

## Submission of Evidence to the Culture, Media and Sport Committee Inquiry: June 2011

This submission is from the Independent Betting Adjudication Service (IBAS) which is an impartial adjudicator on disputes between registered gambling operators and their customers.

### Introduction

IBAS:

- Provides an independent betting dispute resolution service for over 90% of British betting operators, for selected overseas betting operators, greyhound racecourses, a number of online casinos, adult gaming centre (AGC) operators and lottery organisers.
- Has formed a positive working relationship with the Gambling Commission (GC).
- Welcomed the previously stated intention of the GC to review its Licence Conditions and Codes of Practice (LCCP) this year and would support it proceeding at the earliest opportunity.
- Would prefer to see the GC take a more pro-active role in matters relating to the fairness of betting and in particular, to operators' rules.

### Strategic Recommendations

IBAS:

- Considers that the GC should require operators to name their independent, third party dispute resolution body as a condition of their licence.
- Considers that the LCCP should be more detailed in its definition of what it requires from an independent, third party dispute resolution service.
- Notes that the most effective way to ensure that every licensed operator is also covered by a dispute resolution service would be to link the application processes in some way.
- Would welcome liaison with regulators in other territories on the current White List to consider a uniform approach to the handling of betting disputes.
- Receives a relatively low number of disputes relating to gaming machines, but considers that these could be reduced further by helping players understand how the games work and how rigorously they are tested before being made available for play.

### Statistical Information

- IBAS handled 31% more betting and gaming disputes in 2010 than in 2005, with £334,500 extra being returned to customers as a result of adjudication forms returned.
- Despite the sharp growth in online betting since the Gambling Act was passed, the majority (55%) of 2010's completed disputes concerned British-based licensed betting offices.
- In 2010 football overtook horse racing as the subject of the greatest volume of disputes, although this was affected significantly by the 2010 FIFA World Cup.

## **1. Independent Betting Adjudication Service: Background**

The Independent Betting Adjudication Service (IBAS) acts as an impartial adjudicator on disputes between gambling operators who are registered with IBAS and their customers.

Prior to adjudication, IBAS requires that:

- (1) The dispute has been fully considered by the gambling operator but has not been settled to the satisfaction of both parties.
- (2) The parties to the dispute agree to comply with IBAS's terms and conditions.

The first point of reference in all adjudications will be the gambling operator's rules. When a customer makes a bet there is an agreement that the bet will be settled in accordance with those rules. If the gambling operator has no rule governing the disputed situation then the Panel imposes its own rule based on what it perceives is consistent with fair practice and accepted industry convention.

IBAS believes that both parties are entitled to a detailed explanation which gives the reasoning behind the Adjudication Panel's decision. This demonstrates that IBAS rulings are not arbitrary and are based on objective criteria which can be followed and understood.

Since the service was launched in 1998, the primary focus of IBAS's work has been betting disputes, although more recently it has taken on adult gaming centres (AGCs), lottery operators and greyhound stadia as members, and provided an online casino dispute resolution service for members of the Remote Gambling Association (RGA).

## **2. The Gambling Commission**

- a. IBAS has formed a positive working relationship with the GC and has signed a Memorandum of Understanding on information sharing, which has proven valuable to both organisations.
- b. IBAS had welcomed the stated intention of the GC to review the LCCP in 2011 and strongly hopes that this review will indeed take place in the near future, with particular reference to the issues raised below (see 'Independent Dispute Resolution').
- c. The provision of legal advice by the GC (or confidential access to legal advice received by the GC) on the interpretation of certain regulations and offences would be useful for IBAS in resolving a small number of highly contentious disputes.
- d. Similarly, in IBAS's experience, the generalised accusations of cheating made by bookmakers in certain disputes never appear to be followed through by a prosecution. IBAS recommends those regulations relating to cheating be reviewed with the aim of creating a system where allegations of cheating were more likely to result in action being taken against those responsible. From a dispute resolution perspective, actual prosecutions for cheating would help IBAS to identify with significantly greater precision what was considered cheating under the terms of the Act.
- e. IBAS has welcomed the work of the Gambling Commission in conjunction with the Advertising Standards Authority on the question of misleading offers or advertisements e.g. relating to bonuses.

- f. IBAS considers that linking the requirement to provide a third party dispute resolution service more directly to the licensing process could work for the benefit of the public. For example, while the provision of such a service is a requirement of the LCCP, any breaches of the LCCP in this regard tend not to emerge until a dispute with a customer is at an advanced stage, because the membership records of IBAS (and other similar services for betting and gaming companies) are not held by the Commission. An operator may state that he has made a provision when in fact he has not, and in the absence of a centrally provided service the affected customer may have nowhere to turn, aside from the courts.

### **3. Fair and Open Provisions**

The Commitment of the Gambling Commission to fair and open gambling is welcomed. IBAS would welcome a further strengthening of this commitment, including:

- a. A more thorough requirement on operators than the current advice to conduct 'health checks' on their own rules; this would help to protect customers against rules which might fall foul of the 'reasonableness test' within the Unfair Contract Terms Act 1977 (UCTA). It is rare among British licensed operators to find rules which are plainly unfair, but these tend to be identified only as the result of a betting dispute. IBAS does not believe that it should be responsible for identifying and questioning apparently unfair rules, although in practise, with a lack of contract law litigation, it often has been.
- b. Assisting operators, wherever possible, to work towards standardised practices on areas of regular contention, such as 'grace periods' or 'tolerance times' (see below), where betting is permitted after an event has commenced, or so called 'palpable error' rules which give operators the right to amend odds quoted to a customer after the bet has been struck where it is proven that the quoted odds were clearly not those intended to be offered by the operator.
  - i. Tolerance Times: Different bookmakers offer different periods of time after a race has started where they will continue to accept bets. However, these are rarely advertised, resulting in many customers not being aware whether they are holding a valid bet, expecting to collect winnings when they had no prospect of doing so or throwing away what they considered to be a losing betting slip when they were, in fact, entitled to a refund. IBAS has given consideration to whether unpublished tolerance times are effectively hidden terms of a contract which could be deemed unfair in the context of UCTA. IBAS understands bookmakers wish to be able to compete and want to be free to offer discretion on bets placed after the 'off' in certain cases. However a requirement, for example, to publish during or immediately after a race was completed a 'no-more bets' time for each racing event, would greatly increase the transparency of operators' handling of such bets.
  - ii. Obvious Error Rules: The long established principle in bookmaking that an operator reserves the right to correct a price quoted to a customer where it is considered to be a 'palpable error' has evolved with developments in technology. Some operators now reserve the right to correct *any* error where the price offered did not match the intended available price as recorded in the company's central database at the time the bet was struck; although not all have amended their operating rules accordingly. Different bookmakers' rules describe similar situations in different ways, some referring to 'obvious errors', some to 'mistakes' and others to the broader category of 'incorrect prices'.

With an ever growing range of betting opportunities available – particularly with the development of ‘in-play’ betting – the scope for incorrect prices being offered remains high.

There is also variety in the approach taken by bookmakers where obvious errors are detected. In some cases operators reserve the right to make void bets struck at prices they did not intend to offer, rather than resettling at the correct price; ideally, customers would be offered the choice of both where circumstances allow. Some operators resolve price disputes using the ‘best market price available at the time’, others the better price of either the odds available at the time or the starting price. Others have rules which mean that incorrectly quoted odds are simply replaced with the odds that company wished to have offered at the time. It would be helpful to have a more uniform approach and IBAS recommends that consideration is given to using either the LCCP or new regulations to achieve a fairer result for bettors.

#### **4. Independent Dispute Resolution**

IBAS welcomed the requirement under the Gambling Commission’s existing Licence Conditions and Codes of Practice (LCCP) for operators to provide an independent, third party dispute resolution service in cases where it is not possible for the customer and operator to resolve a dispute between themselves.

However, this requirement could be substantially strengthened without significant additional inconvenience or cost to operators by:

- Requiring the operator to name their designated independent third party as a condition of licence and to display its details to customers as deemed appropriate. IBAS requires its members to display the IBAS logo at point of sale.
- Setting out in greater detail the requirements of an ‘independent third party’ to ensure customer confidence in the independence of the dispute process. For example, IBAS considers that adjudicators should not act for operators in a separate commercial relationship, nor should they be seen to be representative of the operators in any capacity.

IBAS considers that certain types of disputes, particularly some broadly described as ‘account management’ related, should fall under the auspices of the GC or other local regulator. IBAS is currently liaising with the GC on that basis.

#### **5. Impact of Increased Offshore Gambling**

- a. The relocation of many formerly British-based online operators to overseas territories has had relatively little impact on IBAS. All of these have remained registered with IBAS throughout and continue to abide by IBAS rulings as per mutually agreed Terms and Conditions.
- b. However, in one recent instance, the involvement of the local gambling regulator in one particular dispute resulted in what appears to have been the first instance of customers of an online, Gibraltar-based and licensed bookmaker being treated differently to customers in the GC-licensed retail arm of the same company/betting ‘brand’.

The IBAS Terms and Conditions acknowledge that the authority of the courts or bodies such as regulators will take precedence over IBAS rulings, but this situation will continue to be monitored closely. Should further similar examples arise, the damage will be likely to affect the reputation of the whole industry, beyond those operators directly involved, and where British customers are affected this is likely to ultimately add to the workload of the GC.

- c. IBAS recommends that consideration be given to the question of consistency in dispute handling for operators based in White Listed territories. This should be addressed by raising the matter through the Gambling Regulators European Forum (GREF) or by introducing regulations requiring those who trade in Great Britain to acknowledge the primacy of British dispute resolution.

## **6. Gaming Machine Disputes**

- a. Despite their apparent significant contribution to the economic success of the gambling industry, gaming machines account for fewer than 1% of disputes. In almost all cases, arrangements made between IBAS, operators and suppliers of gaming machines allow access to the log files of machine play which can ensure that an accurate adjudication is reached.
- b. Machine-related disputes often focus on the ‘unfairness’ of a machine, as perceived by the customer. Although commercial data provided in confidence by the operator can help to satisfy IBAS that ‘normal’ payout levels are being achieved, any initiative to demonstrate openly the processes required by the GC to ensure fairness in machine function would be welcomed. This might include access to the procedures of the nominated Testing House.
- c. In some cases, there appears to be confusion among machine players about the difference in technology used to determine the result of the game. Older gaming machines tended to use a compensator which guaranteed a minimum proportion of stakes returned to customers over a given period of time. The majority of current gaming machines which generate cases for IBAS have the game outcome determined by a random number generator (RNG) with the machines being set up so as to produce an average level of pay out but having the *potential* to generate both profit and loss for the operator. The adjudication forms received from gaming machine customers still suggest confusion between the two in some cases, in particular from customers who expect that after a series of losing games the chances of a subsequent winning game should improve. This may indeed be the case with compensator games but is not with RNG-powered games. A scheme to offer clearer advice to gaming machine players on this basis is recommended.

## 7. IBAS Statistics

<b>2005 – 2010 IBAS ADJUDICATION FORMS RETURNED</b>		
Year:	Total Number of Forms Submitted	Number Relating to Internet Betting
2005	1812	152
2006	1674	206
2007	1668	372
2008	2184	554
2009	2145	612
2010	2373	558

<b>2005 and 2010 – COMPARISON OF DISPUTE ORIGIN BY SECTOR</b>			
<b>2005</b>		<b>2010</b>	
Retail (GB)	81%	Retail (GB)	55%
Internet	8%	Internet	28%
Retail (Ire)	5%	Retail (Ire)	5%
Betting Exchanges	3%	Telephone Betting	5%
Telephone Betting	2%	E-Gaming (Casino etc.)	3%
Gaming Machines	< 1%	Betting Exchanges	3%
E-Gaming (Casino etc.)	< 1%	Gaming Machines	1%

<b>2005 and 2010 – COMPARISON OF DISPUTE BASIS BY CATEGORY</b>			
<b>2005</b>		<b>2010</b>	
Horse Racing	36%	Football	38%
Football	27%	Horse Racing	26%
Greyhound Racing	7%	Greyhound Racing	5%
Numbers Betting	7%	Account Mangement	4%
Motor Racing	5%	Cricket	3%
Golf	3%	Tennis	2%
Rugby	3%	Golf	2%
Cricket	2%	Rugby	2%
Others	10%	Numbers Betting	2%
		Others	16%