

REF: Annual Lecture – 5 February 2019

Lecturer: David Clifton, Clifton Davies Consultancy Limited



Gambling advertising – turn down the volume or turn it off?

1 Introduction: Can I have my ball back?

Good afternoon. Thank you very much indeed for inviting me to address you on the vexed issue of gambling advertising.

First – a short ad.

[GambleAware social media advertisement: “Can we have our ball back?”] [1]

Not a gambling operator’s advertisement. Instead a controversial social media ad commissioned by GambleAware on 24 November last year.

I say “controversial” because:

- some suggest it has been wrongly targeted at betting operators, who had already made it clear that they support greater advertising restrictions around gambling and sports
- others consider the ad to have represented a wholly inappropriate use of funds voluntarily donated by operators to the UK’s leading independent gambling-related harm charity to support research, education & treatment services to help reduce such harms in Great Britain
- others believe that it came across as anti-gambling propaganda and that safer gambling messages are more appropriately conveyed by gambling operators themselves

Whether or not any of those represent fair criticism is not for us to debate today, but it’s easy to see from the following statistics on GambleAware’s website [2] why the bare figures quoted paint a particular picture.

- 95% of ad breaks during football matches feature gambling adverts

- 9 of 20 Premier League and 17 of 24 Championship clubs have a gambling shirt sponsor
- 1.1million adults who bet with bookies online are classified as at-risk or problem gamblers
- 39% of 11-16 year olds have gambled in the last year

Whilst that picture carries a compelling message, whether of itself it justifies a crackdown on gambling advertising is a wholly different matter, that I will be exploring shortly.

However, if the ad's aim was to provoke debate, in my view it has certainly succeeded.

Is betting taking away our love of the game? But that's not all. Additional questions are posed on the GambleAware website [2]:

- Are there too many gambling adverts around football?
- Is football becoming a gateway for kids to start gambling?
- Is it time to rebalance the relationship between football and gambling?

each of which go to the heart of the subject-matter of this lecture, as I hope I shall be able to demonstrate to you over the next 45 minutes or so.

2 What is gambling advertising and who regulates it?

Here in the UK, the definition of "advertising" in the Gambling Act 2005 [3] is directed at advertising that aims to stimulate demand for gambling and covers:

1. anything that is done to encourage one or more people to take advantage of facilities for gambling,
2. bringing information about gambling facilities to the attention of one or more people with a view to increasing their use, and
3. those who participate in or facilitate either or both of those activities.

It also includes entering into arrangements such as sponsorship or brand-sharing agreements.

In terms of regulation, the Advertising Standards Authority ("ASA") – funded by the advertising industry – is the UK's regulator of advertising. In doing so, it applies rules contained in Codes of Practice [4] written by the Committees of Advertising Practice.

Insofar as gambling advertising is concerned, those rules meet the Gambling Commission's expectations [5] that:

- "*gambling [is] advertised only as a responsible leisure or entertainment activity*" and
- advertising will be prohibited that is: "*likely to tap into the susceptibilities, weaknesses or aspirations of children and other vulnerable groups*" or that suggests "*gambling can change lives or is a means of making money*".

As you may know, the rules have been quite considerably tightened recently to prevent free bet and bonus offers exploiting the vulnerable and to restrict ads that create an "*inappropriate sense of urgency*" like those including "*Bet Now!*" offers during live events. [6]

All UK licensed gambling operators face the possibility of regulatory enforcement action by the Gambling Commission (pursuant to recently enhanced powers) if they do not comply with the rules contained in those Advertising Codes of Practice.

Operators should also follow the Industry Code for Socially Responsible Gambling [7], designed to enhance the social responsibility of their advertising. The most recent amendments to that code have been:

- to incorporate a requirement that a responsible gambling message appears on screen throughout the length of a television advert and
- a much publicised voluntary pre-9pm “whistle to whistle” TV sports betting advertising ban that will commence this summer on 1 August. More of that later.

All that I have described carries with it a strong theme of self-regulation designed to promote responsible gambling standards and ensure that the marketing of gambling is socially responsible.

That in fact was the stated aim of the Senet Group, an independent group founded in September 2014 by the UK’s major betting operators. At that time, it was suggested in some quarters that the underlying purpose was to prolong the life of fixed odds betting terminals in licensed betting shops.

However, things have moved on and the Senet Group’s most notable success has been its “*When the Fun Stops, Stop*” [8] campaign message, although detractors have suggested that, read literally, this message can appear to suggest stopping gambling only at the point when harm actually starts to occur.

In addition:

- the Competition & Markets Authority is empowered to enforce compliance with consumer protection law, which it has most notably done recently in relation to online gambling operators’ unfair bonus promotions and withdrawal restrictions [9], and
- the Information Commissioner’s Office [10] upholds information rights in relation to electronic marketing messages (by phone, fax, email or text).

3 Gambling advertising: The root of all evil?

That is certainly what one might think reading some of the more melodramatic newspaper headlines. But what evidence exists to substantiate such an opinion? To what extent would a gambling advertising ban end up merely addressing the consequences, as opposed to the causes, of gambling-related harms?

In 2014, GambleAware [11] (then known as the Responsible Gambling Trust) published a report by Per Binde (Associate Professor at the University of Gothenburg) entitled “*Gambling advertising: A critical research review*”. [12]

This was at a time when, as now, the volume of gambling advertising in the UK had been rapidly increasing, leading to calls for bans and restrictions.

Binde’s report concluded that it is very difficult, if not impossible, to assess how many people gamble excessively because of the direct or indirect influence of gambling advertising but the impact of advertising on the prevalence of problem gambling is in general likely to be neither negligible nor considerable, but rather relatively small.

However, I am not suggesting that his findings have attracted universal approval.

Recently, in their submission to the UK Labour Party’s “*Review of problem gambling and its treatment*” [13], Professor Rebecca Cassidy, from Goldsmiths, University of London, and others stated that the lack of ‘*direct evidence of a causal relationship*’ should not be used as

an argument to support inaction. She added that *“the lack of evidence is indicative of a lack of research, not a lack of a relationship...The search for perfect evidence is an expensive and calculated distraction. Instead we should devise sensible policies based on the weight of existing evidence and evaluating those interventions”*. [14]

Professor Cassidy also published in October last year the results of a study of 11-16 year old Australians entitled *“Young people’s awareness of the timing and placement of gambling advertising on traditional and social media platforms”* [15], in which they said: *“There is now a clear body (of) evidence that current regulatory systems for gambling advertising are ineffective, with further restrictions urgently needed across a range of media channels to prevent exposure to promotions that may encourage young people’s interest and involvement in gambling.”*

In his submission to the same Labour Party review, Professor Jim Orford from the University of Birmingham criticised the narrow interpretation of Binde’s conclusions, describing them as *“controversial”* and *“several years old”*.

Citing practical experience in her submission (and, in part, supporting Binde’s report finding that advertising can serve to maintain or exacerbate existing gambling problems), Dr Henrietta Bowden-Jones, founder and director of the UK’s National Problem Gambling Clinic [16], said that *“many of our patients report that their relapse into harmful gambling was attributable to gambling adverts on TV or social media. Children are at risk. It is our opinion that without gambling adverts there would be a lot less risk of initiating the young and the vulnerable to gambling activities by normalising a potentially harmful behaviour”*.

However, as matters stand, notwithstanding those and other criticisms plus other international research studies, Binde’s 2014 report remains the research on which the UK Government bases its approach to gambling advertising policy.

Back in April 2014 when the report was published, there was a strong public perception that gambling advertising was to a large extent deceptive, unethical and causing harm to society because it incites many people, including youths, to start gambling and to gamble excessively. *“Plus ça change”*, as certain members of this audience might say.

It was in that context that Binde’s report also concluded that, whilst most gambling researchers agree that increasing availability of gambling generally means that participation in gambling increases and, with that, problem gambling correspondingly increases, over time (in what he called an “adaption process”), a trend of increasing participation in gambling and problem gambling prevalence may weaken and eventually be reversed, despite high or still increasing availability.

His reasoning – possibly reflecting what was by then an increasing awareness on the part of gambling operators that promoting responsible gambling will in the long run make their businesses more sustainable – was that, as efforts to prevent problem gambling are intensified:

- gambling operators implement responsible gambling measures,
- treatment is provided more efficiently,
- some of those who recently have begun to gamble excessively realize that they need to cut down on gambling,
- the novelty value of recently introduced forms of gambling wears off, and
- there is a growing awareness in society of the risks associated with gambling.

It may be (and I put it no more strongly than that) this is why, in Great Britain at least, rates of problem gambling have remained, in the Gambling Commission’s words, *“statistically stable”*

with the most recently available gambling behaviour statistics [17] showing 0.7% of adults (some 380,000 people) in Britain to be problem gamblers compared with 0.8% (approximately 430,000 people) in 2015 and 2012.

However, to be clear, I don't for one moment suggest that statistic is a positive sign or (to quote Neil McArthur, CEO of the UK's Gambling Commission, in a speech he gave last November) [18], suggest that the number of problem gamblers is already so low that we have reached a floor and to bring it lower would be disproportionately expensive in terms of both time and finance.

However, is such statistical stability (in fact a slight decline in the rate of problem gambling), at a time when the amount of gambling advertising has substantially increased, consistent with an argument that people gamble excessively because of the direct or indirect influence of gambling advertising?

Binde appears to have thought not, saying *"it is plausible that adaption processes also include gambling advertising, being a part of perceived availability. As to advertising generally, it is known that its efficiency in stimulating sales does not increase linearly with increased volume of advertisements. The advertising-response function is concave at its end. In terms of consumers' perceptions, this is known as 'advertising fatigue'"*. [12]

His report concluded that:

1. it is very unlikely that advertising has no impact whatsoever on problem gambling, citing studies in which problem gamblers have reported that advertising has contributed to their past or present problems
2. it is also very unlikely that advertising is a major cause of problem gambling, citing:
 - a. studies that indicated rates of problem gambling tend to decrease despite more advertising taking place and
 - b. other studies that show that whilst some problem gamblers have been negatively influenced by advertising, typically the great majority of problem gamblers report no or only minor influence from advertising
3. it would be unrealistic to expect that general advertising restrictions would in themselves have a great preventive effect on problem gambling and
4. limitations to the evidence base mean there is a need to improve the wider understanding of gambling related harms.

It is only now, after nearly 5 years, that the evidence base will be meaningfully expanded on publication (currently expected to be within the next few months) of new GambleAware research findings [19] on the effects of marketing and advertising on children, young people and vulnerable groups. This will include which particular features of exposure to, or content of, gambling advertising constitute risk to which groups.

It seems that until then, as far as the UK government is concerned, evidence will continue to be lacking to justify the suggestion that gambling advertising is the root of all evil, at least insofar as problem gambling consequences are concerned.

I have one additional comment before I move on that will have bearing on those of you who regulate less mature markets than exist in the UK.

Binde did acknowledge that circumstances relating to each individual gambling market may have an influence on the impact of gambling advertising. He said:

- “Common knowledge about how advertising works suggests that the impact of gambling advertising is greater on an immature than a mature market.
- In a mature market, advertising chiefly affects market share of competing companies, while in an immature market advertising recruits new customers.
- Thus, if a new form of gambling is introduced in a country, advertising is likely to speed up its spread among consumers, which is one way in which advertising theoretically can contribute to problem gambling.
- This risk is accentuated if new forms of gambling are particularly risky and appeal to vulnerable groups, such as young people”. [12]

4 Gambling advertising: The “normalisation” moral argument

What then about the “normalisation” argument? According to the Committees of Advertising Practice [20], “normalisation” refers to the process by which a product, service, or behaviour becomes an unremarkable feature of everyday life in current society.

Binde [12] considered normalisation to be a hypothetical consequence of gambling advertising, contributing to a positive attitude in society towards gambling by portraying gambling as an acceptable leisure activity associated with positive qualities such as success, economic affluence, excitement and fun such that fears arise that young people are especially susceptible to these values.

However, he concluded that, although such a consequence of gambling advertising appeared plausible in theory, as at April 2014, there was little empirical support for it.

In October 2018, both UK Committees of Advertising Practice made it clear they considered the existing content rules for advertising (as well as the general principles that ads should not cause harm or be socially irresponsible) to be sufficient to address concerns about the normalisation of problematic use of commonly available products. [20]

Nevertheless, it is a perfectly valid question to query whether children are conditioned by exposure to gambling advertisements in a way that is unhealthy for their development.

The British media [21] was quick to pick up on concern expressed to a Parliamentary Committee by Karen Bradley, the former Secretary of State for Digital, Culture, Media and Sport, about the exposure of children to gambling advertising when she said:

“My children can recite just about every gambling advert there is because they sit and watch Sky – I won’t say the name, a news channel that is 24-hour sports. They hear those adverts. I am interested as a parent but I am also interested as Secretary of State in understanding what the impact is on young people of that advertising”.

More to the point, the Gambling Commission’s most recent *Young People and Gambling Survey* [22], published in November 2018, found that 7% of all young people who had ever seen any gambling adverts or sponsorships claimed that this had ever prompted them to spend money on gambling when they were not otherwise planning to.

I have described the normalisation argument as a “moral” argument. It is easily made, as for example, was the case with Karen Bradley’s comment in Parliament. It makes a great newspaper headline. That headline provokes public outrage, which leads to demands for a ban on gambling advertising. But where is the evidence base for such a radical policy change?

It is clear that a great deal will turn on the forthcoming GambleAware research findings on the effects of marketing and advertising on children, young people and vulnerable groups. [19]

5 Gambling advertising: *The times, they are a changin'*

The industry, the gambling regulator and the advertising regulator all accept that problem gambling rates in the UK have remained relatively stable during a period of considerable growth in advertising volumes.

However, as the Gambling Commission repeatedly emphasises, it wants to see a real and sustained decline in the rate of problem gambling. For example, its Executive Director Tim Miller said in July 2018:

"We are not willing to limit our ambitions to simply maintaining the current rates of problem gambling We do not accept that all of the opportunities to reduce gambling related harm have been grasped and acted upon. If problem gambling numbers have reached a floor then it is surely no more than a glass floor. A glass floor that, if we put enough cracks into it, can be smashed through". [23]

What is clear is that, despite Binde's research [12], on which the Government still relies, here and elsewhere gambling advertising will remain firmly under the regulatory microscope.

Even if we find ourselves with a change of Government in the UK within the near future (and currently anything is possible), I think it unlikely that we will see here anything as fundamental a shift in policy as Italy's Dignity Decree [24] that has completely banned the advertisement of services and products related to gambling and betting, including the sponsorship of sports.

The Italian ban has been the subject of immense criticism, including the absence of evidence that it will have any effect on rates of problem gambling. In terms of a comparable, critics have pointed to the fact that, despite the prohibition on advertising of cigarettes (introduced in Italy in 1962), rates of smoking addiction have not reduced.

Italy remains the most extreme European example of greater restrictions being imposed on gambling advertising. However, clampdowns have taken place in Belgium and look inevitable in Spain; with further restrictions on the cards (as I understand it) in Bulgaria and Latvia. I also believe that in Denmark a consultation ended yesterday on promotion of gambling offers.

In the UK, the prime public focus in recent years has been on the considerable increase in the advertising of gambling on television. In 2015, this same issue led Matthew Hill (then Director of Regulatory Risk & Analysis at the Gambling Commission) to say that:

"the environment around gambling (is) as toxic as it has ever been" adding that "the calls for greater prescription and just simply for 'something' to be done are growing". [25]

The following year, Sarah Harrison (then the Gambling Commission CEO) delivered a similar message, saying:

"the Gambling Commission does not govern, or have powers over, the volume or nature of advertising but this can contribute to public attitudes toward gambling and, as such, can influence the debate around its control and regulation". [26]

More recently, in October last year, Ian Angus, Programme Director for Consumer Protection at the Gambling Commission delivered a very powerful message in a gambling conference speech when he said to operators:

“Advertising is the lens through which consumers and the wider public judge you, your brand and the wider industry. It’s the first thing they see or hear; and first impressions matter. The decline in public trust and confidence reflects badly on us all – and it needs to be reversed. My advice to you is this ... A storm is gathering, but it can be avoided. Learn from the mistakes of the past – listen to what the public is saying and put responsible advertising standards at the very heart of your business. Don’t wait for the storm clouds to burst and precautionary measures to be triggered. Step up now and own this.” [27]

From the perspective of some in the gambling industry, that it had come to this state of affairs was surprising, given that – by and large – both the volume and nature of its advertising were lawfully conducted within the applicable rules. Indeed, that may explain why it took such a long time to see acceptance by the industry that change must happen.

What is clear is that such acceptance had certainly happened by November last year, when Neil McArthur conveyed a similar message to senior executives of licence-holding companies at the Gambling Commission’s annual *Raising Standards* conference:

“We all know that the public debate around gambling advertising on TV is getting louder. Indeed, only last Sunday Sky made announcements about this subject. The questions for today are: Do you really need to wait for government intervention on advertising, when we all know this is a growing issue? What opportunities are there to work collaboratively to take decisive action that meets the public’s concerns? Today is a chance to consider how to re-build trust with the public by changing your advertising strategies”. [18]

His speech followed just days after the UK broadcaster Sky had announced [28] that, from the start of the next Premier League season in August, it will substantially reduce the number of gambling advertisements that it shows, by imposing a limit of one gambling advertisement per commercial break on its channels. In addition, with effect from 2020, new technology will enable Sky viewers to exclude gambling advertising completely from the ads viewed by them during commercial breaks.

A month later, in December, the Industry Group for Responsible Gambling (IGRG) announced [29] that a voluntary ban on pre-9pm television sports betting advertising (starting 5 minutes before the event begins and ending 5 minutes after it finishes) will take effect this summer. The ban excludes horse and greyhound racing programmes but it will cover the live streaming of other events, meaning the ban will apply when sporting events that are being broadcast on television can also be viewed on mobile and other devices).

This announcement was welcomed by the current Secretary of State for Digital, Culture, Media and Sport, who said:

“Gambling firms banning advertising on TV during live sport is a welcome move and I am pleased that the sector is stepping up and responding to public concern. It is vital children and vulnerable people are protected from the threat of gambling-related harm. Companies must be socially responsible”. [29]

Some considered that a surprising comment, given that:

- the terms of the voluntary ban replicated one of the principal demands of the Opposition Parliamentary Party [13] and

- as recently as May last year, his same Government Department had seemingly accepted the Committees of Advertising Practice contention that “*advertising does not play a causal or even significant role in problem gambling or harm in general*” [30] but, there again, if a week is a long time in politics (to quote a former British Prime Minister, Harold Wilson) [31], 7 months is clearly an eternity.

As other commentators have observed [32], the decision by the IGRG was probably “*the right thing to do*” as it represented an important step in seeking to re-gain public trust.

However, I can’t help but wonder whether it has set a dangerous precedent for the industry in serving to hand victory on a plate to those whose complaints of excessive amounts of gambling advertising come from a deeply entrenched moral disapproval of gambling (or even from a mere lack of interest in gambling) rather than from a strong evidence base of gambling advertising related harm.

It’s not just in Europe that a considerable change of policy towards gambling advertising has occurred.

Further afield, in March last year, the Australian Communications and Media Authority [33] introduced gambling advertising restrictions for live sport on commercial television and radio, public-service broadcaster SBS, subscription television and online platforms. In September, it extended its ban to include live sport streamed online between 5am and 8:30pm.

Any advertising outside those times is subject to certain conditions. These rules also encompass e-sports, although they do not affect horseracing, harness racing or greyhound racing.

On the subject of Australia, you might think that the Victorian Responsible Gambling Foundation has conveyed a more effective responsible gambling message with its “*Love the game, not the odds*” ad than that conveyed by GambleAware’s “*Can we have our ball back?*” ad. Let’s see.

[Victorian Responsible Gambling Foundation ad: “Love the game, not the odds”] [34]

6 Gambling advertising: TV – the wrong target?

Just over two months ago, Marc Etches, CEO of GambleAware said:

“Children are growing up in a very different world than their parents. The Gambling Commission reports that 59% of 11-16 year olds have seen gambling advertisements on social media, compared to 66% on television. One in eight 11 to 16 year olds follow gambling companies on social media, and they are three times more likely to spend money on gambling. Of those who have ever played online gambling-style games, 24% follow gambling companies online.” [35]

His comments were made following publication of financial analysis commissioned by GambleAware that showed total spend by gambling companies on marketing had increased by 56% since 2014 to £1.5 billion (equivalent to 1.7 billion Euros) in 2017. [35]

Of that £1.5 billion, it was estimated that gambling companies spend £1.2 billion marketing online, five times more than on television ads, meaning that 80% of all gambling marketing spend is now online.

Also of interest is the following breakdown of the areas in which gambling companies spent the most money on marketing in 2017:

- Direct online internet marketing costs – £747million, almost half (48%) of total gambling marketing spend
- Advertising through marketing ‘affiliates’ – £301million, nearly one fifth (19%) of total expenditure
- TV gambling advertising – £234million, just 15% of total gambling marketing spend
- Social media – £149million, more than tripling over three years, and representing 10% of total gambling marketing spend
- Sponsorship – £60million, double the amount spent in 2014 (£30million). [35]

In the last few days, the ASA has published a report entitled “*Children’s exposure to age-restricted TV ads*” [36]. It strongly indicates that children’s exposure to television advertisements for alcohol, gambling and food & drink products high in fat, salt or sugar has been trending downwards in recent years.

For example, from a 2013 peak average of 4.5 gambling ads per week, children’s exposure to such ads had reduced to 2.8 ads per week by 2017.

This has prompted some to wonder (and I quote) whether “*given that the level of exposure of gambling ads to children has been falling (particularly for sports betting), it could be questioned whether the ‘whistle to whistle’ voluntary ad ban coming in next season is necessary*”. [37]

For my part, I wonder whether the decline in children’s exposure to TV ads for gambling products is attributable to children’s increasing shift from TV to online video watching platforms, particularly bearing in mind that an Ofcom report entitled “*Life on the small screen: What children are watching and why*”, published a week ago today, [38] reveals that brand awareness of *Netflix* and *YouTube* among 12-15 year olds is now higher than that for the BBC.

There must surely be a link here with recent Gambling Commission research findings that not only have 59% of 11-16 year olds seen gambling ads on social media but 12% of that same group follow gambling companies on social media. [22]

Add into the mix the fact that online marketing uses very effectively numerous techniques to identify its audience and better target adverts at those who are interested (which will include the vulnerable as well as the young) – including using information on recent browsing on a particular device as well as advertising on social media sites – and it becomes abundantly clear why calls are increasing for much tighter regulation of gambling advertising conducted online.

With all of this in mind, one begins to see why it could be said that the focus of public, media and Parliamentary outrage about a bombardment of gambling advertising on television was being aimed at an easy target.

In terms of where the bulk of gambling advertising expenditure now takes place, has TV advertising been the wrong target?

7 Gambling advertising: The holy grail?

We all know that harmonisation of EU gambling laws is an impossible dream. However, as this audience will appreciate better than I do, regulatory convergence and the achievement of

a consistent high level of consumer protection across the whole of the European Union is a different proposition.

Former Gambling Commission CEO, Jenny Williams, informed a UK Parliamentary Committee in January 2012 that:

“the holy grail, the answer, is for us all to agree on common standards and a common way of compliance and enforcement. That is something that I have been pushing for, but we are a long way off it at the moment”. [39]

It was therefore a major step forward in 2014 when the European Commission issued its *“Recommendation on consumer protection and advertising in the online gambling sector”*. [40] This provided guidance to EU member states on the kind of consumer protection measures that should be included in national gambling regulation. The recommendations, albeit not legally binding, included measures to:

- protect minors from inducement to gambling and prevent underage gambling,
- ensure that online gambling advertisements carry messages (including at least the risks to health of problem gambling) in a practical and transparent manner, and
- discourage:
 - misleading marketing
 - pressurising people to gamble
 - portraying gambling as socially attractive or as a resolution to social, professional or personal problems
 - suggesting that gambling can be an alternative to employment, a solution to financial concerns or a form of financial investment and
 - the targeting of vulnerable players

However, a study by the City University London, commissioned by the European Gaming & Betting Association (EGBA), conducted in October and November last year (and entitled *“Consumer protection in EU online gambling regulation”*) [41] shows that most EU member states have failed to fully implement the European Commission’s Recommendation with the consequence that the primary objective of the Recommendation has not been achieved.

Amongst other things, the study found that:

- only Denmark appeared to have fully implemented the Recommendation’s principles.
- some countries do not impose any restrictions on gambling advertising, although this was described as “rare” with the only example given being Slovakia, and
- *“despite broad similarities in the provisions affecting gambling advertising, specific details remain very divergent”* with the consequence that *“it would not be safe for any international gambling provider to assume that any given promotional activity that is acceptable in one Member State will be equally permissible in another and adverts need to be checked for conformity in each individual jurisdiction”*

The conclusions were that:

1. *“although the Recommendation has contributed to better consumer protection in several EU jurisdictions, it has failed to ensure consistency across all and it did not lead to regulatory convergence”,*
2. *“there is more willingness towards and greater appetite among member states for deeper administrative cooperation than was the case in 2014”* and
3. *“as such there may be more support for direct, mandatory harmonisation measures in the context of gambling that would more effectively achieve the objectives that were intended to be secured though the Recommendation”.*

It doesn’t seem to me that Jenny Williams’ holy grail is within any closer grasp than it was seven years ago.

8 Gambling advertising: Should marketing affiliates be licensed?

In UK gambling regulatory terms, 2017 was the year of the affiliate.

The first financial penalty imposed by the Gambling Commission for advertising failings took place in May that year when BGO Entertainment was fined £300,000 [42] for breaches of conditions relating to marketing & advertising on its own website and 3 affiliate websites, raising questions about how operators could improve:

- the management of their affiliates,
- their contractual arrangements with affiliates and
- both internal and affiliate training needs.

The following month, Lottoland incurred a financial penalty of £150,000 [43] for failing to make it clear to consumers (and in its third party marketing, website and social media promotions) that its customers were betting on the outcome of a lottery draw rather than participating in a lottery.

Lottoland accepted that it was responsible for the actions of its affiliates resulting in termination of a significant number of affiliate partnership arrangements with a view to it exercising greater control over the marketing material produced and published by affiliates.

In September, Sky Betting & Gaming was on the receiving end of an adverse ASA ruling [44] (as were three other operators [45] for fundamentally the same advertisement content). In each case, an ad placed by an affiliate, with the appearance of an editorial article, told the following story:

“... William is over £130,000 in debt after having to sell the house and continue to pay out of pocket for his wife’s cancer related medical bills their insurance wouldn’t cover ... William took to Facebook one night in the hospital lobby to update his friends and family on his wife’s health ... A little tired and admittedly a bit depressed, William stumbled upon an ad for [the operator’s casino] With little to no money to spend, he admits he laughed and almost scrolled past it until he saw they were offering a promotion that would reward him with £10 free at the [the operator’s game] which at over £1 million was too hard to pass up”.

A banner for each casino at the bottom of the page stated “Get £10 free to win” over a million pounds and a button labelled “Claim to win” was present throughout the article.

That has to be the most shocking example of unacceptable gambling advertising that I have ever seen.

To their credit, Sky Betting & Gaming immediately announced the closure of its affiliate marketing programme, citing “growing regulatory requirements”. In its affiliate programme closure notice, it said:

“... the regulatory landscape in which the industry operates is developing and maturing and operators are experiencing increased obligations regarding their regulatory responsibilities and level of compliance. In order to continue to operate in a compliant manner, we feel that operating the Programme is no longer viable and that managing the output of affiliates presents a significant risk to our business from a regulatory perspective. It is for this reason that we have chosen to terminate the Programme.” [46]

Other operators either followed Sky Betting & Gaming's lead or introduced much tougher "one strike and you're out" guidelines for their affiliates.

As if that wasn't bad enough for affiliates and operators responsible for their activities:

1. at the end of 2016, the ICO had written to 400 affiliates associated with promoting gambling products to determine how they were using people's personal data and how they send marketing texts, including the number of texts they have sent and the source from which they obtained people's details, [47]
2. less than a year later, in October 2017, following adverse media publicity, unprecedented joint action was taken in the UK by the Gambling Commission, the Committee of Advertising Practice, the Advertising Standards Authority and the Remote Gambling Association requiring online operators to amend or remove immediately any advertisements on their websites or in third party media that were likely to appeal particularly to people aged 17 or younger (and were freely accessible in the sense of being generally available to view) [48]
3. in December that year Broadway Gaming incurred a £100,000 penalty for misleading advertising (including by its affiliates) [49] and
4. shortly after that (in March 2018), a global intelligence-gathering operation by the Unsolicited Communications Enforcement Network, involving 9 agencies from 5 countries, revealed that the affiliate marketing industry had significant data protection and privacy law compliance issues to overcome.

In July 2018, I participated in a debate at the *iGB Live* conference in Amsterdam. By this time, it was clear that the Gambling Commission would be toughening up its code of practice provisions to reinforce the principle that its licensees are responsible for the actions of any third party organisations they use.

The motion was "*Affiliate marketing will disappear by 2020*". I suspect it won't, but will we see a licensing requirement for affiliates becoming commonplace in future? Presently, no such requirement exists in the UK and nor does it seem likely to be introduced. The approach seems sensibly to have been "*why would a gambling regulator seek to licence affiliates if it can hold licensed operators liable for their affiliates' misdemeanours*"?

This contrasts with the position in, for example, Nevada and New Jersey where marketing affiliates are required to be licensed. Time will tell whether, post the PASPA repeal, this becomes a requirement throughout all those U.S. states that permit sports betting and, if so, whether this will result in European gambling regulators following suit. I suspect you may know more about that than I do.

9 Gambling advertising - Who decides?

There have been times over the last year or so when fast-moving developments have caused me to ponder where the decision-making powers regarding gambling advertising reside.

Perhaps that is natural in a location like the UK where legislative requirements sit alongside different systems of regulation, co-regulation and self-regulation, involving a variety of regulators.

The UK's leading textbook on gambling law (Smith & Monkcom) [50] says, with justification, that "*this makes for quite a complex interlinked framework for all forms of gambling advertising across different types of media*" adding that "*there is no guarantee that an ill-judged marketing campaign may not result in a more draconian regime being introduced*".

In my opinion, it is the court of public opinion, aided considerably by certain sections of the national media, that has been playing an increasingly influential part in the decision-making process relating to gambling advertising. All of this provokes the question “*who decides – the Government, the regulator, or the will of the people (including, notably, the anti-gambling lobby)?*”.

In his book “*Gambling and the public interest*” [51] published in 2003, Professor Peter Collins addressed a number of different bases on which an argument might be advanced that gambling should be banned.

In what he described as the “democratic argument” he suggested that it could be argued that:

1. governments should pass laws that a majority of people would like to have passed
2. a majority of people would like to have gambling banned
3. therefore the government should ban gambling.

He suggested that, to find out whether the second premise is true, the government could hold a referendum.

However, the important defect in the “democratic argument” identified by Professor Collins is that “*the fact that the majority of people want government to do something does not necessarily mean that government should do it*”.

It is worth commenting that in 2014 (a year that has featured large in all that I have said), the Committees of Advertising Practice expressly acknowledged “*the unease among some sections of society*”, adding that its gambling advertising rules:

“provide the necessary level of flexibility to allow the ASA to make decisions whilst having regard to societal expectations. However, on a more fundamental level, social concerns about the proper place of gambling in our society – including whether it should be promoted or encouraged – can only be addressed at a social and economic policy level; advertising regulation must take its cue from the framework envisaged under law and implement rules in an evidence-based and proportionate manner”. [52]

That this is a vitally important consideration in relation to gambling advertising freedoms is evidenced by the fact that GambleAware recently requested production of a brief paper outlining evidence for gambling and gambling-related activity being subject to a “tipping point”, when public opinion causes policy makers to introduce, modify, or ban gambling-related regulation and/or gambling-related activity (such as advertising).

That paper entitled “*Tipping point: When public opinion triggers changes to policy*” [53] was written by Alexander Blaszczynski & Sally Gainsbury of the School of Psychology at The University of Sydney in Australia.

The authors’ following conclusions are worth listing:

1. Time-related factors in relation to public policy changes are the occurrence of a major, or a series of, high profile events that generate community interest and desire for policy change
2. Other indicative variables include:
 - the perceived negative impact on public good (meaning the nature and extent of gambling-related harm),
 - the protection of vulnerable sub-population,
 - the proportion of the gambling and non-gambling community that are affected, and

- the lobbying powers of industry, advocacy groups, and academic publications
- 3. Although inquiries often call for evidence to be presented and relevant research may be publicly funded, there is limited evidence that this has a large impact on policies
- 4. Although events, evidence, and policies in international jurisdictions are often used in debates, tipping points are generally context-dependent, meaning that what will lead to a tipping point is unique to the time and place.

So where does that leave us? I would suggest in much the same place as we started 45 minutes ago.

However, I really do hope that the forthcoming GambleAware research findings on the effects of marketing and advertising on children, young people and vulnerable groups [19] will serve to inform a rather more serious debate than has been played out on the pages of the national press in the recent past.

10 Gambling advertising: Turn down the volume or turn it off?

What is abundantly clear is that yet further tightening of gambling advertising restrictions looks set to continue, not only in the UK but across Europe.

In Italy, the volume has been turned off, prompting concern that legitimate operators will be disincentivised from continuing business in, or from entering, the Italian market. Suggestion has been made that this could well leave customers more vulnerable to disreputable operators, something that seems quite conceivable given that both Facebook and Google have reported unlicensed bookmakers appearing at the top of their Italian customer search lists.

With its recently announced changes to its own code of practice [29], the UK's gambling industry has voluntarily agreed to turn down the volume of its gambling advertising. It will take more than that alone to regain public trust, but it's a start. However, what is clear (in the UK at least) is that there is now much greater engagement on the part of gambling operators from all sectors with the issue of gambling advertising.

I foresee a much greater focus on whether, and how, to restrict gambling advertising online not only for the reasons I have outlined but also, the case of the UK, because of the current government policy commitment to "*make the UK the safest place in the world to be online*". [54] It's not a competition but I would be surprised if other countries did not have a similar aim for themselves.

One can't help but hope that the creative thinking of those in charge of marketing gambling businesses might also now employ their skill and energy in determining how best they can get across, in their commercial advertising, a clear message that:

- directly addresses the risk of gambling-related harm by actively promoting healthy attitudes and behaviour on the part of their customers and
- motivates positive behaviour change to address gambling-related problems.

Easier said than done, but hopefully not an impossible challenge to overcome with support from, and in collaboration with, gambling regulators (with initiatives such as the Gambling Commission's recent co-creative workshop on communicating safer gambling messages with low and medium risk consumers [55]).

By way of final comment, I spoke at ICE VOX [56] yesterday in a debate about whether regulatory enforcement has become too strict. What came across very clearly is that operators

in all sectors and in different jurisdictions want a clearer definition from regulators on where the boundaries lie (including gambling advertising where opinion on what is or is not acceptable can be very subjective). They seem very open to a sensible dialogue with regulators with a view to achieving the correct proportionate balance between consumer protection and the promotion of their own business interests. I wish all of you good luck as you hopefully enter into that dialogue with them.

Footnotes

1. YouTube “Can we have our ball back?” video https://www.youtube.com/watch?time_continue=69&v=i8IXRAeHYDg
2. GambleAware “Can we have our ball back?” social media advertisement <https://www.begambleaware.org/can-we-have-our-ball-back/>
3. Section 327 Gambling Act 2005 <https://www.legislation.gov.uk/ukpga/2005/19/section/327>
4. Gambling advertising: Non-broadcast Code https://www.asa.org.uk/type/non_broadcast/code_section/16.html; Broadcast Code – https://www.asa.org.uk/type/broadcast/code_section/17.html
5. The Regulation of Non-broadcast and Broadcast Advertising of Gambling - CAP and BCAP Consultation Document 18.07.06 <https://www.asa.org.uk/asset/01E0E0DE-55B5-448D-9230D20B5B1D98F3/>
6. CAP Gambling advertising: responsibility and problem gambling - Advertising Guidance (non-broadcast and broadcast), April 2018 <https://www.asa.org.uk/uploads/assets/uploaded/9d0bca96-290b-4fad-9ba33df7103a3fa9.pdf>
7. Gambling Industry Code for Socially Responsible Gambling 5th Edition (coming into effect 01.08.19) <http://iqrq.org.uk/wp/wp-content/uploads/2019/01/Gambling-Industry-Code-for-Socially-Responsible-Advertising-5th-Edition.pdf>
8. Senet Group – “When the fun stops, stop” campaign <https://senetgroup.org.uk/gambling-industry-leaders-back-senet-groups-when-the-fun-stops-stop-campaign/>
9. CMA online gambling investigation <https://www.gov.uk/cma-cases/online-gambling#two-online-gambling-firms-provide-undertakings-to-cma>
10. Information Commissioner’s Office <https://ico.org.uk>
11. GambleAware <https://about.gambleaware.org>
12. Per Binde: “Gambling advertising: A critical research review”, April 2014 http://about.gambleaware.org/media/1165/binde_rgt_report_gambling_advertising_2014_final_color_11_5p.pdf
13. Labour Party “Review of problem gambling and its treatment”, 2018 https://d3n8a8pro7vhm.cloudfront.net/campaigncountdown/pages/2214/attachments/original/1537438117/11519_18_Gambling_addiction_Paper-Tom_Watson_v7_%28ELECTRONIC%29%28WEB%29.pdf?1537438117
14. In a paper entitled “Frequency, duration and medium of advertisements for gambling and other risky products in commercial and public service broadcasts of English Premier League football” <https://osf.io/preprints/socarxiv/f6bu8/>, Professor Cassidy said: “further research is needed to investigate how advertising impacts different groups, particularly children and young people”.
15. Professor Rebecca Cassidy & others: “Young people’s awareness of the timing and placement of gambling advertising on traditional and social media platforms”, October 2018 <http://research.gold.ac.uk/24861/>
16. The National Problem Gambling Clinic <https://www.cnwl.nhs.uk/cnwl-national-problem-gambling-clinic/about-us/>
17. NatCen: “Gambling behaviour in Great Britain in 2016 - Evidence from England, Scotland and Wales”, September 2018 <https://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2016.pdf>
18. Gambling Commission “Raising Standards” conference 08.11.18 <https://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2018/Collaborate-and-know-your-customers-to-make-gambling-safer.aspx>
19. RGSB Research brief: “The effect of marketing and advertising on children, young people and vulnerable people” <https://about.gambleaware.org/media/1538/project-brief-41-advertising-young-and-vulnerable-people.pdf>
20. CAP “Normalisation”, 15.10.18 <https://www.asa.org.uk/uploads/assets/uploaded/e517f21a-9d40-4a46-b2a0da254f04af7f.pdf>
21. See, for example Daily Telegraph “Gambling adverts could be banned as culture secretary reveals: ‘My kids know betting ads off by heart’” <https://www.telegraph.co.uk/news/2016/10/24/gambling-adverts-could-be-banned-as-culture-secretary-reveals-my/>

22. Gambling Commission “*Young people and gambling*” report, November 2018
<https://www.gamblingcommission.gov.uk/PDF/survey-data/Young-People-and-Gambling-2018-Report.pdf>
23. World Gaming Executive Summit 03.07.18
<https://www.gamblingcommission.gov.uk/PDF/speeches/World-gaming-summit-2018-Barcelona.pdf>
24. Decreto Legge 12.07.2018 n. 87, Disposizioni urgenti per la dignità dei lavoratori e delle imprese. OJ no 161 of 13.07.2018
25. World Regulatory Briefing 10.09.15 <http://cliftondavies.com/wp-content/uploads/2015/09/The-future-role-of-responsible-gambling-in-legislation-and-licence-conditions.pdf>
26. World Regulatory Briefing 02.02.16 <https://www.gamblingcommission.gov.uk/PDF/speeches/World-Regulatory-Briefing-at-ICE-2016.pdf>
27. “Responsible Marketing for Gambling Operators” conference 03.10.18 <http://cliftondavies.com/gambling-commission-calls-debate-gambling-advertising-sponsorship/>
28. See Daily Telegraph “*Sky limits TV gambling adverts to one per break amid campaign for pre-watershed ban*” 04.11.18 <https://www.telegraph.co.uk/news/2018/11/04/sky-limits-tv-gambling-adverts-one-per-break-amid-campaign-pre/>
29. IGRG press release <http://igrq.org.uk/wp/news/>
30. ASA “*Tougher standards on gambling advertising announced*” 14.02.18
<https://www.asa.org.uk/news/tougher-standards-on-gambling-advertising-announced.html>
31. See, for example, “*Art in Parliament*” <https://www.parliament.uk/about/art-in-parliament/online-exhibitions/parliamentarians/harold-wilson/image-1/>
32. See, for example, Regulus Partners Blog “*It’s a Shame About Ray – Gambling Ad Bans: the Triumph of Pragmatism... and Intolerance*” 18.12.18 <https://regulusparkers.com/index.php/2018/12/18/its-a-shame-about-ray-gambling-ad-bans-the-triumph-of-pragmatism-and-intolerance/>
33. ACMA - FAQ <https://www.acma.gov.au/theACMA/alcohol-and-gambling-ads>
34. Victorian Responsible Gambling Foundation ad: “*Love the game, not the odds*”
<https://www.youtube.com/watch?v=9DnC2DF1SSM>
35. GambleAware press release <https://about.gambleaware.org/media/1857/2018-11-24-gambling-marketing-online-five-times-tv-ad-spend.pdf> and infographic
<https://about.gambleaware.org/media/1853/2018-11-24-rp-qa-gb-marketing-spend-infographic-final.pdf>
36. ASA “*Children’s exposure to age-restricted TV ads*”
<https://www.asa.org.uk/uploads/assets/uploaded/229cd7e6-f9e2-4cf0-85a0a463add0ee2d.pdf>
37. SBC News “*Children’s exposure to betting ads lowest for 10 years*” 01.02.19
<https://sbcnews.co.uk/europe/uk/2019/02/01/childrens-exposure-to-betting-ads-lowest-for-10-years/>
38. Ofcom “*Life on the small screen: What children are watching and why*” 29.01.19
https://www.ofcom.org.uk/_data/assets/pdf_file/0021/134832/Ofcom-childrens-content-review-Publish.pdf
39. Q735: Culture, Media and Sport Committee - Minutes of Evidence HC421
<https://publications.parliament.uk/pa/cm201213/cmselect/cmcmds/421/120119.htm>
40. European Commission Recommendation of 14 July 2014 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014H0478>
41. Review of the implementation of selected provisions of European Union Commission Recommendation 2014/478/EU across EU States: “*Consumer protection in EU online gambling regulation*” (by Dr Margaret Carran for EGBA) <https://www.egba.eu/uploads/2018/12/181206-Consumer-Protection-in-EU-Online-Gambling-EBGA-Report-December-2018.pdf>
42. Gambling Commission: Decision notice: Review of BGO Entertainment Limited’s operating licence, April 2017 <https://www.gamblingcommission.gov.uk/PDF/BGO-decision-notice.pdf>
43. Gambling Commission: EU Lotto Limited trading as Lottoland - Regulatory settlement following a licence review - Public statement, June 2017 <https://www.gamblingcommission.gov.uk/PDF/Lottoland-public-statement-June-2017.pdf.pdf>
44. ASA Ruling on Bonne Terre Ltd t/a Sky Vegas 13.09.17 <https://www.asa.org.uk/rulings/bonne-terre-ltd-a17-386853.html>
45. ASA Rulings 13.09.17 on: 888 UK Limited <https://www.asa.org.uk/rulings/888-uk-ltd-a17-392622.html>; Ladbrokes Betting & Gaming Limited <https://www.asa.org.uk/rulings/ladbrokes-betting---gaming-ltd-a17-388937.html>; Casumo Services Limited <https://www.asa.org.uk/rulings/casumo-services-ltd-a17-392623.html>
46. As reported, for example, in SBC News 04.09.17 <https://sbcnews.co.uk/europe/2017/09/04/sky-betting-gaming-shuts-affiliate-hub-programme-citing-growing-regulatory-concerns/> and The Guardian <https://www.theguardian.com/society/2017/sep/04/pressure-grows-gambling-industry-over-dubious-tipsters-affiliation>
47. ICO press release 10.11.16 <http://cliftondavies.com/wp-content/uploads/2016/11/ICO-cracks-down-on-use-of-personal-data-in-online-gambling-sector-.pdf>
48. CAP, ASA, Gambling Commission, RGA: joint letter 20.10.17
<https://www.gamblingcommission.gov.uk/PDF/Ltr-from-ASA-CAP-CG-RGA-final.pdf>
49. Gambling Commission: Broadway Gaming Limited - Public Statement December 2017
<https://www.gamblingcommission.gov.uk/PDF/public-statements/Broadway-statement-December-2017.pdf>

50. Smith & Monkcom “*The Law of Gambling*”, 4th Edition 2017
<https://www.bloomsburyprofessional.com/uk/smith-and-monkcom-the-law-of-gambling-9781784512095/>
51. Peter Collins “*Gambling and the Public Interest*” 2003 <https://epdf.tips/gambling-and-the-public-interest.html>
52. CAP and BCAP Gambling Review – An assessment of the regulatory implications of new and emerging evidence for the UK Advertising Codes <https://www.asa.org.uk/asset/3CFADBC6-5BD9-4550-AC953501031A5477/>
53. Alexander Blaszczynski & Sally Gainsbury “*Tipping point: When public opinion triggers changes to policy*” 2017 <https://about.gambleaware.org/media/1520/tipping-point-brief-report.pdf>
54. DCMS press release 11.10.17 <https://www.gov.uk/government/news/making-britain-the-safest-place-in-the-world-to-be-online>
55. Gambling Commission: “*Co-creation workshops – safer gambling*”
<https://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2019/Co-creation-workshops--safer-gambling.aspx>
56. ICE VOX <https://www.icelondon.uk.com/ice-vox#/>

© Clifton Davies Consultancy Limited 2019

cliftondavies 

dc@cliftondavies.com
www.cliftondavies.com