



# “High Stakes: Gambling Reform for the Digital Age”

11 May 2023



## Chair and speakers



Gerald Gouriet KC



Jeremy Phillips KC



Leo Charalambides



Andrew Cotton



## DCMS 2023 Gambling Review

### “High Stakes: Gambling Reform for the Digital Age”



Gerald Gouriet KC



### Secretary of State’s introduction:

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- "...which will make gambling laws fit for the digital age"
- "...we will now make online gambling safer"
- "...we will tackle aggressive advertising"
- "... **State intervention [will] be targeted to prevent addictive and harmful gambling.**"



## First responses

### Critics

**Lord Foster** (House of Lords debate):

*"my biggest concern is the delay in implementation. Can the Minister confirm that there are to be at least 12 separate consultations requiring the Gambling Commission to have no fewer than 30 workstreams? How long must we wait for the outcome of all this work?"*

### Supporters

**Zoë Osmond** (House of Lords debate):

*"Today's Gambling White Paper is a **welcome step in the right direction...**"*



## What should we expect from a White Paper?

Cabinet Office "Guide to making legislation" says that a Bill

*"will usually have been preceded by the normal stages in policy development:*

- A green paper discussion or consultation document,
- A white paper (major policy proposals set out in more detail) and
- **One or more rounds** of public consultation"

### In this 'White Paper'

- So much discussion and so little by way of firm proposals
- i.e. proposals not subject to consultation

**"A Green Paper masquerading as a White Paper"**



## Six Chapters

1. Online protections – players and products
2. Marketing and advertising
3. The Gambling Commission’s powers and resources
4. Dispute resolution and consumer redress
5. Children and young adults
6. Land-based gambling



## Chapter 1: Online protections – players and products

- 4 proposals “subject to consultation”
- 2 statements of intent to “explore” issues
- 3 ‘advisory’ statements – suggestions, with no specific proposals to underpin them
- 1 “welcome” of measures already in place

Search as I might, I could find nothing by way of a firm proposal to **do** anything (as opposed to **consulting** about doing something)

The nearest Chapter 1 gets to a firm proposal is:

*“To ensure all licensees fully understand their responsibilities when entering into [white label arrangements], the Gambling Commission will **consolidate and reinforce expectations** for operators on contracting with third parties, including white labels.”*



- The review's call for evidence ran from **December 2020 to March 2021**
- Some 16,000 submissions were received
- According to the DCMS, "*Ministers and officials ...supplemented this with **hundreds of meetings** with a wide range of stakeholders.*"
- Regard was had to several "**key publications**"
  - The house of Lords' "Select Committee Report on the Social and Economic Impact of the Gambling Industry";
  - Public Health England's "Gambling-related Harms Evidence Review"
- and
- The Independent "Review of the Regulation of Betindex Ltd."

### **Why more consultation? What more does the government need to learn?**



## **Chapter 2: Marketing and Advertising**

- 4 "welcomes" of **measures already in place**
- 2 statements of what the Commission "**will continue**" to do
- 2 statements of 'work, **yet to be done**'
  - "we will undertake a review..."
  - We will work together with the Department of health..."
  - The Commission will take forward work..."
- 2 "calls on operators" and others
  - "**we are calling on operators** to take existing commitments in the industry code further..."
  - "**We expect all sports** to take a responsible approach to gambling sponsorship..."
- Another consultation: "**The Gambling Commission will consult** on setting higher standards for operators in obtaining all customers' consent to direct marketing."



### **King Lear**

*“I shall do such things – what they are, yet I know not – but they shall be the terrors of the earth!”*



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### **DCMS**

*“We’re going introduce measures to prevent addictive and harmful gambling – we don’t know what they are yet – but they’re going to be fantastic.”*





### Baroness Bakewell:

*“I was extremely disappointed to see that gambling advertising continues unabated; it is virtually impossible to avoid. TV advert breaks all include the dubious benefits and enjoyment of gambling. Similarly, radio stations are peppered with adverts for the large sums of money that can be claimed for the price of a £2 phone call.”*

### Lord Foster

*“There is clear research showing that advertising leads to people starting to gamble, leads existing gamblers to gamble more and leads those who have stopped to start again. Why would the industry spent £1.5 billion a year on marketing if it was not to boost its profits? Other countries are taking action to ban or restrict gambling advertising. The majority of the British public want us to do the same. Why is more not being proposed in this country?”*



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## Chapter 3: The Gambling Commission's powers and resources

- **A statutory levy to be paid by operators: details subject to consultation**
- **2 commitments to legislate** "when Parliamentary time allows"
  - Gambling Commission to have "powers to require... ISPs and payment providers to stop providing their services to black market websites"
  - Gambling Commission to have "*greater power to set its own fees*"
- 2 'will continue' announcements of measures already in place : one is what the GC will continue to do; the other is what the industry will continue to do
- 3 statements of intent, too vague to merit the word 'proposal'
  - "The GC will take a more ambitious approach to enforcement"
  - "There are some small changes that could be made around [the GC's] ability to investigate operators."
  - "We will jointly organise a series of workshops to stimulate interest in gambling research."



## "When Parliamentary time allows"

### Cabinet Office "Guide to making legislation"

- Parliamentary time available for government legislation is extremely limited.
- **Securing a slot in the legislative programme:** departments must bid for a slot in the legislative programme for any bills they wish to introduce.
- **Public commitment to legislate:** ministers should not make a public commitment to legislate in the forthcoming session of Parliament unless or until PBL Committee has agreed the inclusion of a bill. The Government's announcement of its intention to legislate on a particular issue will normally be made as part of the Queen's speech. Prior to this, ministers should use the standard wording that they intend to legislate "when parliamentary time allows."



## Chapter 4: Dispute Resolution and Consumer Redress

- “We will look at how the industry, working with all stakeholders in the sector, can create an ombudsman that is fully operationally independent in line with Ombudsman Association standards.”
- “We will explore how best to require that all licensees ensure that their customers have effective access to the ombudsman for social responsibility complaints.”
- “We expect the ombudsman to be established within a year.”

### But what will he/she do?



## Chapter 5: Children and Young Adults

- Minimum age for cash-payout Category D machines to be raised to 18
- 2 “**challenges to operators**”
  - Society lotteries and football pools **challenged** to apply 18 age limit voluntarily (legislation “when Parliamentary time allows”)
  - On course bookmakers and alcohol licensed premises **challenged** “to *urgently improve age-verification measure*”
- 4 proposals “subject to consultation”
  - Moving from ‘Think 21’ to ‘Think 25’
  - To require test purchasing by small operators
  - 18-24s to have lower trigger points for enhanced spending checks
  - Age to be factor in assessment of customer vulnerability
- A statement of intent to “**explore**... evidence around premises where there is not normally staff supervision”



## Chapter 6: Land Based Gambling

- 6 firm proposals
  - To increase machine allowances in 1968 Act Casinos
  - To permit casinos to offer sports betting
  - To free up unused 2005 Act casino licenses
  - To permit casinos to offer credit to non-UK residents
  - To adjust 80/20 ration of Category B and C/D machines in bingo and arcade venues to 50/50
  - To allow linked gaming machines in venues other than casinos
- 2 consultations
  - Raising the cap on fees set by licensing authorities
  - Developing options for cashless payments
- 2 statements of intent to "consider" or "look further at" minor issues
- (Tucked away...) **"We will legislate to introduce CIAs when Parliamentary time allows."**



## Overview

- The Chapter with the most firm proposals is Chapter 6
- Nearly all the proposals in Chapter 6 *increase gambling opportunities*
- Where is the **"comprehensive package of new measures"** that will **"make online gambling safer"** and **"prevent addictive and harmful gambling"**?

There is a sense of any new measures of importance being kicked into the long grass:

- (a) Subject to "consultation"
- (b) To be "considered"
- (c) To be "looked at further"
- (d) To be "explored"
- (e) To be discussed in a "series of workshops"

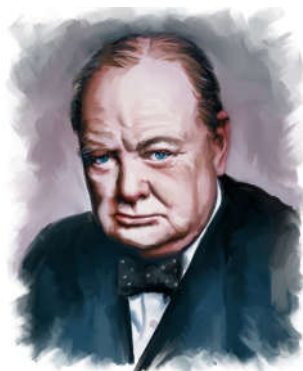


**Louise Davies:** Director of Advocacy and Policy at CARE

*“After years of disappointment relating to this white paper it is galling to learn of more dither and delay from the government”.*

**Guardian headline:**

*“Gambling addicts will die because of delay to reforms.”*



*“Never have so many waited so long for so little”*



## The Questions of Affordability



Jeremy Phillips KC

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## Gambling Commission concerns:

- Affordability Guidance (2019 to 11.11.22) for remote gambling operators:
  - Historically, gambling operators have not systematically considered customer affordability when developing their customer interaction policies... Open source data exists which can help operators assess affordability for their GB customer base and improve their risk assessment for customer interactions. **Thresholds should be realistic, based on average available income for your customers.** This should include the Office of National Statistics publications on levels of household income."



## General 'Indicators of harm' online operators area already required to monitor, include:

"Customer spend:

- Amounts spent, taking into account affordability
- Amount spent compared to other consumers"



## Gambling Commission – historic concerns:

- In a compliance case study identified by the Commission, a customer lost approximately £33,000 in three months without the operator carrying out any financial risk assessment. Compliance staff subsequently examined the information held by the operator on this customer, which suggested they had an annual income of £8,500.
- Failure to consider individual customers' affordability and SoF contributed to e.g. Betway's £11.6m fine (Mar 2020)



## Initial industry concerns:

- “Horseracing leaders .. Deep concern about the potential impact from .. ‘affordability’ thresholds for online betting customers” – *British Horseracing Authority* (Feb 2021)
- New regulations would enforce a mandatory check once a customer had experienced a monthly loss of £100. Horse racing leaders have claimed that this could result in a yearly loss of over £60 million for the industry due to lost payments from betting operators
- *EY Report for BGC* (Nov 2022) suggested that there had been a 15% decline in online GGY 2023-2022 partly due to affordability checks



## ***The Gambling White Paper – Affordability [1]***

- “While we agree that it would be harmful for any form of advertising or marketing to ‘normalize’ harmful practices (for example underage or unaffordable gambling), *we do not consider participation in gambling in and of itself a form of harm.*”
- “.. *It is not the intent that government of the Gambling Commission should set a blanked rule on how much of their income adults should be able to spend on gambling.*”
- “Having worked closely with the Gambling Commission, we consider it necessary to put new obligations on operators to conduct checks to understand if a customer’s gambling is likely to be unaffordable or harmful.”





## The Gambling White Paper – Affordability [2]

- “.. Issues that will need to be considered in addressing it. These included the *complexity of determining at what point a consumer’s gambling can be deemed so excessive or unaffordable that it becomes an operator’s responsibility to intervene.*”
- “As explored in the Commission’s advice to this Review, different checks are likely to be necessary to address the different risks, and requiring the appropriate checks at appropriate thresholds is key to ensuring the system is effective.”
- The Gambling Commission *will consult* on two forms of ‘frictionless / online’ financial risk check:
  - Moderate levels of spend
  - Higher levels of spend”



## Trigger Levels – financial risk checks

- ‘Moderate loss of threshold’: £25 net loss within:
  - I month or £500 within 12 months
- Higher loss thresholds:
  - *‘Binge’ gambling*: £1,000 net loss within 24 hours; or
  - *‘Sustained heavy losses over time’*: £2,000 within 90 days



## Trigger Levels @50% where punters aged 18-24

- £62.50 (?) net loss within:
  - 1 month or £250 within 12 months
- £500 net loss within:
  - 24 hours or £1,000 within 90 days



## Overall impact

- “We recognize that our proposals also involve additional friction and/or reduced incentivisation for some people who are spending at high levels which they can afford and who are not being harmed. The proposals are targeted with the intent of minimizing this unintended consequence, and the resultant costs to the industry, to be proportionate to the objective of reducing harm.”



## Further consultations (>than a dozen) \* [1]

- “Once a suitability effective and secure is in place, the Gambling Commission will consult on making data sharing on high risk customers mandatory for all remote operators. Individual operators can take steps to prevent harm on their own platform, but people suffering gambling harms often hold multiple accounts. Where there are serious concerns, operators must work together.”

\* See key white paper proposals and 'next steps'



## Further GC consultations include [2]

- On new funding system to include a comprehensive and transparent performance framework set out in the Management Agreement with DCMS
- On the '80/20 rule' limiting the total number of Category B gaming machines as against Category C & D
- On statutory levy paid by operators and collected and distributed by the Gambling Commission under the direction and approval of Treasury and DCMS ministers
- Specific consultation options for cashless payments
- Stake game limit for online slots games
- Review game speeds and removing risk features
- **implementation of the white paper has > 60 areas of work for the Gambling Commission alone**



## Filling placeholder with text

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- Fourth level <Bullet Level 1>
- Fifth level <Bullet Level 2>
- *Sixth Level <Italic Bullet>*

*Seventh Level <Indented italic text eg. Regulation>*



## Giving Local Authorities a Real Say - Now



Leo Charalambides



## Enforcement and The Black Market



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