

A sledgehammer to crack a nut?

Northridge Law partner **Melanie Ellis** looks at the UK Gambling Commission's potential ban on gambling with credit cards and asks, is it worth it?

“**A**ffordability” is the latest watchword in the British Gambling Commission's drive to protect vulnerable individuals from the harms of gambling. It goes without saying that individuals gambling beyond their means is damaging, and the Commission is currently considering whether a ban on customers gambling with credit cards should be implemented, to reduce the risk of customers gambling with money they cannot afford to lose. But is this suggestion as unnecessary as it is impractical?

The harm caused to a person who racks up debt to cover their gambling losses which they cannot afford to repay is serious and often life-altering. So, it is right that gambling regulation should take steps to minimise this harm. But the dilemma is what those steps should be and how far they should go. Banning gambling altogether, even if we were to accept this level of paternalistic governance, would simply be ineffective as vulnerable individuals would continue to find ways to gamble, but with none of the protections that regulation brings. An approach must be taken which is proportionate to the level and extent of the harm.

In 2018, the Responsible Gambling Strategy Board (RGSB) recommended that we no longer permit people to gamble online using credits cards and the opposition Labour Party has said it will implement such a ban through new gambling legislation, if elected into government. In terms of the impact of a ban, data from the Remote Gambling Association shows that 5% of gambling deposits (by value) are from credit cards and a further 11% are from e-wallets, which may have been funded using a credit card.

Many people, myself included, conduct all online transactions using a credit card simply for security. If there is any problem with the transaction, or your card details fall into the wrong hands, fraudulent transactions will be reversed by the credit card company usually with no questions asked. Requiring that all online gambling transactions be conducted



using a debit card would penalise the majority of people who gamble entirely safely and within their means, and may prevent some from gambling online altogether if they are not willing to risk their debit card details.

The RGSB's key conclusion is that “gambling with borrowed money significantly increases the risk that consumers will gamble with more money than they can afford”. Of course it does. This is a risk associated with all forms of spending using borrowed money, from purchasing designer handbags on a credit card to car loans and mortgages. However, our interventions to prevent people getting themselves into financial difficulties must be proportionate to the risks and balanced against peoples’ right to freedom of choice.

A ban on credit card use would also mean a ban on deposits via an e-wallet, unless the operator can establish that the deposit into the e-wallet was not made on a credit card. Would such a ban be proportionate and necessary and, more importantly, effective to address the risks?

Gambling Commission consultation

Following a call for evidence, the Commission recently launched a consultation to consider whether it should take this step, or alternatively whether imposing restrictions on the use of credit cards for gambling would be a better solution. The aims of the call for evidence were to develop its understanding of the scale of gambling with credit cards and the associated risks, as well as consider “harm prevention measures which might serve as alternatives to prohibiting or restricting gambling with credit cards”. As part of the consultation exercise, the Commission wants to “obtain further evidence about consumers’ motivations for using credit cards to gamble, and any specific benefits of using them”.

The Commission has not (yet) said that it intends to implement a ban. The alternative restrictions under consideration include ensuring all customers have the opportunity of blocking gambling transactions on their credit cards, imposing delay periods (as yet

unspecified) before a customer can use a credit card and limiting customers to one active credit card. Given that the Commission is still asking for further evidence and has put forward this alternative proposal, this consultation is not the rubber-stamping exercise its consultations often appear to be.

Differing approach between land-based and online casinos

As things currently stand, there is a clear distinction between remote and non-remote casinos in relation to gambling on credit. Whilst remote casinos can currently accept credit cards for gambling and can also extend credit to customers themselves if they wish, a bricks and mortar casino can neither offer loans to customers nor accept payment by means of a credit card.

What is the rationale for the distinction? To a certain extent it is historical. Legislation restricting credit being given in connection with gambling in casinos dates back at least 300 years. The Gaming Act 1710 introduced provisions that securities given for money lent for gambling purposes would be void, subsequently the Gaming Act 1845 made all gaming debts unenforceable. It seems that, at the time, the concerns related primarily to the upper classes losing their fortunes in illegal and unscrupulous gaming houses.

Casino gambling is no longer the preserve of the upper classes, due to the prevalence and variety of land-based casinos and the wide availability of gambling online. The Gambling Act 2005 made gambling debts enforceable again, however despite general acceptance that licensed land-based casinos were operating responsibly, the 2005 Act imposed alternative restrictions to protect casino customers from the harms of credit. The key restriction is imposed by section 81 of the 2005 Act, which imposes a mandatory licence condition that land-based casinos cannot give credit in connection with gambling, nor can they “participate in, arrange, permit or knowingly facilitate” the giving of credit in connection with gambling.

This is not to say that customers do not gamble in casinos using funds obtained on their credit cards. The licence condition only serves to create a disconnect between the casino and the provision of credit, with the aim of preventing the problems prevalent in the 17th to 19th century, where unscrupulous casino operators would act as loan sharks. ATMs can be located in casinos (provided they are sufficiently far away from the gaming tables) and there is nothing to prevent customers withdrawing cash on credit cards using those facilities, which they then exchange for gaming chips.

In 2008, the Gambling Commission sent an “open letter” of sorts to the casino industry on credit and debt in casinos. The letter, sent to



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the British Casino Association, sought to address the introduction of the Global Cash Access machine to casinos, which enables customers to withdraw significant sums on any type of payment card for use to gamble in the casino. After much discussion with the industry and consideration of the risks (including the security risk to customers leaving the casino to obtain large sums from Bureaux des Change) the Commission reached a compromise position. The use of this machine would not breach the condition imposed by section 81, provided the casino did not know (or ignore clear indications that) the customer was gambling using their credit card. Whether the Commission’s focus on affordability extends to a reconsideration of its position remains to be seen, but at the present time, customers are able to gamble in land-based casinos using credit cards, just not in a direct transaction with the casino.

So it’s not as simple as asking ‘why should gambling be allowed online with credit cards, when customers in land-based casinos can only gamble with money they actually have?’ To the extent that there is a differing approach, it stems from the particular risk that the restrictions on land-based casinos are designed to mitigate. In the online context, with the absence of in-person interaction between customer and casino, it is probably true that a scenario is much less likely to arise where the casino encourages a customer to continue gambling on the basis that they can settle up later. Of course, the same absence of in-person interaction can also made it more difficult to spot that a customer is at risk.

What would be an effective and proportionate approach?

Even if credit cards were banned for online gambling, there would be no way for an operator to know that a customer has not, for

example, taken out a loan to fund their gambling or is maxing out their overdraft. Indeed, neither of the options put forward in the consultation include preventing online operators from offering credit to customers themselves. Whilst a credit card ban might reduce the problem, it would not prevent people from gambling money they can’t afford to lose.

It is also worth considering a person who is using a credit card to gamble with funds they do not have and cannot afford to repay is very likely already experiencing a gambling problem. A person in this situation will try to find alternative ways to continue gambling if a credit card cannot be used. As the Commission recognised in its call for evidence, this could involve them turning to high interest payday loans, illegal loan sharks or even crime. Better, surely, to put measures in place that reduce the likelihood of problems developing in the first place.

The Commission has already given a strong indication in its latest enforcement report that it considers that, whenever a customer gambles beyond the average disposable income for the operator’s customer base, some sort of affordability check should be conducted. It is perhaps surprising that the proposed LCCP provisions for the alternative approach of restricting the use of credit cards do not include a requirement for affordability checks to be conducted.

Although some other commentators disagree, on balance I think it more likely that the Gambling Commission will proceed with the approach of imposing restrictions on credit card use, rather than banning it altogether. The effects of a ban on both gambling operators and consumers would be considerable and might in fact prompt a backlash against the increasing intervention of the “nanny state” into people’s freedom of choice when it comes to gambling. Taking a cynical view, being saved from the Damocles’ sword of a ban on the use of credit cards may make operators much more inclined to embrace affordability checks and the proposed restrictions.

Melanie is a gambling regulatory lawyer with 13 years’ experience in the sector. Melanie advises on all aspects of gambling law including licence applications, compliance, advertising, licence reviews and changes of control. She has acted for a wide range of gambling operators including major online and land-based bookmakers and casinos, B2B game and software suppliers and start-ups. She also frequently advises operators of raffles, prize competitions, free draws and social gaming products.

Melanie has a particular interest in the use of new technology for gambling products and novel product ideas.

