

By email to: gamblingactreview@dcms.gov.uk

Department for Culture, Media & Sport
100 Parliament Street
London
SW1A 2BQ

31 March 2021

Dear Sir / Madam,

Review of the Gambling Act 2005

I am writing in response to the Review of the Gambling Act 2005. We have restricted our comments to the Ombudsman Association's area of expertise; consumer redress.

Summary

1. The Ombudsman Association welcomes the review and the opportunity to strengthen the current system of redress in the gambling sector in Great Britain.
2. A single, mandatory, ombudsman should be established to provide comprehensive and effective redress for all gambling customers in Great Britain and to enable holistic feedback to both the sector and the Gambling Commission.
3. Ombudsman schemes are most effective when operating alongside a proactive and well-resourced regulator.

Background

4. The Ombudsman Association (OA) was established in 1993 and includes as members all public and private sector Ombudsman schemes and major complaint handling bodies in the UK, Ireland, the British Crown Dependencies and the British Overseas Territories.
5. The Vision of the OA is that throughout the public and private sectors:
 - It is straightforward and simple for people to complain.
 - People making a complaint are listened to and treated fairly.
 - A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
 - People have access to an ombudsman in all areas of consumer and public services.
 - The learning from a complaint is used to improve services.
6. An Ombudsman helps to underpin public confidence in the organisations that they cover; by providing free, accessible and effective redress, and by feeding back the lessons from their work in order to help improve service delivery and complaints management for the future.
7. The OA's membership criteria¹ are recognised as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*,² which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'.³

¹ www.ombudsmanassociation.org/about-us/join-ombudsman-association

² www.gov.uk/government/publications/new-ombudsman-schemes-guidance

³ www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

Redress in the Gambling Sector

Q25: Is there evidence of a need to change redress arrangements in the gambling sector?

Q26: If so, are there redress arrangements in other sectors or internationally which could provide a suitable model for the gambling sector?

8. Recent Parliamentary (and other) reports⁴ have set out in detail the issues with the current redress arrangements and the need for change. Rather than repeat that detail here we will highlight a few of those issues and how a single mandatory ombudsman can help address them.

Multiple providers

9. Some of the issues in the gambling sector stem from having multiple ADR bodies and allowing operators to choose themselves which one *they* would like to rule on the complaint about their own service. The lower standards set in the ADR regulations, in comparison to the OA's membership criteria, contribute to that, meaning that gambling operators can opt for organisations that do not take an inquisitorial approach or organisations that are not fully independent (one of the approved ADR bodies is run by a trade association). That diagnosis is supported by evidence from other sectors.
10. The position that there should only be one redress provider within a sector, and preferably an ombudsman, has been reinforced by a number of recent reports, including the 2017 Citizens Advice report *Confusion, gaps and overlaps*⁵. Evidence compiled by *Which?*⁶ highlights the issues caused in the aviation sector by having multiple ADR providers. Those reports are clear that it is in the interests of consumers for access to redress to be simple and straightforward and that confusion is caused by having multiple providers, without any clear evidence of the benefits.
11. The responses to Ofgem's call for evidence in 2018, on whether to allow an additional redress provider to operate in the energy sector alongside the Energy Ombudsman, further underlined what best practice is; both consumer representatives and the energy companies themselves highlighted that having multiple redress providers did not benefit either consumers or businesses.⁷
12. In the gambling sector, we are aware of at least one operator which simply chose to 'switch' to a different ADR provider, after having numerous complaints upheld against it by the Independent Betting Adjudication Service (IBAS), the largest of the eight approved ADR bodies. We're also aware of operators who have opted to move from IBAS to another ADR provider simply to save on costs.

Gaps in redress

13. One of the significant issues highlighted in the consultation paper, and in previous reports, is the gap in redress in relation to social responsibility failings by gambling operators. As has been well documented, the existing ADR bodies do not have the jurisdiction to consider complaints that operators have failed to abide by social responsibility codes and yet the Gambling Commission does not investigate those individual complaints themselves. IBAS alone were unable to investigate 653 complaints submitted in 2019/20 regarding social responsibility⁸ and we understand that hundreds more who approached IBAS informally (e.g. via telephone) also had to be turned away for the same reason and signposted to the Gambling Commission, despite the fact that the regulator would not investigate their complaint.

⁴ [Gambling Harm— Time for Action \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/gambling-committee/pages/gambling-harm-time-for-action)

⁵ www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlaps%20consumer%20confusion%20201704.pdf

⁶ www.which.co.uk/news/2020/10/more-airline-passenger-misery-as-court-cases-could-take-years/

⁷ www.ofgem.gov.uk/publications-and-updates/application-utilities-adr-be-certified-adr-provider-energy-sector-ofgem-decision-following-responses-our-open-letter

⁸ www.ibas-uk.com/media/1084/2018-20-annual-adr-report-comparisons.pdf

14. Such gaps are often linked to an approach that perceives redress as a 'cheap' simple solution to 'black and white' consumer transactions; as a poor relation to the adversarial Court system. However, as opposed to the straightforward adjudication process that many ADR bodies follow, the inquisitorial approach taken by an ombudsman is designed to address issues that can be complex. Holding organisations to account for failing to abide by codes that set out best practice on treating people fairly and with respect are the 'bread and butter' of ombudsman schemes in various sectors, regardless of whether those codes are set by the regulator, the ombudsman, or the industry itself.

Gambling Ombudsman

15. Whilst the failings of having multiple ADR providers that operators can pick from are well known, so is the solution; having a single, mandatory, ombudsman.
16. A single mandatory ombudsman not only provides clarity for consumers. Having a holistic overview of complaints across the sector enables the ombudsman to spot systemic issues both within a single organisation and across several different organisations. In turn, this enables an ombudsman to provide feedback to the sector to help drive improvements in service delivery and customer service, and to inform the regulator's activities.
17. An ombudsman is just one piece of the puzzle. Ombudsman schemes are most effective in sectors where they work closely with a regulator and other accountability bodies. This can be seen for example in the energy sector where the ombudsman shares relevant information with Ofgem to inform their regulatory activities and ensure enforcement.
18. Several regulators have recognised the benefit of having a single mandatory ombudsman, reflected in the long-standing positions of the Financial Conduct Authority in terms of the Financial Ombudsman Service, and Ofgem in terms of the Energy Ombudsman – with the latter's position reinforced by the rejection of an application from an additional redress provider to enter the regulated energy market.
19. That recognition of an ombudsman as the 'gold standard' for consumer redress has been further reflected in recent Government policy to establish single mandatory ombudsman schemes in both the rail sector and the new homes sector. In those two scenarios that has been achieved without primary legislation.
20. Whilst the preferred solution to create a single mandatory ombudsman that meets the OA's membership criteria is often via legislation, it is possible to do so without it. In terms of the rail sector, that was delivered via a modification to the passenger licence conditions by the Office of Rail and Road to mandate membership of an approved ADR scheme (the Rail Ombudsman). In the new homes sector, that is being achieved by making it a condition of commercial lending that developers are registered members of the proposed ombudsman. In both instances that approach was supported by the relevant Government department, respectively the Department for Transport and the Ministry of Housing, Communities & Local Government.

Q27: Individual redress is often equated with financial compensation for gambling losses. However, there may be risks associated with providing financial lump sums to problem and recovering gamblers, or risks of creating a sense that gambling can be 'risk free'. Are there other such considerations the government should weigh in considering possible changes to redress arrangements?

21. A balance will clearly need to be struck when considering complex cases. Ombudsman schemes strike these balances on a daily basis when, for example, considering complaints about pensions advice, insurance, conduct of police officers, or potentially avoidable deaths in NHS settings, through their inquisitorial approach to investigations.
22. Ombudsman schemes are concerned with principles of 'fairness' and any redress recommended is to put right a situation where an organisation has acted unfairly, often when that organisation has not followed their own processes and procedures.

23. Having clear, and agreed, codes in place that an ombudsman measures operators against will make that process easier; it would not be a case of making gambling 'risk free' but rather ensuring that those who do choose to gamble can be confident that the processes and procedures in place will be applied correctly and fairly.
24. It is perhaps worth highlighting that financial compensation, when appropriate, is just one of the things that an ombudsman might decide is required. In other sectors it is as common for an ombudsman scheme to recommend an apology, additional training for staff, or changes to a written policy, in order to drive improvements in services and complaint handling.

Q28: Is there any additional evidence in this area the government should consider?

25. The OA would be happy to provide any further information or meet to discuss if you would find that helpful.

Conclusion

There is no need to reinvent the wheel; the issues regarding redress in the gambling sector are already addressed in other sectors by having a strong ombudsman working in tandem with a proactive regulator. Having a single mandatory ombudsman provides more effective consumer protection, facilitates more effective feedback to the sector, and supports the regulator in performing their duties.

Yours sincerely



Donal Galligan
Chief Executive