commission (2021) p.22

³²³ NHS digital. (2019). Health Survey for England 2018 – Supplementary analysis on gambling, published 3 December 2019. <https://digital.nhs.uk/data-and-information/publications/statistical/health-survey-for-england/2018/health-survey-for-england-2018-supplementary-analysis-on-gambling>

³²⁴ Gambling Commission (2021) p.26

should be regarded as the average consumer and supposed consumer demand to play high-risk products should not outweigh imperative to prevent harm to the public in general.

Product information

The regulation of product information (RTS 3 – Rules, game descriptions and the likelihood of winning) has the aim of 'enable customers to make informed decisions about whether to gamble based on their chances of winning, the way the game, lottery or event works, the prizes or payouts on offer and the current state of multi-state games or events.

The requirements and implementation guidelines are leaving it up to gambling operators whether to display house edge or return to player and how the information is communicated. Although information for 'informed choice' is responsible gambling regulation, the current regulations are not ensuring that customers are informed.

Stakes and prizes

It is the DCMS that is responsible for setting stakes and prize limits through the Triennial Review of Stakes and Prizes Limits. The government's execution of the triennial review since the 2005 Act can be described as acceding to the gambling sector's lobbying for increases to stakes and prizes, agreeing with arguments about commercial 'viability', and claims of insufficient evidence to warrant reductions to reduce harm.³²⁵

Importantly, stakes and prize limits apply already to products in land-based sectors. While this has been a long-established component of harm reduction in the historical regulation of land-based gambling, the Government has never imposed limits on stakes and prizes on online products, despite the increased accessibility and risks associated with products in this situation.

Continuing the example of slots, the primary difference between betting shop machines and all other land-based machines is that betting shop machines have a £2 maximum whereas, some casino machines have a £5 maximum, there are far more machines with a £1 or less maximum. The primary difference between land-based and remote slots is that remote slot stakes are unlimited and available 24/7 from your mobile phone.

The current time between spins on land-based and remote is 2.5 seconds. So even at £1 stake, the theoretical stake per hour is £1,440. At a theoretical house edge of 4%, the theoretical loss per hour is over £57. This contrast dramatically with the average hourly wage rate of just over

³²⁵ DCMS. (2013). Triennial Review of Gaming Machine Stake and Prize Limits Government Response to Consultation on Proposals for Changes to Maximum Stake and Prize Limits for Category B, C and D Gaming Machines. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/249311/Government_Response_to_Consultation_on_Gaming_Machine_Stake_and_Prize_Limits_FINAL.docx.pdf

For discussion of triennial review and the battle for the reduction in FOBT stakes See HOL 2020, p.31-32.

£15. It would require slowing down the speed of games to every 10 seconds and a reduction in stake to £1 to have a degree of parity between hourly wage rate and loss rate.³²⁶

Recommendations for gambling product regulation

The extensive evidence on psychological mechanisms used in gambling product design, the direct role of these in causing harmful gambling and addiction, and evidence for the effectiveness of product limits provide a strong basis for designing effective regulatory controls on products for all consumers' safety. Rules on products, venues, and access, to control exploitation and excessive gambling have all been core to gambling regulation in Great Britain since at least the 1950s and can still be seen in land-based gambling regulations. There needs to be a coherent product regulation regime across land-based and online gambling. Regulation needs to address the underlying market dynamic to increasingly risky and harmful products and commercial practices.

Safety for consumers as a statutory objective

As set out in Chapter 2, the underlying principles and objectives of gambling regulation need to be revised in law to place a legal duty on the regulator and gambling companies to ensure consumers' reasonable safety – as would be expected from any 'mainstream' leisure activity.

Commercial incentives for safer products

Those operators wishing to offer higher risk products should be subject to a higher tax rate or higher mandatory levy to build the cost of harm into the operational cost, disincentives push to high-risk, high-profit games and make the provision of lower risk games competitive.

Product risk categories

Scoring scales have been developed to evaluate the risk of available and planned gambling types. These are based on theoretical and empirical evidence of the characteristics of products that cause harm, validated against data from longitudinal studies, which demonstrates which product categories lead to the development of problem gambling. The large transactional and account-based consumer datasets give the potential to further validate and refine product risk categories. Product risk could be assessed through factors such as the percentage of GGY from a small number of consumers or loss of control during a session. Algorithms have been

³²⁶ Based on unofficial estimates

developed to identify risky play, and these could also be applied to high-risk products – i.e., the products where there is more play demonstrating these characteristics carry more risk.³²⁷

Limits and essential characteristics

Given the logic of the gambling market in which innovation and development are for increased risk and harm to consumers, there need to be hard limits – rules – placed on products. These could be developed using the historic gambling regulatory approach of essential characteristics. A basic set of characteristic and parameters in which these can operate need to be defined for each category of product: slots, roulette, table games, fixed odds betting. For online gambling, essential characteristics should not simply codify existing high-risk practice but put in place new base restrictions to bring these to a level of safety.

These could form the basis for controls on the characteristics of different products categories and on access to different products categories, both well-established techniques of gambling regulation.

Big data for safety by design

To achieve safety by design in the context of gambling, where a gambling company wishes to add a new feature or adopt a new feature from another game or setting or invent a new game, which goes beyond the defined essential characteristics of that product category, permission from the regulator should be sought.

Such a change should be subjected to independent assessment against theory and evidence-based principles of reasonable safety and explored systematically via simulated ecologically-sound online experiments³²⁸ and then via controlled, real-world experiments with operators in live environments. This is very possible to achieve online, as has been demonstrated by the Behavioural Insights Team's work on responsible gambling tools. There is no reason the real-world experimental approach and expertise of behavioural insights should not be applied to achieve safer product design.

However, it is the case that the impact of an adaptation or feature on consumer behaviour is not fully known until some period of people's interaction with the product. Consequently, release to the wider market should be restricted for a period, and its impact assessed in the real world before it can be more approved and widely adopted by the gambling sector. In addition, there needs to be ongoing monitoring of products in the market, making use of operator big data to enable regulatory adjustments, as necessary.

³²⁷ PwC. (2017). Remote Gambling Research Interim report on Phase II, August 2017, prepared for GambleAware. https://www.begambleaware.org/sites/default/files/2020-12/gamble-aware_remote-gambling-research_phase-2_pwc-report_august-2017-final.pdf

³²⁸ Newall et al. (in press – b)

Importantly, these product risk scores are for categories of products, and individual products need to confirm to the essential characteristics or limits placed on products for this category, and this can be checked via the routine testing process. It is not proposed to create a risk score for every different game within each category.

This new approach requires the:

- Establishment of an independent testing and monitoring facility with significant big data analytical power to develop and monitor compliance against the standards.
- Requirements for the provision of operator data and mechanisms for joining up data across operators for real-world transaction data at the consumer level.

Neither of these requires the regulator to have new powers. The powers for the regulator to set standards for products, include these in licencing conditions and establish the means for testing, as well as the ability to require operator data, monitor and enforce, are already in place under the 2005 Act.

Gambling situation risk

There needs to be a coherent product regulation regime across land-based and online gambling, using the established regulatory principle of considering the way product risk increases depending on the characteristics of the gambling situation and access. There are many features of the online environment that add to product risk, including the addictive nature of online activities in general, ease of access to money, and 24/7 accessibility via mobile devices.

Importantly, the level of safety for online products should not be based solely on parity with offline gambling but commensurate with the added risks due to being available in an online gambling situation.

Immediate action on speed and stake limits for continuous play products

The following are controls needed immediately for which there is more than sufficient evidence - to reduce further harm and should not be delayed as this new approach is implemented.

As above, speed and stake are the two most harmful features, because both in isolation and in combination, they create the facility for excessive spending and thus risk of harm to consumers in general, as well as problem or disordered gamblers. Limiting either and both put a limitation on the amount of money that can be lost in a period on continuous gambling products. Limits on speed and stake should be put in place for all continuous online gambling products. In the first instance, this could bring parity with offline products - a limit on stakes of at least £2 for parity with land-based fixed odds betting and reduction of speed to that of manual table game (1

minute a spin). However, this needs to be assessed in the longer term within the development of a coherent regime of limits on products.

Betting is frequently overlooked in discussions on product controls and measure to address the risk of in-play betting and rules regarding 'mugs bets', the complexity of bets, bets manipulating cognitive heuristics and creating your own bet. These are generally very difficult for consumers to understand, are more likely placed by young, poorer, and vulnerable people and generate very high losses.

Fake reinforcements and illusion of control

There should be a consideration to removing clearly false and misleading elements of game design. This would involve removing elements that are of no actual benefit to consumers and produce the illusion of control and mislead the player.

For slots, this would include:

- Free spins and bonus rounds.
- Options to replace product symbols.
- 'Gamification' elements.
- Equalising the total number of symbols and number of winning symbols on each reel to prevent the artificial inflation of the number of near misses. Discontinuing sound and visual stimuli for all events, except for an actual win.

Where a portion of the bet is returned less than the actual stake, this should be shown as a loss. For roulette, discontinuing the display of winning and losing numbers or 'hot and cold numbers' as these create an illusion of control for a game that is entirely chance.

Appeal to children and young people

Gambling products should not be allowed to use references to other culture or leisure appealing to children and young people and associated with youth culture.

Considerations to limit access

There is also no necessary reason why controls on access should not be considered in the remote sector to create parity with the land-based sector. This could include the requirement for remote gambling to close between 12 and 8 am, as happens in other jurisdictions.

Land-based historic regulatory controls defined products according to essential characteristics to prevent ongoing development and adoption of higher risk features into games. Along with this, land-based regulation restricted what kind of products could be available in what kind of venue, with different licenses for different product types. Casino games in casinos, betting to

bookmakers, bingo in bingo halls. This allowed limits on access, based on the kind of gambling situation and venue, restricting high-risk products to a limited number of venues and venues with higher controls and less availability.

It also was intended to prevent all gambling operators from adding increasingly higher risk more profitable products to their venues (e.g., promoting casino games in bingo halls), allowing competition within the product or venue category. In remote, offering a single generic license to provide all product types has resulted in online gambling provision becoming essentially the same, as companies all offer everything and compete based on pushing consumers to higher risk more profitable products.

The remote sector should be disaggregated, and specific licenses provided for different product types, with the prohibition on the promotion of higher-risk products to consumers. This produces the potential, e.g., bingo operators to compete for customers with each other on dimensions of, for example, social interaction and leisure experience, rather than purely on the extraction of turnover with high-risk products.

While it is the case that consumers can open accounts for different kinds of play, this introduces friction rather than promotion for the general consumer. In addition, the ability to monitor all an individual consumers' play needs to be put in place via the independent consumer portal.

Fair and open product information

As argued, the provision of information to enable rational choice and make consumption 'fair and open' is misguided and inappropriate as the basis of regulation of gambling products – based on complex mathematical concepts and designed to distort human behaviour and decision-making.

Nonetheless, there is a great deal of scope to improve gambling product information, and this should be done on the basis that gambling wishes to be a mainstream leisure occupation, and consumers have a right to fair, open, accessible, and understandable information on what they are paying for. This is likely to have minimal effect on behaviour, however, compared with product controls and would favour the privileged consumer.

Product information needs to be made a mandatory requirement by the regulator and be communicated as official government health information. Requirements should include both content and placement, implementation, taking advantage of dynamic messaging capabilities online. Information should not be left to the discretion of gambling companies. Any information needs to be carefully designed and tested with the public and should allow comparison across different product categories and major sub-categories.

To achieve this, the following show promise:

- A traffic light system, akin to food information, providing an overall safety ranking for the product category, and additional information by dimension of product characteristic.
- Price to play, indicating how much money a number of minutes on a game will cost, to enable easy comparison with spending on other leisure activities.
- Probability of winning the maximum prize in the form of the chance of winning is 1 in 50,000,0000.
- House edge for all products, including betting – with a dynamic display of total possible lot for a bet when this is placed.

CHAPTER 5

Safer gambling tools

Introduction

The steady move from land-based to online gambling and the increasing sophistication of digitally-enabled gambling products has produced never-before-seen accessibility of gambling, while simultaneously encouraging faster and continuous play.

The digital tools used to create ever more addictive products can also be used to monitor, track, and provide safer gambling tools. In fact, the ability to do so is often used by the gambling sector to argue that this means regulation of the remote sector does not need to be as substantial as the regulation of land-based gambling. However, it is important to note that no evidence has been given to show a decreased level of harm or increased protections for players. In fact, the official statistic from the Gambling Commission's prevalence survey and the recent GamCare Helpline Statistics report shows an increased level of harm originating from online play.³²⁹

It is paramount that safer gambling tools are redefined from being post-harm tools for 'problem gamblers', to become a means to prevent harm, protect and safeguard all gamblers. The evidence shows that the current approach to safer gambling tools, whereby they are inconsistently promoted by gambling companies, as a voluntary measure to those already experiencing difficulties, is at best ineffective and at worst negligent.

The Gambling Commission's LCCP includes sections on 'Gambling management tools and responsible gambling information', in section 3.3.³³⁰ It outlines the need for operators to make information 'readily available to their customers on how to gamble responsibly and how to access information about, and help in respect of, problem gambling'. The section, how it is currently implemented and used by operators, will be examined further in the chapter below.

This section will show a need to move from safer gambling tools as optional add-ons to safety systems that are built into every customer's experience. With the previous section looking at

³²⁹ Helpline Annual Statistics. (n.d.). [online] Available at: <https://d1ygf46rsya1tb.cloudfront.net/prod/uploads/2020/10/GamCare-Helpline-Statistics-Report-2019-20-FINAL.pdf>; Gambling Commission. (2018). Gambling participation and problem gambling. [online] Available at: <https://www.gamblingcommission.gov.uk/news-action-and-statistics/Statistics-and-research/Levels-of-participation-and-problem-gambling/Gambling-participation-and-problem-gambling.aspx>.

³³⁰ Gambling Commission. (n.d.). License conditions and codes of practice (LCCP). [online] Available at: <https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/LCCP/Licence-conditions-and-codes-of-practice.aspx> [Accessed 16 Mar. 2021].

gambling products and outlining, using our car analogy, the rules a car must adhere to, the following section looks at the rules of the road and the safety measures players need to follow.

The chapter does so by examining the evidence base around the efficacy of existing tools, the current regulation and implementation of the tools and make recommendations for improvements.

Limit-setting

What works

Gamblers often spend more time and money than they initially intended when gambling.³³¹ This pattern is because gambling produces a 'hot' emotional state, rather than in a 'cool', problem-focused state.

Limit-setting is a harm minimisation strategy whereby a gambler sets a monetary or time limit before engaging in a gambling session. Here we look at limit-setting through arrangements a consumer makes with a gambling operator (not informal personal budgeting or using willpower). Limit-setting is intended to function as a preventative measure for customers. The idea is that imposing a barrier while in a neutral emotional state and engaging in rational decision-making can help people play within their time and monetary means when in a 'hot' state during gambling.

The evidence around limit-setting is mixed. However, it demonstrates that limit-setting should be deployed as a preventative tool to stop people from experiencing harms, not a treatment or rehabilitation tool for those already experiencing harms. Indeed, it has been argued that there is 'no evidence to suggest that problem gamblers will be rehabilitated by participation in a state-wide [deposit] scheme'.³³²

Voluntary limit setting systems – such as currently employed in Great Britain – whereby a consumer can choose to engage with the limit-setting tools, have low uptake. In an evaluation of EGM policy changes in the UK, it was found that limit setting, in either monetary or temporal forms, was found in less than 0.5% of the evaluated gambling sessions over a month.³³³

³³¹ Monaghan, S. and Blaszczynski, A. (2009). Electronic Gaming Machine Warning Messages: Information versus Self-Evaluation. *The Journal of Psychology*, 144(1), pp.83–96.

³³² Nisbet, S., Jackson, A. and Christensen, D.R. (2015). The Influence of Pre-Commitment and Associated Player-Card Technologies on Decision Making: Design, Research and Implementation Issues. *International Journal of Mental Health and Addiction*, 14(3), pp.228–240.

³³³ Salis, Sergio & Wardle, Heather & Morris, Stephen & Excell, David. (2015). ABB Code for Responsible Gambling and Player Protection.

In a recent umbrella review, the authors found five reviews examining 13 unique studies on pre-commitment and limit setting.³³⁴ Seven studies showed no positive effect on gambling when using limit-setting tools, as users continued to gamble even after receiving messages. The number of people who exceeded their limits varied, with one study reporting that 80% had and another reporting the lower figure of 30.2%. Six of the 13 studies reported a positive change, and limit-setting reduced both duration and overall gambling activity.

One of these studies evaluated a universal limit-setting system in Australia, whereby a consumer registering with the gambling provider had to set a self-imposed time and deposit limit of a maximum of 800 euros per week. The results were that both monetary spend and duration were significantly decreased for poker players, casino games and on slot machines.³³⁵ This means that a mandatory limit-setting system, applying to all gamblers, decreased both time and monetary spend, two large indicators of potential harm. This shows the importance of limit-setting as a preventative tool when used correctly.

Importantly, the authors of the umbrella review highlight that possible negative consequences have also been recorded with limit setting. Consumers experiencing gambling harms are more likely to not only exceed their limits but also to set much higher limits, leading to a potential increase in gambling expenditure.³³⁶ These concerns could be addressed by requiring lower 'anchoring points' for deposits and lowering the maximum limits to be in line with affordability check requirements. This would also have the benefit of tailoring the limits to the individual consumer.

Looking at the reviewed evidence, we can see that limit-setting have a positive impact as a universal preventative tool, to help all consumers. However, we can also note that, in its current implementation in the UK, it has several shortcomings. Limit-setting can be a powerful tool to keep consumers safe if people are required to set deposit and time limits, rather than the tool being voluntary with consumers having to opt-in. In addition, it is currently easily circumventable by either overriding messages when the limit is reached or switching websites altogether. Both options occur when a gambler is likely in an emotionally aroused state, negating the whole premise of imposing a barrier when in a neutral emotional state and making rational decisions.

Every car needs to have seatbelts built into them as a safety feature. The protection offered is not voluntary and up to each individual to choose to drive safely or not. Nor is it hidden or unknown to most consumers. It is regulated, mandatory and clear standards are set for how it should be used. The same should be the case for limit-setting tools.

³³⁴ McMahon, N., Thomson, K., Kaner, E. and Bamba, C. (2019). Effects of prevention and harm reduction interventions on gambling behaviours and gambling related harm: An umbrella review. *Addictive Behaviors*, 90, pp.380–388.

³³⁵ Auer, M. and Griffiths, M.D. (2012). Voluntary Limit Setting and Player Choice in Most Intense Online Gamblers: An Empirical Study of Gambling Behaviour. *Journal of Gambling Studies*, 29(4), pp.647–660.

³³⁶ McMahon et al (2019). p.5

Current regulation

Provision 3.3.1 in the LCCP outlines the 'social responsibility code for responsible gambling information'. This includes the provision that all licensees – with a few exceptions – must 'make information readily available to their customers on how to gamble responsibly and how to access information about, and help in respect of, problem gambling'. The section goes on to state 'the information must cover any measures provided by the licensee to help individuals monitor or control their gambling, such as restricting the duration of a gambling session or the amount of money they can spend'.³³⁷

In practice, this means that the Gambling Commission provides for voluntary limit-setting for consumers, whereby consumers have to opt-in to use one of the few tools available to protect them from potential harm. This system that relies on the gambling operator to incentivise consumers to pick up a tool that might lower the operator's income is ineffective.

In the most recent Gambling Commission participation survey, only 34% had seen or received information about either monetary or time-based limit-setting.³³⁸ The voluntary nature also means that the few people who engage with the tools can easily increase or ignore the limits when they reach them. The regulator has produced no evaluation of whether these regulations have any effect in preventing or reducing harm in Great Britain. However, as the international evidence shows, 'the non-binding nature of such pre-commitments systems, lacking consequences for exceeding limits, render these systems largely ineffective'.³³⁹

Recommendations

- Limit setting should move from voluntary to mandatory and be applied to a consumer's gambling across all their gambling accounts. This means that any consumer wanting to engage in online gambling would have to create an account on an independent website and then be required to set limits on their expenditure that should apply to all the companies the consumer is engaged with.
- Limit setting should eventually be handled by a separate entity and not the gambling providers. This would enable the information to be shared with all gambling providers that the individual is signed up to, ensuring the limits set apply to total gambling, across product or provider. Ideally, this platform would also handle time-outs and self-exclusion. This carries the benefit that the information collected would not be able to be used for marketing purposes. The data collected should also be made available, in an anonymous format, to researchers.
- Limit setting, self-exclusion and time-outs need to be easily accessible via an online platform with minimum friction. A single platform enables a 'one-click' safer gambling tool

³³⁷ LCCP p.45.

³³⁸ Gambling Commission (2018) Participation and problem gambling. p.24.

³³⁹ Livingstone, C, Rintoul, A, de Lacy-Vawdon, C, Borland, R, Dietze, P, Jenkinson, R, Livingston, M, Room, R, Smith, B, Stooove, M, Winter, R & Hill. (2019). Identifying effective policy interventions to prevent gambling-related harm. Victorian Responsible Gambling Foundation, Melbourne. p.39.

that would allow struggling gamblers to minimise the emotional cost of having to go to multiple gambling websites to make changes.

- The default limits (anchoring points) and available maximum limits should be in line with affordability rules. To increase limits beyond these, consumers should be required to provide evidence of means before being able to increase.
- When reaching a limit, a termination of play should take effect and gambler should be logged off. Gambling should not be resumed for a defined period.
- A consumer who wants to increase their pre-committed limits should only be able to do so at regular intervals no sooner than say seven days after reaching a limit. Decreasing a limit should be immediate while increasing should only be possible with a mandatory waiting period.

Self-exclusion

What works

Self-exclusion is the act of an individual preventing themselves from being able to gamble though entering into an agreement with an individual operator or through a multi-operator scheme. Such schemes are intended to exclude consumers from gambling with all gambling companies of that license type (for online gambling, GamStop). By its nature self-exclusion is predominantly used by those who are experiencing severe harm from gambling. It requires the consumer to recognise that they are experiencing gambling harms and then take the steps to put barriers in place. It is the most restrictive of the tools a consumer can use to protect themselves.

Little is known about the impact of self-exclusion – both its effectiveness as a block and for harm reduction. The umbrella review identified 11 unique studies looking at the effects of self-exclusion programmes. Five of those studies found that 'gambling severity decreased' during the self-exclusion period, but this was not maintained after the consumer started gambling again. Self-exclusion was also reported to positively affect participants' mental health by reducing anxiety and depression and decreasing distress from difficulties with work and family life.³⁴⁰

It has been shown from EbEs and in research that self-exclusion programmes are not always effective in stopping people from gambling. While the programmes work to limit access to gambling opportunities, the onus currently lies on individuals to ultimately abstain, with many of those who try, breaching the agreement at some point (26% - 60%).³⁴¹ Interestingly, although

³⁴⁰ McMahan et al (2019). p.5

³⁴¹ Ibid.

consumers get around the block, it still positively impacts people's overall well-being and reduces their gambling.³⁴²

A commonly used tool in combination with self-exclusion programmes is blocking software. The software is installed on an electrical device – most commonly phone or computer – and blocks access to online gambling sites.

Vita CA recently carried out an impact review of the online gambling blocking software Gamban.³⁴³ Several of the people interviewed said that excluding themselves from gambling sites one at a time was counterproductive. They continued to gamble on other sites, often subsidiaries or alternative brands of the company they had excluded from and ended up with many more gambling accounts and the associated marketing.³⁴⁴

The process of excluding needed to be made as smooth and frictionless as possible. People who seek to self-exclude are likely experiencing severe gambling harms or are seeking help after a specific event galvanised them to act.³⁴⁵ Several people interviewed asked for a 'one-stop-shop' where they can self-exclude from all gambling operators (online and offline) and receive a blocking software (to protect them from those sites that the gambling operator self-exclusion scheme does not cover), as well as get signposting and help.³⁴⁶

The combination of gambling blocking software and a formal exclusion scheme was pieces of a puzzle combined to provide stronger protection. An often-mentioned benefit was that Gamban also included protection from gambling on the black market, social gambling or demo-versions of games that prolong or triggered the interviewees' addiction.³⁴⁷

"Could all just be one? Like a one-stop-shop? In my experience you maybe use one, and then you pick up about another one. A dropdown with opt-in? For all the people that are on Gamban, you have a 100 people that are not."

"If I was going to recommend anything, I would do a partnership between Gamban and Gamstop. That would be the two things that worked for me because there are sites that Gamstop doesn't cover, which Gamban does. I think if you could combine the two, then that would be the best use of the tools."

Current regulation

Gambling operators must provide self-exclusion as a license condition: 'Licensees must have and put into effect procedures for self-exclusion and take all reasonable steps to refuse service

³⁴² Gainsbury, S.M. (2013). Review of Self-exclusion from Gambling Venues as an Intervention for Problem Gambling. *Journal of Gambling Studies*, 30(2), pp.229–251.

³⁴³ Kallman, A. and Wyllie, C. (2020). Gamban's Impact: User views and experience.

³⁴⁴ Ibid. p.32.

³⁴⁵ Ibid p.18.

³⁴⁶ Ibid p 32-33.

³⁴⁷ Ibid.

or to otherwise prevent an individual who has entered a self-exclusion agreement from participating in gambling'.³⁴⁸

In the latest Gambling Participation Survey from the Gambling Commission, they found that over half of the people surveyed were unaware of self-exclusion as a tool (53%). 42% were aware of it with a further 5% having ever self-excluded.³⁴⁹ While the number of people self-excluding has increased slightly over the last few years, it is noticeable that while gambling operators must – according to the LCCP – offer self-exclusion they are not required to market, advertise, or increase its uptake.

The LCCP also includes a requirement on operators to offer a 'time out' facility, where a consumer can opt to exclude from gambling at that one operator for a set amount of time (up to 6 weeks). However, the latest Gambling Commission participation survey showed that time outs had been used by 3% of respondents, with 63% unaware of the tool's existence.

Recommendations

- Players should be able to enrol in and manage self-exclusion on the same independent website as deposit and time limits.
- Self-exclusion should continue to be in effect after the set period has finished, unless the consumer takes steps to reinstate their gambling account(s).
- For consumers who want to reinstate their account(s) after a self-exclusion period, there should be a requirement of providing information that adequate steps have been taken to address their gambling harms.
- There should be as little friction as possible for consumers wanting to self-exclude or time out. Therefore, a one-stop-shop should be created, whereby a consumer who self-excludes is excluded from all gambling sites, given free access to blocking software, is guided to the formal treatment network or alternative pathways of support and informed about bank gambling transaction blocking.
- The one-stop-shop needs to be independent from the gambling sector. It should also be integrated with limit-setting, affordability checks and safer gambling information.
- The ability to time-out from gambling on an operator-by-operator basis means that vulnerable consumers must log-on to their all their gambling accounts, run the risk of being triggered back into gambling, and then request a time out. The system, in its current state, arguably puts people who are at risk or suffering harms in a position where they are likely to lapse back into those harms. To protect people, time-outs should be managed on the separate, non-gambling site and take effect across all operators.
- Direct marketing to self-excluded customers, or those on a time-out, should be an offence, for the whole gambling sector, from operators to affiliates and tipsters. This

³⁴⁸ LCCP p.48

³⁴⁹ Gambling Commission (2018). Gambling participation and problem gambling

would be in line with the Gambling Commission's stance to 'suspend direct marketing to customers who show signs of harm'.³⁵⁰

- The block on direct marketing should remain in effect after the self-exclusion or time-out period is over, unless the consumer goes through the process of reinstating their accounts and checks that steps have been taken to address gambling difficulties have been made.
- There should be an option for permanent self-exclusion.

In-play messaging

What works

Messaging as a tool to help keep consumers safe has evolved from a static message on a poster or 'safer gambling' page to dynamic 'pop-up' messages. These messages will show on the screen during gambling. They are designed as a brief intervention to interrupt the game or modify gambling behaviour.

While these messages are currently not required by regulation in the UK, pop-up messages have been evidenced to have a greater impact on behavioural change than their static counterparts. In a study examining the gambling of 92 participants, dynamic messaging was significantly more likely to be recalled, with 83% recalling the dynamic messages compared to 15.6% recalling the static message, without being prompted.^{351 352} As a result of this, the study recommends that messages be delivered dynamically to increase the efficacy.³⁵³

That leads to the question, what information has the highest efficacy and should be delivered in the messages? The umbrella review, found 9 unique studies examining messaging on gambling machines, ranging from self-appraisals and warning messages to general information. One of those studies showed that when presented with a self-appraisal message, people were substantially more likely to end play than those who received a session length message.³⁵⁴ A study examining the self-reported change in behaviour found that one in four individuals indicated that session length notifications increased their management over time and spending. Another study found that slightly over one-fifth of gamblers who used an on-screen clock ended their gambling session due to it.³⁵⁵

³⁵⁰ Customer interaction - formal guidance for remote gambling operators Formal guidance note under SR Code 3.4.1. (n.d.). [online]. Available at: <https://www.gamblingcommission.gov.uk/PDF/Customer-Interaction-Formal-Guidance-Remote-July-2019.pdf> [Accessed 16 Mar. 2021].

³⁵¹ Monaghan, S., & Blaszczynski, A. (2007). Recall of electronic gaming machine signs: A static versus a dynamic mode of presentation. *Journal of Gambling Issues*, 20, pp. 253–268.

³⁵² There was also a significant difference in cued recall with dynamic at 85.1% compared to the static at 24.4%. Prompted or cued recall is the retrieval of memory with the help of cues.

³⁵³ Monaghan and Blaszczynski (2007)

³⁵⁴ McMahan et al (2019). p. 385.

³⁵⁵ Ibid.

Another review looking at the effectiveness of personalised feedback interventions (PFI) found two studies of note. PFIs are designed to work by bringing out the erroneous beliefs that a consumer might hold about their behaviour, compared to others in their 'peer group', to lessen the behaviour. While the studies found that both the PFI and cognitive behaviour interventions produced reductions in gambling, the PFI group was more effective in creating behaviour change.³⁵⁶

A laboratory computer-simulated study tested participants playing EGM and receiving self-appraisal messages of how much time and money spent, such as, 'Do you know how long you have been playing?'. The participants stated the messages made them more aware of how long they had gambled and significantly influenced their behaviour. The same study also looked at the impact of self-appraisal messages compared to informative messages on participants gambling behaviour. The findings found that self-appraisal messaging has a considerably greater influence on participants compared to informative messaging.

The use of purely factual information – odds, risks, and the game's nature - currently has limited empirical support in a gambling context. Interventions successful in improving participants' statistical understand of gambling tend not to result in any change to gambling behaviour.³⁵⁷ Instead, messages should move away from factual statements towards messages encouraging consumers to self-appraise the money and time spent within a session. The idea is that doing so would cause the player to personally evaluate their behaviour. This also means action taken post receiving the message will be based on the individuals' own motivations and thoughts. Other forms of messaging to consider are periodic monetary and time-based reminders before a limit is reached, ideally tied to an individual's own limit setting, as discussed above.

A study using data from an online gambling operator examined if a pop-up message after 1000 consecutive plays of online slot machine would make players terminate their session. The introduction of the message resulted in a ninefold increase in termination of play. This shows the value of introducing dynamic messaging in a real-world scenario. However, it is noteworthy that less than 1% of all sessions reached the 1,000 spins mark, meaning that only the most intense players received the message. It may be that introducing the message at an earlier stage would have enabled increased control for a larger group. It also shows the limited impact that this messaging has on players once deep in an emotional gambling state.³⁵⁸

Current regulation

Currently, operators are only required to provide dynamic messaging through what the Gambling Commission refers to as a 'reality check'. Operator must provide an 'easily accessible facility' whereby customers can set 'a frequency at which they will receive and see on the

³⁵⁶ Marchica, L., and Derevensky, J. L. (2016). Examining personalized feedback interventions for gambling disorders: A systematic review. *Journal of Behavioral Addictions*, 5, pp.1–10.

³⁵⁷ Cited in Monaghan and Blaszczynski' Harris, A., Griffiths, M.D. A Critical Review of the Harm-Minimisation Tools Available for Electronic Gambling. *J Gambi Stud* 33, 187–221 (2017). p.16.

³⁵⁸ Auer, M., Malischnig, D., and Griffiths, M. D. (2014). Is 'pop-up' messaging in online slot machine gambling effective as a responsible gambling strategy? An empirical research note. *Journal of Gambling Issues*, 29, pp. 1–10.

screen a reality check'.³⁵⁹ A reality check is defined as a display of the time that elapsed since the start of the gambling session.

In their participation survey, the Gambling Commission found that the proportion of gamblers using reality checks had decreased from 3% in 2018 to only 1% in 2019. Worryingly, 70% of respondents were unaware of reality checks. The Gambling Commission noted that the number who are unaware of reality checks has increased over the last year.³⁶⁰

The Remote Technical Standards was recently updated to include that the elapsed time and net position must always be displayed for the gaming session's duration when playing online slots. This change is planned to come into force on the 31 October 2021.³⁶¹ Nevertheless, this means that the only requirement will be to show session time and net position as static information on the screen, with no guidance on how it should be displayed on the screen. The Gambling Commission states that it would be 'neither appropriate nor practical to impose an overly descriptive and ultimately restrictive set of rules – especially around points such a text size, placement.' There are currently no incentives or directives for the industry to go beyond this and offer, what is evidenced, is a dynamic, meaningful intervention. Additionally, a static message will not interrupt play, to require refocusing and a break in the gambling session.

Recommendations

Dynamic information messages are a very low-cost intervention that can influence positive gambling behaviour and stop individuals before they reach harmful levels of play. Evidence shows that well designed, personal information messages, would have an important short-term impact and support long-term efforts to manage gambling. Due to the low cost and the evidence towards a positive effect, it is recommended these be implement as a meaningful population-level harm reduction tool.

Our recommendations are:

- Generic information messages should be avoided.
- Messages related to behaviour, ideally linked to the consumers' limit-setting, or that invites reflection on personal goals, or social comparisons should be used when algorithms trigger warnings of harmful play.
- Personalised feedback interventions should be used regularly through a gambling session. The information could be provided at pre-determined intervals (i.e., when reaching a percentage of deposit limit – 25%, 50%, 75%, 90%) or follow the alternatives above.

³⁵⁹ Remote gambling and software technical standards Consultation response. (2017). [online]. Available at: <http://www.gamblingcommission.gov.uk/PDF/consultations/Remote-Technical-Standards-response-June-2017.pdf> [Accessed 16 Mar. 2021]. p.27.

³⁶⁰ Gambling Commission. (2018). Gambling participation and problem gambling. p.23

³⁶¹ Gambling Commission. (n.d.). Gambling Commission announces package of changes which make online games safer by design. [online] Available at: <https://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2021/Gambling-Commission-announces-package-of-changes-which-make-online-games-safer-by-design.aspx> [Accessed 16 Mar. 2021].

- Pop-up messages relating to certain events, such as reaching a limit or display of risky behaviour, should include pathways to support and advice.
- Pop-up messages need to be centrally located on the screen, with no competing messaging or activity from the game taking place at the time of viewing. They must also be provided in easily read text.

Customer interaction

What works

A randomised controlled trial of brief motivational contact, with customer interaction through telephone and letters, showed a significant short-term positive impact on high-expenditure gamblers and their use of responsible gambling tools. The follow-up study looking at the impact of the intervention on expenditure over a 12-month period. The findings showed a positive and sustained effect through the year, with the phone group showing a 30% reduction in theoretical loss and the letter group showing a reduction of 13%. Both groups significantly outperformed the control group. The group contacted by telephone had the largest change and had the highest uptake of safer gambling tools. Importantly, more than 93% of those who received the initial intervention were still customers a year later - highlighting that the intervention did not deter customers from gambling.³⁶² The research shows that effective customer interaction from gambling companies can significantly impact consumer safety.

Current regulation

The Gambling Commission outlines its customer interaction requirement for operators in 3.3.1 of the LCCP: 'Licensees must make information readily available to their customers on how to gamble responsibly and how to access information about, and help in respect of, problem gambling'.³⁶³ They build on this in the 'Customer Interaction - Formal guidance for Remote Gambling Operators'. Here, the Gambling Commission say they make their expectations 'clear' and 'suggests ways' the gambling sector could meet them. The regulator states this is an 'outcomes' approach. However, the expected outcomes are never explained nor outlined in the document. In any of their guidance to remote operators, the Gambling Commission offers no structured outcomes-based regulation with clear indicators for what good looks like. Rather they offer suggestions and ask the industry to effectively self-regulate customer interaction, which has been the pillar of their online 'safer' gambling regulation.

³⁶² Jonsson, J., Hodgins, D.C., Munck, I. and Carlbring, P. (2020). Reaching out to big losers leads to sustained reductions in gambling over 1 year: a randomized controlled trial of brief motivational contact. *Addiction*, 115(8), pp.1522–1531.

³⁶³ LCCP p.45

The self-regulatory approach can also be seen in the regulator's approach to evaluating customer interactions, where the Commission asks large corporations to share their evaluations of internal processes with competing companies.³⁶⁴

This lax approach can also be seen in 3.9, where the Gambling Commission explains that it is 'good practice' – rather than a social responsibility code condition - to suspend direct marketing to those who are showing signs of harm. This means that an operator who has flagged a consumer as experiencing harm but continues to send them direct marketing – including bonuses – will incur no financial penalties, or risk losing their licence. While breaching ordinary code provisions could still be admissible as evidence in criminal or civil proceedings,³⁶⁵ this is remains enforcement after harm has taken place, rather than regulation to prevent harm.

Another example of the Gambling Commission's guidance missing the mark, is the short-sighted attempt to introduce a version of affordability. This is done by asking the industry to set lower limits for deposits and loss thresholds in line with what people can afford.³⁶⁶ The customer interaction guidance asks the industry to use data from the Office of National Statistics to set their deposit anchors, as this would be 'realistic, based on average available income'. If we ignore that this is again the Gambling Commission pushing their regulatory responsibility onto the gambling sector, it fails to consider that a minority of gamblers uses deposit limits. As mentioned in the deposit section, in reviewing EGM policy changes in the UK, limit-setting, in either monetary or temporal forms, was found in less than 0.5% of the evaluated gambling sessions over a month.³⁶⁷ The proposed measure also does nothing to protect consumers across multiple accounts and operators.

Most importantly, as with the Gambling Commission's wider approach, it is a voluntary measure that takes place after harm is experienced and does nothing to prevent people from entering harmful behaviour. As Dr Rebecca Cassidy described in her book when discussing responsible gambling to a public health approach, it can be 'compared to parking an ambulance at the bottom of a cliff, rather than building a fence at the top'.³⁶⁸ Only, in this case, the ambulance is a recommendation.

Single digital site for gambling tools

To ensure the implementation and efficacy of the recommended changes, we propose the creation of an independent consumer portal for players to manage safer gambling tools. Anyone who would want to gamble online would have to sign up to the website and register. The consumer would then receive a personal gambling account that would then be used to manage safer gambling tools such as limits, self-exclusion, and affordability across all operators and

³⁶⁴ Gambling Commission. Customer interaction – formal guidance. p.12

³⁶⁵ LCCP p.31

³⁶⁶ Gambling Commission. (n.d.). Customer interaction – formal guidance. p.5

³⁶⁷ SALIS, S. et al. (2015).

³⁶⁸ Cassidy, R. (2020). *Vicious games: capitalism and gambling*. London Pluto Press. p.93.

accounts. The proposal carries the benefit that a third-party organisation is a safe space to set gambling limits and would not carry risks of triggering those suffering from disordered gambling wanting to self-exclude. It also means that a single government-mandated organisation manages consumer data, rather than a myriad of different companies.

This carries the benefit that it creates an unprecedented data repository for researchers to use to understand gambling. Importantly, an independent organisation would ensure consumer data was not subjected to unscrupulous use by gambling operators and furthermore removes the issue of competitors sharing data with each other. Analysis originating from such a potent data would provide useful insights for the industry as a whole.

Our proposed organisation aligns itself well with the recent recommendations made by the Social Market Foundation, who advocate for the introduction of a gambling ombudsman to oversee, among other things, affordability. They note that it 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’.³⁶⁹ The same organisation would be well positioned to manage safer gambling for all online gambling consumers. A third party that already has access to each consumers information and oversees their affordability would be perfectly positioned and already have access to most of the information needed to manage safer gambling tools.

Our recommendations

- The creation of an independent consumer portal where consumers would be required to sign up before gambling on any online gambling site in GB. This site would be a one-stop-shop for all safer gambling tools from deposits to self-exclusion, along with affordability checks. This means that when a deposit limit is set it will apply to all gambling operators and all a consumer’s accounts.
- The introduction of a gambling ‘driver’s license’. Any gambling consumer who wants to gamble online need to sign-up to the independent one-stop-shop - ideally ombudsman - and receive a unique gambling identification number. This number could then be used when creating gambling accounts for all licensed operators and would tie the individual to their safer gambling profile. This would ensure that safety tools, affordability and safeguards are always in place for all online gamblers.

³⁶⁹ Noyes, J. and Shepherd, J. (2020). Gambling review and reform: towards a new regulatory framework. [online] Social Market Foundation. Available at: <https://www.smf.co.uk/publications/gambling-review-reform/> [Accessed Mar. 16AD]. p.8