THE BEHAVIOURAL INSIGHTS TEAM

THE GAMBLING POLICY & RESEARCH UNIT

Using behavioural market design to align gambling operator incentives with consumer interests

August 2023

Executive summary

This discussion paper presents ideas to reduce gambling harm by reshaping the market. In the UK gambling market, incentives are not strong enough for operators to prevent gambling harm, apart from at the extreme ends. A well-designed market would align operator incentives with improving consumer welfare and well-being.

We explore two approaches that have been used as levers in other markets:

1. **Applying pressure on operators by sharing information about them with other stakeholders.** For example, providing consumers with information such as which operators have the best customer service score could encourage consumers to spend more money with those operators, incentivising all operators to improve their customer service.
2. **Creating stronger regulatory incentives to encourage best practice.** For example, clear guidelines and/or outcome measures allow the regulator to monitor operator performance. Performance can be tied to incentives such as levies, fines or other regulatory action to further incentivise operators to prioritise consumer interest.

Our current view is that the first approach has benefits but is unlikely to be sufficient on its own to reshape the market, and that a combination of both approaches is likely to be most effective.

We welcome feedback on this discussion paper. Our next steps are to work with stakeholders to shape new research and pilots to help inform policymaker decisions on what should be done to reshape the market.

1. Redesigning the gambling market to work for all

The UK's gambling market isn't working optimally because incentives are not always strong enough for operators to prevent harm – other than at the extreme end of

problem gambling. Gambling operators hold a huge amount of data on their customers. However, too often this data is used to design products and promotions that exploit aspects of human behaviour – our limited cognitive bandwidth, present bias and being disproportionately drawn to what is most easy. So we end up with products where it is difficult to understand the real likelihood of winning, or features that invoke a strong sense of scarcity (e.g. push notifications with time-limited offers) to encourage an immediate bet. Features like these which exploit behavioural biases make it uniquely difficult for consumers to make informed choices..

The design of traditional remedies (e.g. fines for breaking specific rules) can fail to account for the influence that behavioural factors have on market incentives. In contrast, a behaviourally designed market (one which takes into account how people actually behave relative to how they are assumed to behave) would align operator incentives towards maximising consumer welfare and well-being. In practice, this would create a market-wide shift so that operators move to a consumer-first model. This would mean using rich consumer data to design user experiences that support consumers to play within their means, while operating a sustainable business. In time, we would see operators innovating to introduce brand-new products and features that maximise well-being and minimise harm.

Behavioural factors exploited by the gambling industry:
The gambling industry has access to a wealth of behavioural data, and there are many examples of them using their knowledge of human behaviour to design the user journey, from their marketing to their platform and product design. At present, this improves the enjoyment of play, but also increases the potential for harm – particularly among at-risk groups. Some examples of how behavioural factors are currently being exploited by the gambling industry include:

1. **Limited cognitive bandwidth:** It is often in businesses' interests to increase complexity and make it hard for consumers to know if they are getting a good deal. We see this across many consumer markets: people need to spend ~107 minutes per week navigating and comparing options if they want to make good decisions. In the gambling market it is similarly difficult to make good choices: is it really worth opening an account to get 10 free spins? How easy will it be to get my winnings?
2. **Present bias:** People tend to prefer immediate rewards over waiting for later, larger rewards. You know you should head to sleep or at least put your phone down, but the lure of scrolling is just too tempting. Operators capitalise on this through introductory offers, push notifications, and time-limited bonuses that can be hard to resist. This can particularly affect people who experience problem gambling.
3. **Taking the path of least resistance:** Businesses know that introducing extra hassle puts people off from making a decision. Operators make certain things really easy, like placing a bet, and other things hard, like withdrawing funds, opting out of marketing messaging, or closing an account.

With the recent publication of the Gambling Act white paper, this is a timely opportunity to develop solutions to fix market failures. This paper explores two options that have been used as levers in other markets:

1. **Applying pressure on operators by sharing information about them with other stakeholders.**
2. **Creating stronger regulatory incentives to encourage best practice.**

In the first section of this paper, we lay out how we can empower market players with transparent information provision, and use this to shift the market to be more aligned with consumer interests. In the second section, we discuss how developing new regulation can realign the market, by rewarding the best market players, and punishing the worst. We explore these two ideas in isolation, as well as their combined strength. Whilst the approach of empowering market players has clear potential, this paper also explains its limitations, and why using it in combination with stronger regulation would be our recommended approach to realign the gambling market and minimise gambling harms.

2. Applying pressure on operators by sharing information about them with other stakeholders

Disclosure can be a powerful way to shape markets – simply providing people with information can be enough to shift consumer behaviour. For example, in the restaurant market, better information about quality based on customer reviews boosts revenue for the best restaurants, especially smaller independents. Such remedies span league tables and comparison sites (e.g. the FCA's performance scorecard for personal accounts), to public data reporting (e.g. the NHS Digital's data on GP appointments), to scoring, kitemarks and awards (e.g. Yelp's health inspection scores). A commonality across these remedies is that they all shift behaviours and incentives through information provision.

Greater transparency across all operators could realign the UK's gambling market, so that profit-making activities maximise consumer well-being and minimise harm. In theory, this information could influence the choices of other market players (consumers, investors, other businesses in the supply chain or employees). By encouraging market-players to choose or switch which operator they invest their time or money into, operators may be incentivised to improve on the factors that those market players care about. If those factors are ones which make the market safer for consumers, then we in turn improve consumer well-being. With the new data powers given to the Gambling Commission in the white paper, there may be an opportunity to share information publicly to allow better comparisons across operators.

To develop an effective remedy, we need to understand how different market players are likely to use and act on different types of information. **Four potential target players include consumers, investors, wider corporate partners and employees. In this section, we explore how powerful each player could be in shaping the market.**

Consumers:
Consumers care about particular factors when choosing an operator. Our early evidence suggests that around 6 in 10 people would be likely to consider an operator's customer service score, the average player gains, and whether the operator had been awarded the Advanced Safer Gambling Standard by GamCare when choosing an operator to gamble with. Improving transparency across these metrics – for example, through the implementation of an independent and accredited league table, or via requirements on

adverts to include statistics such as the proportion of customers that lose money playing the advertised product – could result in consumers using this information to decide which operator to play with. In principle, this would incentivise operators to compete on these metrics by improving their standards, creating a safer market for consumers.

If consumers were to consider factors such as customer service score when choosing an operator to gamble with, this could exert sufficient pressure for operators to optimise towards this, and create a safer gambling market. However, there are two risks with relying on consumers to exert pressure on operators:

1. This mechanism requires a sufficient number of consumers to use the information and act on it, otherwise remedies here risk only being effective for improving outcomes among the most engaged consumers. We've demonstrated that consumers care about factors which influence their wellbeing, but more research would be needed to determine if this mechanism would sufficiently impact operator profits.
2. Consumers may react to the same information in different ways, and provision of some comparison information may cause more harm. For example, consider the case of better odds/promotions. Encouraging greater competition on these factors may improve outcomes for the average consumer, but could risk worsening outcomes for those most at risk of gambling harm – for example, high risk individuals who gamble may be prompted to redeem all the top-ranked promotions, and spend more than they otherwise would. This could be exacerbated if consumers incorrectly assume that offers have been independently verified and potentially deemed 'safe'.

Investors:
Investors are concerned with returns and the broader impact of their investment. Many UK operators are owned by larger firms, who in turn are owned by large institutional investors – This is the case for Entain, Flutter, and Kindred. Institutional investors could act as potential levers for influence across operators via at least two mechanisms, with current evidence suggesting there is greater potential with the first:

1. Regulatory action which reduces profit could impact share prices, and reduce returns, incentivising operators to improve practices to avoid this. For example, in March 2023, Kindred Group's share price dropped by over 2% after two of its operators were given a £7.1m fine for regulation failures.
2. There are investors that care about more than just returns, which could encourage operators to make changes to appeal to responsible investors. The OECD outlines several strategies which institutional investors can use to identify responsible investment opportunities (e.g. screening, divestment or engagement). The likelihood of this occurring in practice may be less promising. Our work on green investment suggests even big issues like climate change rank fairly low down investors' list of priorities. Further research is needed to determine investor interest in gambling harm - and interest in differentiating between the 'best' and 'worst' gambling operators in their investment strategies. A study based in Macau, China, has found implementing government initiatives to improve ESG (e.g. smoking bans and responsible gambling) can lead to significant increases in investment in some types of casinos.

Wider corporate partners:
Wider corporate partners such as media owners (e.g. YouTube), and sponsorship partners (e.g. football teams) may be concerned about the impact of working with certain companies

on their reputation. For example, Mars made the call to remove adverts from YouTube after they had been placed alongside controversial video content, and more recently, Chelsea Football Club made the decision to walk away from a deal with betting company Stake following pressure to do so from their supporters. In theory, better information on the 'best' and 'worst' gambling operators could result in sponsorship partners and media owners choosing not to work with operators ranking bottom on gambling harms (e.g. through not carrying their branding and/or adverts). This provides operators with an incentive to improve, to increase their competitiveness when securing deals such as sponsorship agreements.

Operators spend large amounts on advertising – as high as one third of annual revenue – a helpful proxy for the importance of securing desirable deals with media owners and sponsorship partners. There are some cases where operators have changed their contracted deals with partners due to PR issues, such as in 2021, when Norwich City FC removed BK8 as a sponsor because they published provocative adverts. However more research is needed, as current evidence does not indicate how long these impacts can last – with Aston Villa more recently signing a deal with BK8 – or what factors and level of publicity would be necessary to outweigh the financial benefits of working with the industry.

Employees:
Employees' decisions to work for an operator may be influenced in at least two ways by additional transparency across operators:

1. By the operator's reputation, which may be affected by a record of social responsibility. Published information on an operator's performance could therefore prompt those who value social impact to move to an operator who ranks higher.
2. By their perceived job security. An operator facing a risk of significant fines, or possibly losing their licence could prompt employees to consider switching jobs.

Some evidence suggests that industries which are generally perceived as "immoral" need to pay higher wages to attract workers.. If information was publicly available to prospective employees related to the 'morality' of the operator organisation, employees may use this information and opt to prioritise job applications with the better performing operators.

More research is needed to better understand the labour market movement in the gambling industry. One survey found that 74% of surveyed graduating students are considering stability as a key motivator for applying for a specific job, suggesting that employees could exert enough pressure on operators to improve practices if risk of redundancy is a known concern. We therefore advise that this idea is explored further.

For information to be most effective in reshaping the market, it will require information to be shared about all operators, to provide a complete picture to market players, and remove concerns of creating a commercial disadvantage for those that participate. This could be achieved by enforcing compliance for information sharing, or, using available data such as that from the upcoming Ombudsman, as well as the data that the Gambling Commission will soon have increased power to access from operators following the white paper.

Overall, while transparency remedies have clear value, if implemented in isolation they may be insufficient to incentivise gambling operators to prioritise consumer well-being. In the next section we explore regulatory incentives as another mechanism to reshape the market.

We would welcome views and feedback on:

Q1. Which market player(s) would be most effective to target with information provision?

Q2. What information would be most effective for each market player?

Q3. In what format, and at what moment would it be best to share information with each market player? Is there scope to also be strategic with information provision - such as targeted comms?

Q4. Do we have access to the information we need? If not, how can we get access?

Q5. What research is needed to determine how we can leverage one or more of these market players?

3. Creating stronger regulatory incentives to encourage best practice

Pressure from market players through information provision alone may not be effective in all cases. To complement this, we can increase the impact of transparency mechanisms by backing them up with a stronger threat of regulation. Gambling regulation aims to ensure that consumers are safe from exploitation, free from crime, and able to enjoy a fair and open gambling experience. New regulation could go further, beyond punishing rule breaking or non-compliance, to ensure that consumer interest is at the heart of an operator's actions. For this to be successful, three things are required:

1. Metrics to **measure performance** against best practice.
2. A system to **monitor performance** against these metrics.
3. **Performance that is linked to regulatory incentives** (e.g. fines; size of levies; bans on market access; increased monitoring or decreased monitoring), to ensure that good performance against regulatory expectations results in an increase in revenue/profit for the organisation, and poor performance results in a decrease.

The regulator can further bolster the effectiveness of this regulatory regime by publishing performance metrics across operators in the market, and how close they are to the threshold for regulatory action such as investigations, suspensions or penalties. This would effectively work as an early warning system - allowing operators, and potentially other market players such as investors - to understand the likely threat of future regulatory action and take action to improve performance before the regulator is forced to act.

This new regulatory regime can be built on existing legislation. The Gambling Commission already has a 'fair and open' licensing objective. It also already provides detailed guidance for operators in its Licence Conditions and Codes of Practice (LCCPs), to inform operators of what measures they must take to comply with their requirements. We recommend that in the first instance, the Commission explores whether these can be augmented through stronger guidance on what constitutes fair and open; clear metrics on how compliance should be measured, and a monitoring regime to assess performance over time – building on its existing compliance assessments. The Gambling Commission should soon be able to use operator data to monitor and measure compliance. For example, within LCCP 7.1.1, an additional guideline could be added, which explicitly requires operators to provide products and services that are designed to meet their customers' needs, that they know provide fair value, which do not cause harm. Guidelines could also add that operators should ensure they do not exploit customers' behavioural biases, lack of knowledge, or characteristics of vulnerability.

Developing a system to measure, monitor and incentivise target behaviours will come with challenges, but there are examples from other markets that demonstrate how this could be done. Below are three case studies that showcase different approaches. Further work would be needed to understand whether and how lessons from other markets could be adapted to the gambling market.

Case study 1: FCA Consumer Duty

Regulating to put consumer interests at the forefront of firms' objectives

The FCA recently brought in a new Consumer Duty, to be introduced in July 2023, which "sets higher and clearer standards of consumer protection across financial services, and requires firms to put their customers' needs first". By introducing this duty, they are forcing firms to think carefully about what a customer should expect from products and services - factoring in a deep understanding of how consumers actually behave.

Specifically, the duty will require firms to:

1. End rip-off charges and fees.
2. Make it as easy to switch or cancel products as it is to sign up in the first place.
3. Provide helpful and accessible customer support, not making people wait so long for an answer that they give up.
4. Provide timely and clear information that people can understand about products and services so consumers can make good financial decisions, rather than burying key information in lengthy terms and conditions.
5. Provide products and services that are right for their customers.
6. Focus on the real and diverse needs of their customers, including those in vulnerable circumstances, at every stage and in each interaction.

To ensure the success of the consumer duty, compliance will be monitored and assessed via at-least annual reports on customer outcomes against a set of rules and guidance published in July 2022. Additional monitoring comes in the form of firms' obligation to notify the FCA - and the firm in question - if they become aware that another firm is not complying. Non-compliance will result in corrective action, and, if serious, investigation, fines and securing redress for customers who have suffered harm.

Applying this model to the gambling market: An FCA-style consumer duty would require operators to consider the consumer's best interests – something that would require defining – whilst designing and marketing user experiences. Similar to the FCA, the Gambling Commission could set expectations for what they would expect to see as key outcomes and best practices. Performance could be monitored, for example by providing access to data and results from internal audits, analysis and trials. Non-compliance would result in regulatory action, such as fines or additional investigations. Like the FCA consumer duty, requirements of the gambling duty could include providing timely and clear information on products and services, aligning this model well with the approach of information provision.

Case study 2: Research Excellence Framework

Tying funding to a framework that aligns research outputs with the priorities of higher education funding bodies

In 2014, UK higher education funding bodies[1] introduced the Research Excellence Framework (REF) "to secure the continuation of a world-class, dynamic and responsive research base across the full academic spectrum within UK higher education". Every year in the UK, public funding is allocated to support research conducted by UK higher education providers (HEPs). The funding bodies introduced the REF to ensure that HEPs will prioritise impactful, high quality research.

REF is a review process used in the UK to assess research by HEPs. REF ensures that the research quality in the UK is of a high standard by creating a "single framework for assessment across all disciplines, with a common set of data required in all submissions, standard definitions and procedures, and assessment by expert panels" which HEPs can use as a goal for their research quality. REF also uses this framework to 'monitor' or assess the research against the criteria.

The REF outcomes are used to inform the allocation of around £2 billion per year of public funding. By tying the outcomes of the REF assessment to the allocation of funding, REF encourages HEPs to submit higher quality research.

Applying this model to the gambling market: A REF-style model could involve creating detailed guidelines and outcome measures, allowing the Gambling Commission to compare performance across different organisations. The guidelines would be created based on the Gambling Commission's priorities, namely, consumer interests, and it may be possible for these to be created by adjusting the existing LCCPs. The REF model was developed to inform funding decisions; in the gambling market, operator performance could be incentivised in different ways – via fines, size of levies or different levels of regulatory action. For example, those falling below a specific performance threshold could be restricted from marketing their services, allowing those with better performance to capture a larger proportion of the market and increase their profit.

[1]The UK higher education funding bodies: Research England, the Scottish Funding Council, the Higher Education Funding Council for Wales, and the Department for the Economy, Northern Ireland.

Case study 3: Care Quality Commission
Inspecting against guidelines to achieve higher standards of health and social care.

The Care Quality Commission (CQC) is the independent regulator of health and adult social care in England, whose purpose is to ensure health and social care services are safe, effective and high quality, pushing the healthcare market to improve their services.

The CQC has a set of guidelines, centred around five broad domains: whether practices are safe, effective (clinically), caring, responsive and well-led. These guidelines can be used by service providers to meet expectations, and the CQC uses these to monitor performance.

Service providers are incentivised to achieve a good result from inspections. The CQC has the power to take action, including setting out improvements; limiting what the provider is registered to do; increasing supervision and fining or prosecuting. The rating the provider receives must also be displayed, meaning patients can place additional pressure on the provider to improve, by using the rating when deciding which provider to use.

Whilst inspections such as these can be timely and costly, the Behavioural Insights Team has demonstrated that simply by using publicly available data published by the CQC and other sources, we could identify 95% of inadequate GP practices by inspecting only 20% of them. Building models into the inspection process could therefore help reduce costs of the regime over time.

Applying this model to the gambling market: Following the creation of a clear set of guidelines and outcome measures, a CQC model would involve a detailed, targeted audit process, to assess performance against these criteria. As an incentive, those that come out well in the audit could be given a reprieve from the audit, whilst those that perform poorly could be audited more frequently, and as such, they'd be more likely to be subjected to regulatory action. In addition, they could risk having their freedoms to operate limited and possibly receive a fine.

Several factors require further consideration to inform the potential shape of stronger regulatory incentives, including:

- For a new framework or guidelines to be developed, more clarity is needed on what operator best practice looks like and which metrics will be used to assess operators. This may mean, for example, developing clear definitions of 'socially responsible gambling', and 'gambling harm'.
- Once a framework or guidelines are developed, a process for measuring and monitoring compliance will need to be designed. As outlined earlier in this paper, it's possible that the existing compliance assessments could be built on to serve this purpose.
- The guidelines will need to consider how much control operators have over all aspects of the user journey. For example, operators may not have the power to change the design of their games, when game design is owned by software companies.

We would welcome views and feedback on:

Q1. Can we create a regulatory system with stronger incentives to prioritise the consumer interest by using existing legislation? What additional resources - if any - would be required for this to succeed?

Q2. What incentives/dis-incentives should be explored? And which of these are feasible under the existing system?

Q3. Are there any other factors that require consideration, such as possible backfires, before we can implement these recommendations?

4. Next steps

We welcome your feedback on this discussion paper, and in particular on the questions we have outlined. We will use this paper and any feedback as the basis of collaborative work with stakeholders across the sector to prioritise next steps for this work. Our ambition is to develop additional evidence and pilots to inform decisions for policymakers on how to reshape the market.