

**The area in which the subject of cheating becomes most difficult is sports betting. Sports betting can be a question of mere ‘pin sticking’ - but the normal expectation is that punters will, to a greater or lesser extent, use their skill and judgement to predict the result.**

Rules which, it might be said, are not effectively drawn to the public’s attention.

The Gambling Commission and the Competition and Markets Authority (‘CMA’) in the UK have recently announced investigations into bookmakers’ practices and terms and conditions. The reason is that there is a growing feeling that some bookmakers are seeking to impose terms that breach consumer protection laws by being unfair on consumers. Bookmakers will say that ultimately they should be entitled to choose their terms and conditions of business and the customers that they deal with - but, in practical terms, the exercise by bookmakers of these kinds of discretions is a distortion of punters’ ‘normal expectations.’ It must be recalled that cheating is something which applies to operators as well as players. It is to be hoped that the CMA/ Commission investigation in this area will lead to greater clarity on what the ‘normal expectations’ of gamblers and bookmakers are in relation to betting and emphasise the requirement for gambling to be conducted fairly.

1. Phillip Ivey v. Genting Casinos UK Limited T/A Crockfords Club [2016] EWCA Civ 1093.
2. In that regard, consider the dissenting judgment of Sharp LJ in the Ivey case, which focussed on the fact that the casino was entirely in control of the circumstances in which the game was played, and therefore had to live with the position.

## NEWS ANALYSIS

### GC outlines position on VCs, eSports and social gaming

The British Gambling Commission (‘GC’) published its position paper on virtual currencies, eSports and social casino gaming on 15 March 2017, which *inter alia* states that the existing regulatory framework allows for proportionate control of the risks associated with betting on eSports, reiterates the GC’s push for the industry to self-regulate, and emphasises the need to protect children and vulnerable people as demonstrated by the prosecution involving FutGalaxy.

The GC stresses that gambling services that utilise in-game items that can be traded or exchanged for money or money’s worth or for ‘other items of value’ outside of the game are considered money or money’s worth and therefore such activities require a licence. Susan Biddle, Legal Consultant at Kemp Little thinks that “there is still scope for some debate as to when an in-game item constitutes money or money’s worth. The GC says that items which can be traded for ‘other items of value’ are money’s worth, but also says that items which might otherwise be acquired by real money payment are not necessarily money’s worth.”

“The GC has wisely not attempted to produce a painting by numbers set of objective tests to determine exactly where and how eSports competitions become licensable betting activity,” said Julian Harris, Partner at Harris Hagan. “It has set out a number of factors to take into account pointing either to wager or competition, and taking also into account factors such as presentation, use of gambling imagery and links to gambling operators and products.”

### Heads of German states sign up to amended treaty

The heads of Germany’s 16 states signed on 16 March 2017 the country’s new federal gambling treaty (‘NT’), despite the European Commission (‘EC’) criticising the NT as not being ‘a workable solution.’ Under the NT, those 35 operators who applied for a sports betting licence in 2012 will receive an interim concession beginning on 1 January 2018; *inter alia* the EC has criticised that operators later entering the market would face established operators, and that the NT does not regulate online casino and poker.

“Those 35 licence applicants and those companies that will be excluded are almost certain to challenge an interim licensing regime,” said Dr Matthias Spitz, Partner at Melchers. “The ‘35’ will not be ready to accept rigid licensing conditions, such as having to switch off online casino. The excluded companies will not be ready to relinquish the increased legal protection against enforcement that the position of an interim licensee offers.”

The NT must now be ratified by all state parliaments. Certain politicians in Schleswig-Holstein (‘SH’) have reportedly expressed doubts that the NT will pass in SH; however SH’s Prime Minister has confirmed that SH will ratify the NT. “The NT will pass the various state parliaments,” believes Paul Voigt, Partner at Taylor Wessing. “Still, the EC might act on its threats to start infringement proceedings against Germany for breaching the freedom of services with its restrictive gambling regulations.”