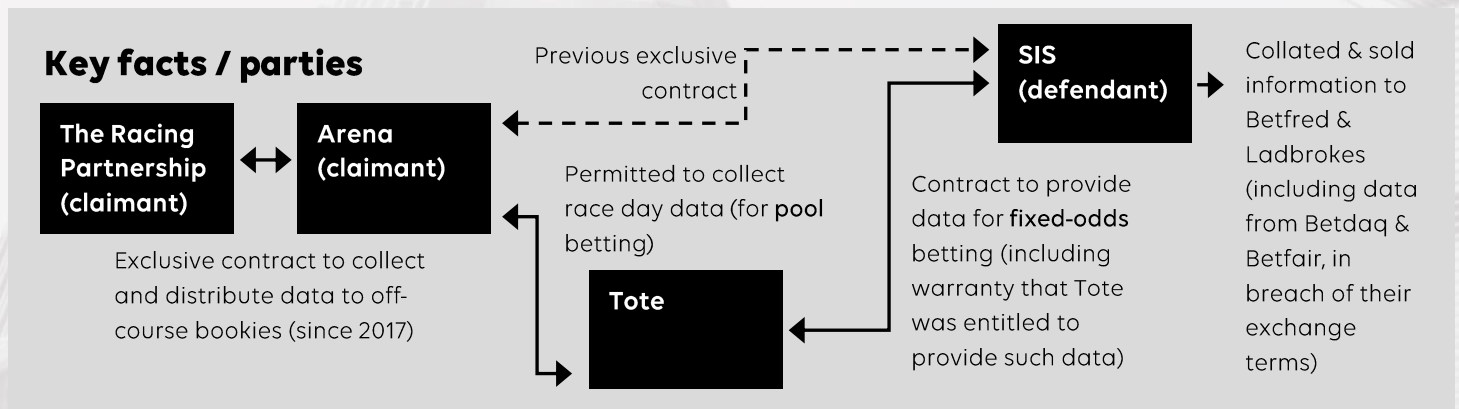


BETTING & GAMING CASE UPDATE

Misuse of betting data

The Racing Partnership and Arena have succeeded in their claim against Sports Information Services (SIS) relating to the use of betting data. This note summarises key practical takeaways



Key issues

- > Was the betting data received by SIS subject to a duty to keep it confidential?
- > In any event, was there a conspiracy to injure The Racing Partnership using 'unlawful means'?

Issue 1: Confidentiality

The [Court of Appeal](#) decided that SIS had not received the data via Tote subject to any duty of confidentiality. Critically, SIS received a warranty from Tote confirming it was permitted to provide the data (as there was no express restriction in its contract with Arena).

Significantly, however, that doesn't mean the data was never capable of being confidential at all:

- > Tote had received information for a specific purpose only (pool betting) and therefore it should have known it was otherwise confidential.
- > Although not binding, the judgment makes clear that not all race day data can be confidential:
 - > **Not confidential:** e.g. course conditions / weather.
 - > **Possibly confidential:** The compilation of various race day data; and/or data received with a speed advantage over the public (even if only for a short period before, say, a TV broadcast).

Issue 2: Conspiracy to injure

Although SIS hadn't misused confidential information, it was still liable to The Racing Partnership because it was found to have conspired by 'unlawful means' to injure it.

This was a controversial point in the judgment, but in simple terms the court decided that SIS had worked with Tote to harm The Racing Partnership (as it was having to compete with SIS to supply information to off-course bookmakers) through two 'unlawful' acts:

- > SIS had obtained data from Betdaq & Betfair that it acknowledged was obtained in breach of those exchanges' terms (it then combined this data with information from Tote to sell on to others).
- > Even though SIS hadn't misused confidential information (see left), Tote had (only one conspirator needs to have acted unlawfully for others to be liable).

Practical takeaways

This is a case to watch as it is likely to be appealed to the Supreme Court. In the meantime, takeaways for companies dealing with betting data include:

- > **Due diligence, warranties & indemnities:** If there are concerns about the receipt or use of betting data, parties should take reasonable steps to address those concerns e.g. seek a warranty that the party is entitled to provide the data or other due diligence. An indemnity supporting the warranty is also key, given the risk of being liable for 'conspiracy to injure' even if you aren't the one who acted unlawfully.
- > **Express restrictions on use:** Event organisers/owners should ensure express restrictions are imposed not just on attendees but all other service providers and counterparties (which was not the case for Tote).