

'Justice for Punters'

An investigation into online gambling

**Competition and Markets Authority: Are
gambling companies trading in a fair way?**



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1. Introduction

The launch of this investigation follows concerns raised by the Gambling Commission (GC) about potential breaches of consumer law in the online gambling industry. The Competition and Markets Authority (CMA) has conducted an initial review of complaints information and a number of gambling firms' promotions and terms and conditions. The CMA are now launching an investigation to determine whether they should exercise their consumer protection powers to tackle unfair or misleading behaviour in the gambling industry.

The investigation will pay particular attention to the following practices, **whilst not excluding others:**

- Being locked into complex and strict requirements linked to gaming promotions that are difficult to understand and may be unachievable.
- Companies having a wide discretion to cancel bets or alter odds after bets have been accepted, because they made a mistake when the odds were first set.
- Terms restricting players' ability to challenge a company's decision.

All three are important, but it is the last one that provides the scope for a wide investigation.

When this investigation was revealed the publicity in the main general media was huge and 'Justice for Punters' was quoted frequently. We were pleased by this as some of our advisory board have been corresponding with the GC and the CMA since August 2015. This investigation only came about because of hard work by a number of people and the complaints that the CMA and GC have received.

There is no point holding back; for years online gambling companies have been using many unfair terms and conditions and despite the GC knowing this, they did nothing, but we are now in a new era where the regulators know if they do nothing they will be exposed in the main media and labelled as being compliant with the gambling companies' misbehaviour.



This is not a time to be complacent though. The large corporate gambling companies, their trade organisations, PR agencies, lobbyists and friends in parliament will be doing all they can to prevent change. At present online gambling companies, in general, do what they like, when they like and it is their unfair terms and conditions that underpin this situation.

As a bettor, punter, gambler, customer, whatever term you prefer this investigation should provide the best opportunity ever to change the status quo, which at present, is completely biased towards the online gambling companies.

However, for this to opportunity to come to fruition customers must complain in a constructive way to the CMA. This is what this leaflet is about.

2. What can be deemed as an unfair term or condition?

A standard term is unfair if, contrary to the requirement of good faith, **it causes a significant imbalance** in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

The requirement of **'good' faith** embodies a general **'principle of fair and open dealing'**.

It means that terms should be **expressed fully, clearly and legibly** and that terms that might disadvantage the consumer should be **given appropriate prominence**. However transparency is not enough on its own, as good faith relates to the substance of terms as well **as the way they are expressed and used**. It requires a supplier not to take advantage of consumers' weaker bargaining position, or lack of experience, in deciding what their rights and obligations shall be. Contracts should be drawn up in a way that respects consumers' legitimate interests.



When you consider the words in bold, it's obvious that online gambling companies are going to have to **make massive changes** to their terms and conditions and **how they interpret them in practice** unless the investigation becomes a 'whitewash'.

This link is a brief summary of unfair terms and conditions in relation to the UK 'Consumer Act' (2015) produced for gambling companies: http://www.harrishagan.com/wp-content/uploads/bsk-pdf-manager/Consumer_Rights_Act_2015_137.pdf

It is probably fair to say that some companies have taken little notice of this advice.

3. What is not stated in terms and conditions is just as important

If terms and conditions are to follow a '**principle of fair and open dealing**' omissions in them are equally, if not, more important. A customer is supposed to enter into a contract that is clearly and concisely explained. Gambling companies are superb at leaving out crucial terms and conditions, thus not being clear. They do this at present as **nobody would ever open an account online if they knew the true nature of the contracts they are entering into**. The following are some example T&Cs that SHOULD be in all online gambling company contracts:



"When you open an account with us YOU should realise this is for recreational purposes only. If you display any mathematical or gambling ability your account will be heavily restricted, which to all intent and purposes is really a closure or ultimately it may be closed completely. We have a policy of no winners except those who luckily have an amazing accumulator that wins or if you are deemed by the company to be 'useful' to us, e.g. a MP who lobbies for the industry or a journalist who regularly promotes the gambling industry in a positive light."

"When YOU access our website or any of our services YOU agree to the company collecting and analysing personal and other data, including information technology and telecommunications data collected by us and third parties, which will enable the company to build a personal profile of YOU that will inform the company decision to trade with YOU or not. There is an important fraud and crime angle to this data collection and analysis, but we will also do it to ensure we only trade with those who lose or are very likely to lose in the medium to long term."

Terms and conditions like this are essential in a contract that follows the **'principle of fair and open dealing'**, because they provide consumers with a choice. With this information consumers can decide whether to trade, or not, with a gambling company that has no intention of actually allowing what is defined as gambling, i.e. a chance to win or lose (and not just as a 'fluke' in the short term). Historically, most people lose when gambling, but some people did win (about 1-2%); this is no longer allowed by the vast majority of online gambling companies. Their greed has redefined gambling as 'losing'. They should have to admit to this in a clear and concise way during the registration process.



4. What are the unfair terms and conditions being used at present? (Some examples)

When people think about this question, it is important to remember the following: *“The investigation will pay particular attention to the following practices, whilst not excluding others.”* There has already been publicity stating that the investigation will not be considering certain issues; this is rubbish and gambling companies will try to encourage the message that the investigation is focussed, it is not. Yes, there is emphasis on some aspects, but it is up to customers/punters to make it clear that T&Cs abuse is widespread covering many topics.

Examples (all blue words should be noted strongly)

*“We have the right to disable, suspend or restrict Your User identification name or password, whether chosen by You or allocated by us, at any time, at **Our discretion**, including if, in **Our opinion**, You have failed to comply with any of the provisions of this Agreement.”*

The blue wording is wholly imbalanced against the customer, so this T&C is unfair.

*“We reserve the right to refuse the whole or part of any Service offered to You or to reject any application from You to open an Account **without offering You any explanation**. At any time we may terminate Your Account and/or this Agreement with You **without offering You any explanation**.”*

The blue wording is likely to be deemed as discriminatory, because in theory, a company could discriminate against females as they state no reason has to be given for refusing to trade with someone.

*“We reserve the right to monitor, restrict and/or alter the administration of special offers and trading concessions on a per client basis at **Our own discretion** without prior notice.”*

Same principle again, as the customer has no say or cannot challenge a decision, so unfair. It also cannot be done without ‘prior notice’.

*“In certain circumstances and from time to time we may contact You and ask You to provide further information to us directly in order for us to complete checks. For example, for this purpose, we will be entitled, at **our sole discretion**, to require that You provide us with ID (certified according to the applicable law of your jurisdiction) including proof of address, utility bills, **bank details, bank statements and bank references**. Until such information has been supplied to **our satisfaction** we may prevent any activity from being undertaken by You in relation to Your Account or we may, **where we reasonably believe that deliberately incorrect information has been supplied by You, keep any amount deposited on Your Account following the closure of Your Account by us**.”*

Where “we believe”, so it doesn’t have to be the police then? The arrogance of these companies is incredible. Of course, this term is unfair, as the customer has no say or comeback.

"Whilst we are undertaking verification of the details You supplied, we may restrict You from withdrawing funds from Your Account and/or prevent access to all or certain parts of the Website. Please note that we may from time to time re-perform the checks for compliance, security or other business reasons."

So, we are not going to tell you why we are demanding documents we could steal your identity with and we are going to block access to your own money. This term once again is unfair, as the customer has no say or comeback.

"If your account has not been used for 400 days, it will be deemed dormant and may be subject to dormancy fees. The dormancy fee is calculated as 5% of the total account balance on the day the account falls dormant or £5 (whichever is the greater) and is charged on the day the account falls dormant, and the first day of each calendar month thereafter. To minimise administration costs, once the balance falls below £5 (or currency equivalent \$6/€6) then the entire remaining balance will be deducted. The dormancy fee will continue to be charged either until the account balance has been reduced to zero, or your account is reactivated by you placing a bet or gaming using the balance. We will not take any additional funds from any registered payment methods, as this only applies to funds within your present balance (oh thanks for that, you're not going to steal from my bank account, you're only going to steal my money, which is held by you, because I'm a nasty person who forgets/decides not to trade with you)."

Just what is the culture in these companies? To even dream up something like this is a scandal. If a person chooses not to gamble with a company and has forgotten there is money left in their account surely the money should be returned to the customer less any bank transaction charges? The cost of keeping these accounts active is a few pence per annum. There are probably no guidelines concerning terms being broken here, but there is no question this situation should be challenged as it is likely to be banned.



"We cannot be held responsible for any mistakes in the publishing of prices or other palpable errors which lead to prices or conditions being posted other than those intended, or bets being accepted that contravene these rules."

It will be no surprise to most people that when a punter makes a 'palpable error' they may or may not be able to address it. To be fair some bookmakers will allow you to change your bet, if you have made a 'palpable error', so long as it is well before the event starts, e.g. you normally bet in 'tenners' and you hit the wrong key and you placed a bet of £100.00; you backed the wrong horse, etc. However, the punter has little chance of addressing their error close to the event starting and **no chance after it has started or after it has finished.**

This is a complete imbalance between the service provider and the customer, so unfair. Basically the gambling company can make a mistake and correct it any point, even after the event has finished, but the customer cannot. This could and does lead to all sorts of unscrupulous behaviour.

"All Customer offers are limited to one per person, family, household address, email address, telephone number, same payment account number (e.g. debit or credit card, Skrill etc), and shared computer, e.g. school, public library or workplace. We reserve the right to withdraw the availability of any offer or all offers to any Customer or group of Customers at anytime."

There is little wrong with this term, except many gambling companies try to invoke it retrospectively, e.g. remove best odds guaranteed (BOG) after a customer has already backed a winner where BOG is beneficial to the customer. This is unfair and the customer would always win a claim in the small claims court. The customer must be informed of any changes in writing or a bet placed using a promotion of any type will stand in law unless other fair terms have been broken by the customer.

5. How to and please do complain

As mentioned at the start it is crucial people complain.

It is rare for government regulators, 'quangos' or government themselves to take any notice of abusive correspondence, whereas constructive words based on fact and personal experiences could make a big difference. As there is so much unfairness taking place there is no need for the customer to submit anything that is not based on fact, so please do try to be constructive.

This is the link to the CMA investigation page: <https://www.gov.uk/cma-cases/online-gambling>
The email address to complain to is: Gambling@cma.gsi.gov.uk

Do not be put off by the following advice on the webpage: "State clearly in the subject line of your email whether the information relates to sign-up promotions, altered odds or cancelled bets, or terms that restrict the ability to claim." **As stated these are the priorities, but you can complain about other issues (vital).**

6. Example emails

Subject line: Altered odds or cancelled bets

To whom it may concern,

It was not clear when I registered with A N Bookie that their promotions could be withdrawn retrospectively.

I recently placed a bet with A N Bookie. The bet was placed using a promotion termed 'best odds guaranteed'. I backed ?????????????????? at ???. It won at ???. A N Bookie refused to pay me at the best odds. They claimed that their terms and conditions outlined that any promotion can be withdrawn at anytime; surely this cannot be applied retrospectively after an event?

May I suggest that all terms and conditions in the future covering promotions include a sentence that explains any withdrawal of a promotion must be done in writing prospectively? This is the only way to make the contract fair.

Please could you add my email as evidence as part of your investigation into whether online gambling companies are treating their customers fairly.

Yours faithfully,

A N Other

Subject line: Terms that restrict the ability to claim

To whom it may concern,

It was not clear when I registered with A N Bookie that they would share my personal data with other companies for the purpose of improving their profitability.

I recently opened an account with A N Bookie as part of their ?????????????????? promotion. Luckily and somewhat amazingly for me I won some money and tried to withdraw it. A N Bookie refused as they said I also had an account with A N Bookie and both companies are in the same corporate group. This was not clear when I registered with A N Bookie and if it is such an issue why did the company not refuse to accept my deposits and my bets? I would assume they have the ability to do this, if they have the ability to refuse to pay me my winnings? I suspect that if I had lost my deposits this matter would never have arisen?

May I suggest that all terms and conditions in the future clearly state that all wagers will be honoured if a registration mistake is missed, i.e. all wagers, until it is noticed. This is the only way to make the contract fair.

Please could you add my email as evidence as part of your investigation into whether online gambling companies are treating their customers fairly.

Yours faithfully,

A N Other

Subject line: Terms that restrict the ability to claim

To whom it may concern,

I recently tried to withdraw some money from A N Bookie. As it was not obvious when I opened my account that I may be asked for extra identity checks to do this I think the contract was unfair. Even worse, I did not realise that I could be treated like a criminal without being given a good reason.

I accept it is important to control under-age gambling and to keep crime out of gambling, but I think it is totally unacceptable to let me register, deposit money and gamble without these checks taking place, but then demand they do take place when withdrawing money without providing any reason for doing so. How do I suddenly become a suspected criminal, because I decide to withdraw money when this has never been suspected before? I have a suspicion this process is being implemented simply to delay me withdrawing my rightful winnings in the hope I will lose them whilst waiting?

May I suggest that all terms and conditions in the future covering identity checks have to include wording that states a company must provide an exact reason or reasons why any extra checks are taking place? Also, if any costs are incurred by what the company demands, e.g. scans, paper bank statements, signature by a lawyer, that the company pays these costs if the customer is found to be genuine and not to be doing anything wrong. This is the only way to make the contract fair. At present, it is theoretically possible for the costs of withdrawing money to be more than the actual withdrawal.

Please could you add my email as evidence as part of your investigation into whether online gambling companies are treating their customers fairly.

Yours faithfully,

A N Other



Subject line: Sign-up promotions

To whom it may concern,

It was not clear when I registered with A N Bookie following an advertisement for a sign-up promotion that I would not be allowed to win.

I recently opened an online account with A N Bookie. I've had ?? bets, turned over £????, my profit/loss was £????. I am no longer allowed to place bets to a stake I request on ??????????. This happened so quickly it means I cannot even complete the turnover requirements for the advertised promotion.

My understanding is that a gambling operator's licence by definition involves risk. The definition of gambling is: "To wager on an event in which you can win or lose money." It is obvious from my experience that A N Bookie is trying to abolish all risk on their part. This cannot be ethical and is unfair. As a customer I should not be the only one taking risk.

Whilst I fully accept that a gambling company has a right to manage risk, if A N Bookie behaves in this way surely they should lose this freedom to manage risk their own risk, as they are operating an extreme version of this principle to enable them to only trade with those they define as 'losers' or even to simply prey on the vulnerable.

If gambling companies are allowed as part of their licence to only trade with people who lose when gambling I think it is vital that the terms and conditions when a customer registers for an account make this situation absolutely clear. May I suggest a pop-up box that must appear before completing account registration that outlines this fact. The customer must be given the opportunity to actively accept this part of the contract for it to be fair, e.g. by ticking a box after a clear explanation that customers are not allowed to win in the short, medium or long term unless the company decides the wins are pure luck.

Please could you add my email as evidence as part of your investigation into whether online gambling companies are treating their customers fairly.

Yours faithfully,

A N Other

**It is important and please do use
your own wording.
These are only examples.**



'Justice for Punters'
www.justiceforpunters.org
info@justiceforpunters.org

7. Disclaimer

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