

GAMBLING LAW UPDATE

Case Update: Exclusions in terms and conditions

A recent case provides useful guidance on how terms and conditions of gambling websites may be interpreted by the courts. We have provided a summary of the case below, together with some practical points to consider when drafting/reviewing terms and conditions.

Overview

A customer won £1.7 million on an online casino game. The operator claimed that such amount was not payable, as there was a software error in the casino game and the liability to pay the winnings was excluded pursuant to its terms and conditions. The recent [judgment](#) concluded that the operator's liability to pay the winnings was not excluded.

Whilst this case raises useful reminders and pointers for others drafting or considering terms and conditions, the outcome in this case was fact specific. In short, this case does not mean liability to pay winnings can never be excluded for software errors – it can, provided you consider the practical points on the right-hand side.

Grounds for the decision

The key points from the decision were:

1. **No clear words:** The wording of the terms and conditions was unclear and did not cover the ability to exclude liability to pay out winnings in the event of a software error.
2. **No sign-posting:** The poor presentation of the relevant clauses (they were buried within the terms) and the failure adequately to draw them to the customer's attention meant that the purported exclusions, even had they been effective to exclude liability, were not incorporated in the contract.
3. **Not transparent or fair:** Even if the above points had gone in Betfred's favour, the clauses were still not transparent or fair (under consumer rights law) and the operator was not entitled to rely upon them.

Liability can be excluded

Even though the judge did not accept that liability was excluded in this case, the judge expressly stated that if terms are adequately drafted and signposted, liability for such events can be excluded i.e. it is possible to exclude liability for paying out winnings on a game where there has been a game error.

Practical points

Each of the below points was specifically referenced in the judgment and, if included in terms and conditions, would strengthen the argument that liability for paying out winnings when there has been a game error could be excluded.

Terms and conditions should:

- › have a clear structure with 'general' sections and separate sections for specific services (e.g. casino or sports betting);
- › use consistent numbering and don't excessively use capitalised wording where it isn't important or relevant;
- › not be repetitive;
- › if they incorporate other documents (e.g. game rules), it should be clear where such other documents can be accessed;
- › use plain English to say what you mean (no typos) and use precise, clear wording when seeking to exclude liability for certain things;
- › require clear acceptance of the terms by customers;
- › include exclusions in terms and conditions rather than in game rules. If important contractual clauses are included in the game rules, these should require clear acceptance by customers before they play the game;
- › include express wording regarding errors in games and the consequences of such errors e.g. that the operator has no liability to pay out winnings, but that any stakes would be refunded;
- › clearly signpost important exclusions. Although not specifically mentioned in the judgment, a method to better signpost important exclusions is to include a summary of the key terms (especially for important, significant or unusual terms) at the beginning of the terms and conditions; and
- › be drafted in way which can be understood by an average consumer without needing to consult a lawyer.

If you would like any further advice or assistance with responding to the consultation, please contact Melanie Ellis (melanie.ellis@northridgelaw.com) or Tom Edmonds (tom.edmonds@northridgelaw.com).