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Gambling and the risks of over-regulation

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Summary

- The government has launched a review into British gambling law 'to make sure it is fit for the digital age'. A coalition of activists has proposed a range of anti-gambling measures, including an advertising ban, low stake limits, a monthly spending cap, slower gameplay and a ban on VIP schemes, bonuses and inducements.
- Despite the perception of a gambling 'epidemic' in Britain, the number of people who gamble has not risen in the last decade and there has been no rise in the rate of problem gambling since records began in 1999. The number of children who gamble has halved since 2011. In real terms, the amount spent on gambling has declined since 2015.
- Many of the policies proposed by the anti-gambling coalition would be incompatible with the government's stated aim of respecting 'the enjoyment people get from gambling' and 'the freedom of adults to choose how they spend their money'.
- An advertising ban would make it more difficult for customers to distinguish between the regulated and unregulated sectors. It would deprive advertising platforms of an important source of revenue and stifle competition. There is very little evidence that it would have any impact on problem gambling.
- A ban on sponsorship would similarly hinder licensed operators from establishing their brands. It could have a devastating impact on many sports, such as lower league football, darts and snooker. There is no evidence that it would yield any benefits.
- A £2 stake limit for online games would have a similar effect as the £2 stake limit on fixed odds betting terminals, which is to say it would make them unplayable for many gamblers. This is not regulation in the

normal sense, but a form of neo-prohibition which would likely drive players to unlicensed, unregulated and untaxed websites.

- Artificially long gaps between online bets would be boring and frustrating for players. As with the £2 stake limit, this policy can be seen as an attempt to deter gambling *per se* rather than tackle problem gambling. The technology exists to track harmful patterns of play and intervene. Sophisticated algorithms and timely interventions for the minority of high-risk gamblers are more effective than simplistic, blunt tools.
- Limiting the amount people can spend on gambling each month would be extraordinarily paternalistic. There is no other market in which consumers are restrained by the state from spending more than a certain amount of money. Although it has been suggested that the deposit limit could be lifted for those who can prove that they can afford it, it is not easy to see how this could be done without significant bureaucracy and the invasion of privacy. Ordinary people who want to gamble with their own money would be treated as if they were taking out a mortgage or living off the proceeds of crime.
- Protecting the vulnerable and preventing gambling becoming a source of crime are two of the three key objectives of British gambling law. The policies proposed by anti-gambling campaigners could undermine both of these by stimulating demand for unregulated websites that can be easily found via internet forums, search engines and affiliate sites. Many players will be unwilling to tolerate online content that has been made deliberately tedious and unexciting by limits on speed of play and stakes/prizes. Unregulated online casinos closely resemble their regulated competitors and, if advertising is also banned, consumers could have great difficulty distinguishing one from another.
- Use of unlicensed gambling websites is relatively rare in Britain, but it is not unknown. Unregulated websites are used by 4.5 per cent of UK online gamblers and 44 per cent are aware of at least one unlicensed site. Research from Sweden suggests that players of online casino games, slots, poker etc. are particularly willing to use unregulated websites. These are the consumers who would be most affected by the kind of policies currently being proposed in the UK.
- A better answer lies in technology. The ability of ‘Big Data’ to identify problem gamblers and prevent harm is unlike anything we have seen before. Regulated online operators use a range of practical harm reduction measures which advance the government’s objectives without infringing the rights of the average punter or handing a competitive

advantage to the unregulated sector. Not every company uses their technology to prevent harm in the same way, but best practice could be made standard through regulation. It is these practical solutions, not the blunt tools of anti-gambling activists, that could be the focus of the government’s review.

Introduction

Fourteen years after the reform of Britain's gambling laws, the issue remains controversial. Despite a string of new regulations and the near-eradication of fixed-odds betting terminals in bookmakers, a coalition of anti-gambling activists is pressing for a further clampdown. After promising to review the Gambling Act 'to make sure it is fit for the digital age', the government launched a public consultation in December 2020 'to assess whether we have the balance of regulation right' (DCMS 2020a). Activists are hopeful that it will lead to primary legislation with severe restrictions on stake limits, advertising, promotion and perhaps even a limit on how much players can spend.

Although the media narrative about gambling is largely driven by those who want to restrict consumer choice, the government acknowledges that gambling is a 'fun leisure activity for many people' (ibid.) and it 'recognises the need to balance the enjoyment people get from gambling with the right regulatory framework and protections' (DCMS 2020b). Britain's gambling industry is worth £14.3 billion a year, pays £3 billion in tax and employs 100,000 people. This paper examines the gambling market, assesses the likely impact of the measures proposed, and looks at constructive policies that could serve the interests of consumers.

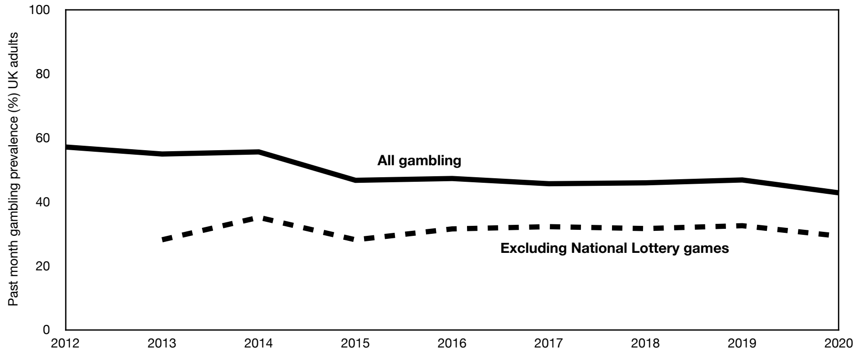
The facts

Repeated claims in the media about Britain being in the grip of a gambling 'epidemic' with a growing number of 'addicts' are not supported by the evidence. Since these claims are widely believed, we begin by establishing the facts.

Gambling participation

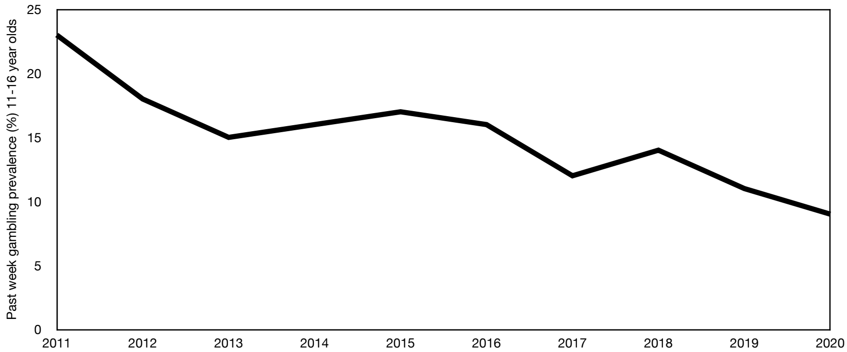
The number of gamblers in Britain has fallen somewhat in recent years, mostly because of the declining popularity of the National Lottery. Figure 1 shows adult gambling prevalence (past month), with the dotted line showing the proportion of Britons who engage in non-Lottery gambling. The latter has remained steady at around a third of the population. Gambling participation fell in 2020, largely as a result of Covid-19. Looking at the more typical year of 2019, the most common gambling activities were the National Lottery (29 per cent), other lotteries (12 per cent), scratchcards (11 per cent), sports betting (7 per cent), private betting (5 per cent), slot machines (4 per cent) and horse racing (4 per cent).

Figure 1: Adult gambling prevalence in the past month



Gambling among children has fallen more sharply. Figure 2 shows past week gambling activity by 11-16 year olds (Gambling Commission 2020). In 2020, nine per cent reported gambling in the previous seven days. The most common activities were private bets with friends, playing cards for money and playing a National Lottery game, all of which were reported by three per cent of the sample. No other gambling activity was reported by more than two per cent of the sample.

Figure 2: Gambling prevalence among children in the past week



It is possible that children under-report their gambling in surveys, especially when the activity is illegal. On the other hand, when dealing with such small percentages, it is worth remembering that school children may not always take such surveys seriously. For example, two per cent of 11 year olds in the Gambling Commission survey reported having gambled in a casino in the past week, which seems very unlikely.

In any case, the overall number of children engaging in any form of gambling is low and getting lower, and most of the activities are legal, non-commercial and cannot be affected by regulation.

Problem gambling

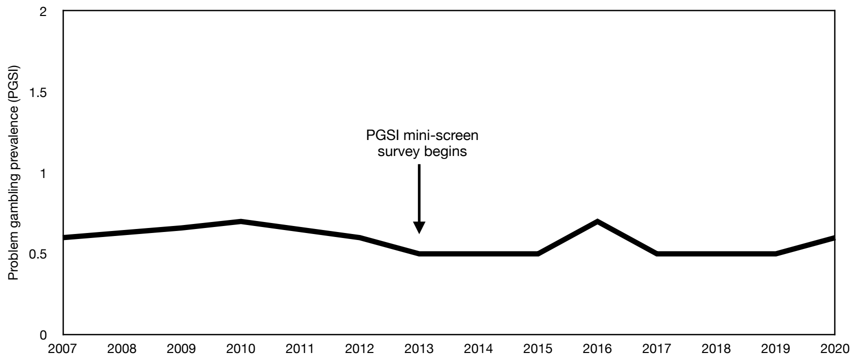
Rates of problem gambling have been low ever since they were first measured by the government in 1999. They have barely fluctuated in the intervening years. The results from the two internationally recognised surveys are shown in Figures 3 and 4.

The Problem Gambling Severity Index (PGSI) has been used since 2007, initially in the British Gambling Prevalence Survey and subsequently in the Health Surveys for England, Scotland and Wales. A simplified version of the survey was introduced in 2013, featuring three questions about respondents' activity in the past 12 months:

1. Have you bet more than you could really afford to lose?
2. Have people criticised your betting or told you that you have a gambling problem?
3. Have you felt guilty about the way you gamble or what happens when you gamble?

The options are 'never', 'sometimes', 'most of the time' and 'almost always', with scores of 0, 1, 2, 3 respectively. A score of four or more classifies the person as a problem gambler (although campaigners and journalists often refer to 'gambling addicts', this is not a scientific term and the surveys do not measure 'addiction').[1] There has been no statistically significant change in problem gambling prevalence by the PGSI measure over the years, with rates hovering around 0.6 per cent of the population.

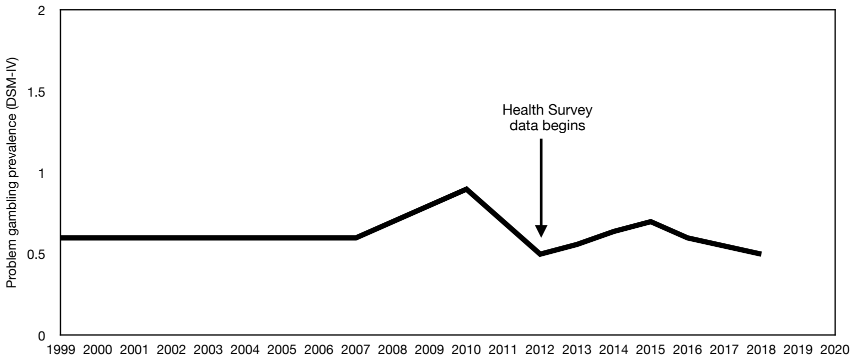
Figure 3: Adult problem gambling prevalence (PGSI)



1 If a person scores more than zero, they are classified as an 'at risk' gambler. It is far from clear that being 'at risk' has any clinical significance (Delfabbro and King 2017), but the numbers are much larger, with 1.8 million people in the UK 'at risk' compared with 350,000 problem gamblers. With the number of problem gamblers failing to rise, campaigners have increasingly cited the number of 'at risk' gamblers.

Similarly, the DSM-IV survey method suggests that rates of problem gambling have been low and essentially flat for twenty years. The British Gambling Prevalence Survey reported DSM-IV problem gambling prevalence estimates in 1999, 2007 and 2010. Since 2012, the data have been collected in the Health Surveys for England, Scotland and Wales, which classify gambling as a 'health-related behaviour'. Figure 4 shows that mid-point prevalence estimates have ranged between 0.5 and 0.9 per cent, with no upward trend since 1999.

Figure 4: Adult problem gambling prevalence (DSM-IV)



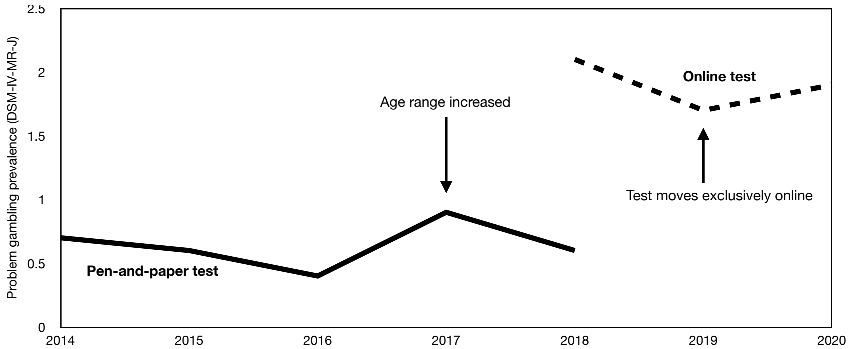
Rates of problem gambling are very low among women (0.1-0.3 per cent). Among men, it is much more common among the 25 to 34 age group than any other. This has been the case for as long as the UK has been measuring problem gambling. Rates are consistently less than half as high among 35 to 44 year olds, which suggests that problem gambling is usually a temporary 'condition' that most people grow out of or otherwise overcome.

Problem gambling among children

Estimates of the rate of problem gambling among children did not exist in Britain until 2014, when the Gambling Commission began collecting the relevant data based on a different set of questions in a survey known as the DSM-IV-MR-J. Unfortunately, several methodological changes have made it impossible to discern a trend. There was no rise between 2014 and 2016 but, in 2017, the age of children interviewed rose from 11 to 15 year olds to 12 to 16 year olds. Then, in 2018, an online version of the test was introduced. This produced a much higher prevalence estimate than the pen-and-paper test: the former suggested that 2.1 per cent of children were problem gamblers whereas the latter suggested a figure of

0.6 per cent. Since 2019, the test has only been conducted online and the estimate has been 1.7 per cent (see Figure 5).

Figure 5: Problem gambling prevalence among children



There is no conclusive explanation for why the online test produces higher estimates, but it seems likely that it picks up many false positives. If taken at face value, the most recent figure suggests that 1.9 per cent of 11 to 16 year olds are problem gamblers. Among 16 year olds specifically, the rate is reported to be 3.5 per cent. These figures seem implausible given that the rate among 16 to 24 year olds is only 0.8 per cent.

Regardless of which measure is more accurate, the apparent rise in recent years is clearly the result of methodological change, although that did not stop the BBC claiming that the 'number of children classed as having a gambling problem has quadrupled to more than 50,000 in just two years', thereby fuelling the sense that Britain was in the grip of a growing epidemic (BBC 2018).

Given that the number of 11 to 16 year olds who gamble has fallen significantly in recent years, as shown in Figure 2 above, it would be surprising if problem gambling had truly risen among the same age group. Although the claim that 55,000 children are problem gamblers is often repeated, it should be treated with caution.

International comparisons

It seems clear that the adult problem gambling rate has been around 0.6 per cent for the last 20 years, seemingly unaffected by new innovations in the industry and changes in regulation. Is 0.6 per cent a big number? Not when compared to other countries. An extensive study by Williams et al. (2012: 5) used a consistent methodology to estimate problem gambling rates in 26 countries and found that:

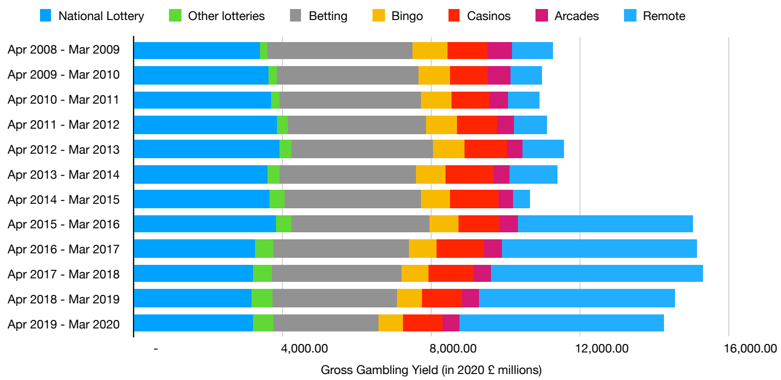
> Depending on the specific country and the survey year, the standardised past year rate of problem gambling ranges from 0.5% to 7.6%, with the average rate across all countries being 2.3%. In general, the lowest standardised prevalence rates of problem gambling tend to occur in Europe, with intermediate rates in North America and Australia, and the highest rates in Asia. More specifically, the lowest standardised prevalence rates occur in Denmark, the Netherlands, and Germany. Lower than average rates are seen in Great Britain, South Korea, Iceland, Hungary, Norway, France, and New Zealand. Average rates occur in Sweden, Switzerland, Canada, Australia, United States, Estonia, Finland, and Italy. Above average rates occur in Belgium and Northern Ireland. The highest rates are observed in Singapore, Macau, Hong Kong, and South Africa.

Problem gambling among children in Britain is also 'towards the lower end of the range of rates of adolescent problem gambling seen across other countries', as the government acknowledges (DCMS 2020a). Indeed, even the higher figure of 1.9 per cent reported in the internet surveys is comfortably below the international average for children (Calado et al. 2017).

Gambling expenditure

In a 2020 report, the National Audit Office (2020: 7) claimed that 'Gambling in the UK has grown rapidly over the past decade seeing a 57% increase'. This figure has been repeated by the All Party Parliamentary Group on Gambling Related Harm and the BBC, but it is highly misleading. The National Audit Office clarifies that the rise is 'mostly due to a significant increase in licensed online and mobile gambling, which did not need to be licensed in Britain before November 2014 if it was based overseas'. This is, in fact, the whole reason for the apparent increase. In real terms, there has been no rise in gambling spend in the last five years (see Figure 6), and the totals before and after 2015/16 are not comparable.

Figure 6: Gross Gambling Yield by UK registered companies (adjusted for inflation)



In 2014, the Gambling (Licensing and Advertising) Act required all offshore gambling companies trading with UK customers to be licensed by the Gambling Commission, taxed by the British government and comply with British gambling regulation. This led to a huge increase in *recorded* gambling spend in the remote sector in 2015/16, but it only made previously unrecorded expenditure visible. Prior to 2015/16, online gambling revenue had been significantly underestimated.

For this reason, the period between 2008/09 and 2014/15 cannot be compared with the period between 2015/16 to 2019/20. In practice, there has been a shift to online spending, as in many industries, but the claim that there has been 57 per cent growth overall is not supported by the evidence.

Since 2008, there has been a decline in spending on the National Lottery, bingo and arcades, and an increase in spending on other lotteries and remote gambling. Casino revenue has remained fairly stable and betting shop revenue was stable until 2017 when it began to decline. It is also interesting to note that betting industry revenue did not increase in real terms after 2008 despite the widespread availability of fixed-odds betting terminals - termed the ‘crack cocaine of gambling’ by their critics - in betting shops.

The anti-gambling coalition

Aside from the creation of the National Lottery in 1993, the Gambling Act (2005) was the first piece of major gambling legislation since 1968. Its three priorities were to protect children and vulnerable people, prevent gambling being a source of crime, and ensure that gambling was conducted in a fair and open way. These remain the government's chief objectives.

The Gambling Act represented a shift in attitude, with gambling treated as a legitimate and normal leisure activity after decades of being grudgingly tolerated. The Blair government found that gambling was still viewed as immoral in some circles and the legislation was the subject of a considerable media storm before being watered down shortly before the 2005 general election. Various concessions were made to faith groups and the incumbent gambling industry. No 'super-casino' was ever built and the casino industry remains subject to arbitrary restrictions which inhibit its growth (Snowdon 2012). The 2005 Act's main achievements were to legalise gambling advertising, create the Gambling Commission as industry overseer and regulate online gambling for the first time.

When concerns about gambling re-emerged in the following decade, they were not focused on casinos, which had been the target of tabloid fears in 2005, nor on online gambling, which was the most rapidly growing sector, but on machines in betting shops. Fixed-odds betting terminals (FOBTs) allowed players to stake up to £100 on digital casino games such as roulette and blackjack. Derek Webb, a former professional poker player and casino game inventor, set up two campaign groups - the Campaign for Fairer Gambling and Stop the FOBTs - after finding three card poker, which he had invented, on an FOBT in 2007. He considered legal action but, as he told the *Guardian* in 2013, 'rather than sue I backed a campaign to make my point' (Ramesh 2013). By 2017, he had spent £3 million of his personal fortune on the campaign (Ahmed 2017a).

A coalition formed around the issue which included the Salvation Army, several think tanks, problem gambling charities and various bishops, as well as businesses in the rival arcade, casino and pub industries. The All Party Parliamentary Group on FOBTs was formed and a number of prominent politicians, including Tom Watson (deputy Labour leader 2015-19) and Tracey Crouch (Sports Minister 2018-19), became vocal supporters of a drastic cut in the FOBT stake limit - from £100 to £2 - which would make FOBTs unattractive to most punters.

Campaigners referred to FOBTs as the ‘crack cocaine of gambling’ - a term coined in the 1980s by Donald Trump when he was lobbying against digital competition to his casinos - and the media soon adopted the phrase (Snowdon 2013). The result was a widespread perception that gambling expenditure, problem gambling and the number of betting shops were all growing rapidly. None of this stood up against the facts, but the government capitulated nonetheless, cutting the maximum stake on the machines to £2 in April 2019.

This proved to be only the start. In the last two years, the government and the Gambling Commission have introduced a range of new regulations related to gambling. In April 2020, gambling with credit cards was banned and all online gambling operators were required to join the national self-exclusion system GAMSTOP, thereby preventing problem gamblers who exclude themselves from gambling websites from playing on any regulated site. In 2019, the government announced plans to set up fourteen NHS problem gambling clinics by 2023/24. Teaching about the risks of online gambling became mandatory in state schools in September 2020 under the Health Education curriculum. The age at which the National Lottery can be played will be raised from 16 to 18 in October 2021.

There has also been a growth in industry self-regulation, with all the big operators signing up to codes of conduct on advertising and player protection. In August 2019, most of the big gambling companies introduced a voluntary ‘whistle-to-whistle’ advertising ban, in which no gambling advertisements can be shown during or shortly before and after live sport on television. They also agreed to ensure that at least twenty per cent of their broadcast advertising promotes safer gambling. When the first Covid-19 lockdown began, the industry agreed to a six-week voluntary ban on all gambling advertising. Since November 2020, people aged 25 or under are not eligible to join VIP reward schemes, which offer perks to loyal customers, and those who do are subject to ongoing checks on their gambling behaviour.

None of this has appeased anti-gambling campaigners. Paying the Danegeld never gets rid of the Dane. The victory against the supposed 'crack cocaine of gambling' has been all but forgotten and nobody is claiming that the number of problem gamblers has fallen as a result. The voluntary restrictions on advertising introduced during the first lockdown were taken as 'a clear acknowledgement by the industry of the harm that advertising can cause' by the industry's critics (APPG on Gambling Related Harm 2020: 20) and the ban on gambling with credit cards inspired campaigners to call for a ban on gambling with loans and overdrafts (with no explanation of how this could be enforced). Much of the rhetoric used in the campaign against FOBTs has now been repurposed and redirected at the online sector.

In an interview with the *Financial Times* in 2017, Derek Webb suggested that he would start campaigning against online gambling once he had won his battle against FOBTs (Ahmed 2017a). So it has proved. Webb now funds Clean Up Gambling, a pressure group run by Matt Zarb-Cousin who previously worked for the Campaign for Fairer Gambling. It wants a levy on the gambling industry and a stake limit on all online games. It also wants a total ban on gambling advertising. Clean Up Gambling co-ordinates yet another group, the Coalition Against Gambling Ads, to campaign for the latter.

'Mission creep' is a common feature of pressure politics. It often requires new arguments to be made and old arguments to be forgotten. As Zarb-Cousin (2019) explained in 2019, 'The case for a £2 cap was built by proving FOBTs were addictive, facilitated money laundering, put staff at risk of abuse, and were subject to disproportionate levels of criminal damage'. None of these issues are relevant to online gambling, except the vexed question of 'addiction', which can apply to any form of gambling. In a submission to government in 2013, the Campaign for Fairer Gambling (2013: 34) stated that '**FOBTs is [sic] the only gambling activity significantly and positively associated with disordered gambling**' (emphasis in the original). Such claims have clearly outlived their usefulness, but the activists are on a roll and the anti-gambling coalition has reassembled to push for the new set of demands. The General Synod of the Church of England (2019) has passed a motion to reduce the 'quantity and pervasiveness of gambling advertising' which, it said, 'has become a major public concern, because it is seen to be everywhere'. In January 2019, the APPG on FOBTs changed its name to the APPG on Gambling Related Harm and gave itself a wider remit. The group, which received £30,000 in registrable financial benefits from Webb in 2020,[2] published a report calling for a £2 stake limit on online slot games, a ban on all gambling advertising, a levy on the gambling industry, a ban on in-play sports betting, and 'significantly slowing down the speed of "Random Number Generated" digital slots and roulette'.

Like Clean Up Gambling, the APPG wants to ban all VIP schemes and inducements, such as free bets. It has also called for mandatory 'affordability limits' on the amount gamblers can spend. This policy has been endorsed by the Social Market Foundation (SMF) in a report published in August 2020 that acknowledges Derek Webb as a financial supporter (Noyes and Shepherd 2020). The SMF recommends a 'soft cap' limiting online deposits to £100 a month. Under this system anyone who wants to spend more than £23 a week on gambling would have to prove they could afford to do so without experiencing hardship.

Finally, in June 2020, the House of Lords' Select Committee on the Social and Economic Impact of the Gambling Industry published a report calling for heavier restrictions on gambling advertisements and inducements (though not an outright ban), more stringent affordability checks, and the speed of play on online games to be slowed down to the same level as seen in casinos, betting shops and bingo halls.

2 Register of All-Party Parliamentary Groups (p. 569) (https://publications.parliament.uk/pa/cm/cmallparty/201104/register-201104.pdf).

Towards better regulation

The recent wave of anti-gambling advocacy comes in the wake of the Conservative Party's promise to 'review the Gambling Act 2005 to make sure it is fit for the digital age'. Oliver Dowden, the Secretary of State for Digital, Culture, Media and Sport, has described the Act as 'an analogue law in a digital age' (DCMS 2020b). This is an exaggeration. Most UK households had access to the internet in 2005 and the Act regulated online gambling. The main development in the years since has been the widespread adoption of smartphones, but this does not seem sufficient justification for the whole Act being repealed and replaced with new primary legislation, as some anti-gambling campaigners hope. Most of their demands, such as advertising restrictions and stake limits, are not specific to smartphones, or even to online gambling.

In the discussion about gambling reform, free-market and liberal voices are rarely heard. In this section, we will look at the proposals from the activists, many of which are essentially paternalistic, and see how they could affect the consumer.

Advertising and sponsorship

Gambling advertising in Britain is subject to extensive regulation and self-regulation. The Advertising Standards Authority (2020) has strict rules on content and has banned adverts in the past for encouraging gambling after a loss, implying that gambling could solve financial problems, appealing to children, and much more besides. Adverts cannot feature anyone who is, or appears to be, under the age of 25. They cannot encourage people to 'Bet Now!' or encourage repetitive play. Online advertisements on platforms such as YouTube have to be age-gated. These rules were made more stringent in 2018.

The Industry Code for Socially Responsible Advertising requires operators to include responsible gambling messages in advertisements and forbids adverts being shown on television before 9pm except for bingo, lotteries and sports betting around televised sport (Industry Group for Responsible Gambling 2020). In August 2019, the major operators introduced a voluntary 'whistle to whistle' advertising ban in which gambling adverts are not shown from five minutes before the start of a sports broadcast to five minutes after the end (horse-racing is exempt).

Moral reformers often take aim at advertising, but according to Harris and Seldon (2014: 39) in *Advertising in a Free Society*, we should not yield to 'critics who aim at the reflected image instead of declaring openly against smoking or gambling or hire purchase or whatever it is they dislike. While the law permits such activities, their advertising must be tolerated'. Pressure to ban gambling advertising comes principally from activists who seem to be simply opposed to gambling and anything that promotes it. For them, a ban on gambling advertising would be symbolic. It would signal that gambling is socially undesirable and that more should be done to stamp it out.

If this is the motive, it does not warrant government coercion. In the 2001 report that paved the way for the 2005 Gambling Act, the economist Alan Budd commented: 'if the underlying activity is properly regulated, there should be no objection in principle to the product being advertised' (Budd et al. 2001: 124). Interestingly, Budd expected the promotion of gambling to lead to a rise in problem gambling. As we have seen, that did not happen; the Advertising Standards Authority (2018: 3) makes the obvious point that 'problem gambling rates have remained stable during a period of quite considerable growth in advertising volumes'. The growth in gambling advertising in recent years has not led to more people gambling, nor has it led to more money being spent on gambling. Although children's exposure to advertising is often cited as a justification for a ban, the number of children who gamble has fallen in the last decade.

The 'harm' associated with gambling is of a fundamentally different kind to that associated with unhealthy products. Whereas cigarettes are inherently harmful to health, the harm from gambling comes from a small minority of consumers spending more than they can afford. The 'harm' from gambling advertising is more tenuous still. Having looked at the evidence, the Advertising Standards Authority concluded that 'data on problem gambling suggests gambling advertising has, at most, a very limited causal role and is unlikely to have contributed to an increase in harm' (ibid.: 7). Upon launching the recent public consultation, the government cited no evidence of harm, but instead mentioned 'growing public concern about the relationship between sport and gambling' as a possible justification for additional regulation (DCMS 2020a).

A ban on gambling advertising may indeed be popular with much of the public. Advertising, in general, is not particularly popular with the public, who tend to disassociate it from the many free or subsidised services it pays for. Gambling advertising spend has risen in recent years as new operators sought to establish themselves and incumbent businesses fought to protect their market share. Restrictions on when adverts can be shown have led to a high volume of advertising on certain channels at certain times (mostly after 9pm). Some viewers find the sheer number of adverts for a service they do not use irritating. But that may not be a good justification for government coercion. It is broadcasters who decide which advertisements to broadcast, not viewers.[3]

Tiresome as advertising can sometimes be, it benefits consumers in two important ways. Firstly, it stimulates competition and allows new entrants to make themselves known, thereby lowering prices and encouraging innovation. Secondly, it allows brands to establish themselves. Building a brand can be an expensive process, but that, in itself, acts as the consumer's guarantee. Businesses which cannot afford their brands to be tarnished have a strong incentive to maintain standards.

This is particularly important in the online gambling sector. A huge range of gambling websites are available worldwide, not all of them reputable. Only those registered with the Gambling Commission can advertise in Britain. As the government acknowledges, the freedom to advertise is 'one of the primary advantages that licensed and regulated operators have over the black market' (HM Government 2020). This, combined with the costs required to advertise on television, means that consumers can be confident they are not dealing with a fly-by-night operation, but with a regulated, registered, taxpaying business.

3 In reality, gambling advertising amounted to £234 million in 2018 which is 4.6 per cent of the total spent on TV advertising (£5.1 billion). Television advertising accounts for only 15 per cent of gambling advertising spend.

Sponsorship

Sponsorship is almost entirely about branding and seldom involves a 'call to action'. The House of Lords report does not support a full advertising ban, but it does call for a ban on gambling companies sponsoring sports teams. Again, it is the sheer volume of sports sponsorship, rather than the principle, that seems to bother people. Eight of the twenty Premier League teams are currently sponsored by gambling companies. In the Championship, which is itself sponsored by SkyBet, twelve of the 24 teams have gambling sponsors on their shirts (but not on children's merchandise, including replica kits).

The high volume of sponsorship reflects the highly competitive nature of the market. Online gambling is still a relatively new industry and has yet to be consolidated. For companies predominantly involved in sports betting, there is an obvious synergy with sports teams and sporting events. The amount of gambling sponsorship in football will probably decline as the market matures, but the quantity should not be the issue. Either gambling sponsorship is so harmful as to warrant prohibition or it is not. Proponents of a ban have found almost no evidence to support them. The House of Lords committee (2020: 132), which opposes a full advertising ban because there is insufficient evidence, says a ban on sports sponsorship 'would in our view be very beneficial', but it does not say why.

Gambling companies would not be the biggest losers from a ban on advertising and sponsorship. It would be broadcasters, advertising platforms and football clubs who would suffer, along with smaller gambling companies who would face a barrier to entry. Indeed, the big gambling companies could benefit, as Professor David Forrest told the House of Lords committee (ibid.: 129):

> It is striking that in jurisdictions which have moved against sponsorship and advertising by the betting sector—Australia and Italy—opposition from the betting industry has been muted but that from sports leagues and broadcasters strong. This may reveal that betting houses themselves perceive their marketing as about brand share rather than extending the market and there would be some advantage to them from the state doing what competition law prevents them from

> doing for themselves—negotiating away heavy marketing budgets which just cancel each other out.[4]

Breon Corcoran, who led the merger between Paddy Power and Betfair, appears to agree, saying in 2017: ‘The thesis that, as barriers for entry go up the small guys will suffer, is increasingly evident’ (Ahmed 2017b).

Top tier football teams will never struggle to find sponsors, but excluding a whole industry would create a ripple effect and reduce revenues from top to bottom. There is no reason to expect other industries to increase their marketing spend to make up the shortfall. Clubs will have to lower their asking price to attract new sponsors, and sports which rely heavily on gambling sponsorship, such as darts and snooker, will be hit hard. The House of Lords committee (2020: 132) acknowledges that a sponsorship ban would ‘not unduly harm Premier League clubs, but it would very probably have a serious effect on smaller clubs; some of those in the EFL might go out of business without this sponsorship if they cannot find alternatives’.

This is a high price to pay for a policy with no proven benefits. Gambling advertising and sponsorship have not led to any measurable harm since they were legalised in 2007 and there is no reason to think their prohibition would reduce harm. Marketing of gambling products is subject to stringent regulation, and the maintenance of strong brands helps consumers distinguish between regulated and unregulated companies. There will always be people who would prefer not be reminded of legal activities of which they disapprove, but that does not justify censorship.

Stake limits

The idea of capping online stake limits to £2, as proposed by the APPG on Gambling Related Harm, is taken directly from the anti-FOBT playbook. To people unfamiliar with gambling products, it may seem anomalous that traditional slot machines have stake limits of one or two pounds while FOBTs had a stake limit of £100. But FOBTs were not jackpot machines. Players typically stood to win whatever they staked. When roulette and blackjack are played in casinos, the *minimum* stake is typically £5 or £10. For many players, anything less than £5 provides too little risk and reward to make it interesting.

4 The House of Lords committee concluded: ‘We suspect that Professor Forrest may be right in thinking that operators are happy to cease advertising if they can be sure that other operators will do the same’ (ibid.: 130).

Cutting online stakes to £2 should therefore not be seen as a minor regulatory change, but as a way of deterring play altogether. Anti-FOBT campaigners were keenly aware that it virtually amounted to *de facto* prohibition. Not for nothing was Derek Webb's pressure group called Stop the FOBTs. The explicit aim was to get the machines out of bookmakers altogether - and they succeeded. The number of FOBTs in betting shops plummeted from 32,661 to 1,003 after the new stake limit was introduced.[5] The government would therefore only introduce a £2 stake online if it is trying to get rid of these games too. It would not be regulation in the normal sense, but a form of neo-prohibition.[6]

In practice, the government cannot stop people playing for higher stakes because unregulated gambling websites are within easy reach of anyone with an internet connection. This is not to say that there should be no stake limit whatsoever, but it should be several standard deviations from the mean. It could be set high enough for virtually all players to get a sufficient sense of risk and reward.

Speed of play

The House of Lords committee (2020: 53) recommends 'the equalisation of speed of play and spin, so that no game can be played quicker online than in a casino, betting shop or bingo hall'. This assumes that the speed at which the games are played in traditional settings is optimal. It is a sort of naturalistic fallacy. Flawed in principle, it is also wrong in practice since 'traditional' games are not necessarily slow. Slot machines are played at a rapid pace, with a spin every two seconds being typical, and a one-on-one game of blackjack in a casino can be played surprisingly quickly.

Artificially creating long gaps between online bets would be boring and frustrating for the player, but for anti-gambling campaigners that would be a feature rather than a bug. As with the £2 stake limit, the aim is not so much to reduce 'harm' as to deter people from playing altogether. There may be a case for mandatory breaks or 'cooling off' periods in online gambling after a certain amount of time, or after a certain amount of money has been spent. The technology exists to do this and operators have been providing these kinds of harm reduction features for years.

5 They were largely replaced by B3 jackpot machines which players can stake £2 on every 2.5 seconds. Their numbers rose from 114 to 28,655 in the same period.

6 Noyes and Shepherd (2020: 34) note that a £2 stake limit on non-slot games, such as roulette, would 'lead to a revenue loss of 92% - essentially making that content no longer commercially viable'.

There is a telling inconsistency in the way anti-gambling campaigners want internet gambling regulated. They want online games to emulate casinos' speed of play without casinos' stake limits, and they want the stake limits of gambling machines without the fast play of gambling machines. It is a pick-and-mix approach in which the least appealing elements of traditional gambling are applied to digital gambling. Naive attempts to recreate bricks-and-mortar gambling in the online space would truly lead to 'an analogue law in a digital age'.

Deposit limits

An extreme variant of capping stakes is capping the player's overall spending. The Social Market Foundation has proposed a £100 per month cap on deposits based on its estimate that households can afford to spend £23 on gambling per week (Noyes and Shepherd 2020). This figure is derived from the Joseph Rowntree Foundation's Minimum Income Standard which attempts to calculate the amount of money people need to attain an 'acceptable' standard of living. This, in turn, is based on a shopping list compiled by focus groups which goes far beyond the necessities and invariably produces high figures (Snowdon 2014). The 2020 edition concluded that a couple with two children needed to earn £37,400 per annum to have an 'acceptable' lifestyle.

The Social Market Foundation defines a 'low income' as 75 per cent or less of the Minimum Income Standard. It then calculates how much households can afford to spend on 'social and cultural activities' - which could include gambling - before they drop below this poverty line. For the group with the lowest income (single pensioners) the figure is £45. The authors then produce a different estimate of how much can be spent by a person 'beyond their and their family's means without necessarily amounting to severe hardship'. They do not explain what this means or how it is calculated, but the figures range from £23 to £48 a week. The authors opt for the lowest of these as the betting cap and round it up to £100 a month.

The methodology is questionable and it seems inappropriate to set a cap for everybody based on the supposed needs of those who have least to spare. It is also extraordinarily paternalistic. The government says it respects 'the freedom of adults to choose how they spend their money' (DCMS 2020a). This is a basic right in a free society. There is no other market in which consumers are restrained by the state from spending more than a certain amount of money. It is inconceivable that anyone would suggest rationing the amount people can spend on other 'social and cultural activities', let alone at a level that is less than the price of modest restaurant meal.

The Social Market Foundation describes its deposit limit as a 'soft cap' because people would be allowed to spend more than this - subject to 'closer oversight' - if they could prove they can afford it. They do not explain how this would be done. Perhaps by contacting the players' bank or by demanding to see pay slips? It is hard to imagine any process that would not require significant bureaucracy and invade privacy. Ordinary people who want to gamble with their own money would be treated as if they were taking out a mortgage or living off the proceeds of crime. It would be easier for an individual to invest £50,000 on a risky stock market investment than place a £200 bet on Liverpool winning the Premiership.

This is not to say that companies should never ask questions about whether their customers are spending too much. One of the advantages of online gambling is that it can keep track of how much individuals are spending and track unusual patterns of play. Under the Social Responsibility Code 3.4.1 of the Licence Conditions and Codes of Practice, operators are required to interact with customers to minimise gambling-related harm. The industry is instructed to look out for a range of indicators, including length of session, frequency, failed deposits, use of multiple payment methods, previous self-exclusions, erratic betting patterns, chasing losses, and many more. They are told to intervene when customers breach deposit or loss thresholds which are set by the company and should be 'based on the average available income for your customers' (Gambling Commission 2019: 6).

Operators can, and do, intervene by suspending customers' accounts and speaking to them directly. Personal contact with players is one of the benefits of the much-maligned VIP schemes,[7] but there is a limit to how much any business can pry into its customers' lives. There is a case for making this requirement more specific, with a threshold set by the Gambling Commission, but the onus should be on the industry and regulators to safeguard high risk individuals, rather than requiring ordinary punters to jump through hoops to spend their own money on a legal activity.[8]

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7 The Gambling Commission (2019) understands this and tells operators: 'Even if you think the customer can afford it, they may still be experiencing gambling harms. Your enhanced contact with your VIPs means you have many opportunities to get to know them well and make better informed decisions'.

8 It also seems likely that a problem gambler will be more willing to jump through these hoops than an ordinary punter who wants to place the occasional large bet.

Other issues

Much of the recent debate has centred on the Gambling Commission, which has been criticised for being too slow to act when companies break the rules. Some have even called for the Commission to be replaced by a new regulatory body. This paper takes no view on this except to note the case for enforcing gambling laws strongly and consistently. Nor do we take a view on how much the regulator's budget should be (the Gambling Commission is currently funded by industry licence fees which amounted to £19 million in 2018/19).

It has been suggested that the gambling industry be required to pay a levy to fund services for problem gamblers. The vast majority of operators are already committed to donating at least 0.1 per cent of their Gross Gambling Yield (revenue before expenses) towards 'safer gambling' projects and the five biggest firms have promised to increase this to one per cent by 2023. Whether this is sufficient and whether these payments should be mandatory are not questions that directly touch on economics and so we leave them to one side.

The risks of excessive regulation

The challenges of regulating the internet are well known. The UK government can control how registered gambling companies operate, but they can do little about the rest of the world. The challenge to regulators is to ensure a sufficient degree of consumer protection without driving punters to the unregulated sector.

Governments can compel internet service providers to block certain websites, but it is an endless game of whack-a-mole and anyone with a virtual private network (VPN) can get around such restrictions with ease.[9] It is naive to hope that UK consumers can be prevented from accessing high-stake casino content when people use the internet to buy hard drugs.

In Sweden, online gambling operators have been required to have a licence and pay tax at 18 per cent since January 2019. Under this system, which is not dissimilar to the UK's, official estimates suggest that 85-87 per cent of online gambling takes place in the regulated sector.[10] Research by Copenhagen Economics found a slightly lower range of 81-85 per cent, but this rose to over 95 per cent for horse racing, lotteries and bingo, while falling to 72-78 per cent for online casinos (Lundvall et al. 2020).

Players of online casino games, slots, poker etc. therefore seem particularly willing to use unregulated websites. These are the consumers who would be most affected by the kind of policies currently being proposed in the UK.

9 Virtual private networks allow the user to pretend to be using the internet in another country.

10 In the UK, profits from remote gaming made from customers based in the UK are taxed at 21 per cent, regardless of where the company is based. This was increased from 15 per cent in April 2019.

The authors of the Copenhagen Economics report conclude that the drivers of unregulated online gambling are availability, ease of entry, attractiveness, consumer willingness and the similarity between the unregulated websites to their regulated rivals. Neil McArthur, the chair of the Gambling Commission, has said that he 'does not see a lot of evidence' of 'a burgeoning black market'.[11] This is a result of Britain's relatively liberal gambling laws, which have so far given consumers little reason to look elsewhere. Nevertheless, recent research by PricewaterhouseCoopers (2021) found that 4.5 per cent of UK online gamblers had used an unlicensed operator in the past twelve months and 44 per cent were aware of at least one unlicensed gambling website. This is not a bear that should be poked, particularly since McArthur himself has acknowledged that unregulated websites target problem gamblers who have self-excluded through the GAMSTOP system and that '[c]riminals seeking to circumvent the regulated sphere and exploit the vulnerable are demonstrating increasing sophistication, complexity and capability which poses challenges to us to keep pace' (McArthur 2021: 3).

Protecting the vulnerable and preventing gambling becoming a source of crime are two of the three key objectives of British gambling law. The policies proposed by anti-gambling campaigners could undermine both of these by stimulating demand for unregulated websites that can be easily found via internet forums, search engines and affiliate sites. Many players will be unwilling to tolerate online content that has been made deliberately tedious and unexciting by limits on speed of play and stakes/prizes. Unregulated online casinos closely resemble their regulated competitors and, if advertising is also banned, consumers could have great difficulty distinguishing one from another.

11 Public Accounts Committee, oral evidence, 27 April 2020 (https://committees.parliament.uk/download/file/?url=/oralevidence/310/documents/5421?convertiblefileformat=pdf&slug=oe00000310pdf).

Conclusion

There has been no shortage of regulation and self-regulation in the gambling industry in recent years. None of it has satisfied anti-gambling campaigners, but it is sufficient to fulfil the government's longstanding objectives of protecting children and vulnerable people, preventing gambling being a source of crime, and ensuring that gambling is conducted in a fair and open way. A sensible response to cases of misconduct is not to create yet more rules but to enforce the rules that already exist.

Problem gambling is endemic at low levels in all societies, but in Britain its prevalence is lower than average and has been unaffected by the significant changes in the availability and promotion of gambling products over the last twenty years. Yet the 0.6 per cent of adults who are classified as problem gamblers have been used as weapons in a permanent war of attrition against gambling. The hard truth is that nothing can stop a pathological gambler from losing more money than they can afford if they are so inclined. The government could accept this reality and implement safeguards for problem gamblers while respecting the right of adult consumers to spend their money as they choose. The consequence of restricting consumer choice online will be a shift towards unregulated, untaxed websites which have fewer safeguards.

Technology should be seen as the solution, not the problem. It is technology that allows customers to self-exclude, set deposit limits, set playing times and opt out of receiving inducements, such as free bets. The ability of 'Big Data' to identify problem gamblers and prevent harm is unlike anything we have seen before. In the past, gambling companies often had no idea who their customers were. Today, the regulated online sector not only knows their customer's name and address (which they check with credit agency databases), but how much they spend, what they play and how they play. The company knows if they have self-excluded from any other regulated website. Algorithms are used to identify 'markers of harm', such as chasing losses, switching between products and playing late at night. These red flags trigger interventions. At the low end, they include e-mails reminding the customer about deposit limits or being taken off mailing lists offering bonuses and inducements. Those deemed to be at higher risk will receive a phone call or be given a spending cap or have their account suspended, sometimes permanently.

Not every company uses their technology to prevent harm in the same way, but they could. Best practice could be made standard. There is currently a mix of regulation, self-regulation, guidance and private initiatives aimed at reducing gambling harm that could be consolidated, formalised and made legally binding. Regulated online operators use a range of practical harm reduction measures which advance the government's objectives without infringing the rights of the average punter or handing a competitive advantage to the unregulated sector. It is these practical solutions, not the blunt tools of anti-gambling activists, that should be the focus of the government's review.

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