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In-play betting in the UK and Australia

In-play betting has come under the regulatory radar of numerous jurisdictions, with notably different approaches now being taken. Melanie Ellis, Senior Associate at Harris Hagan, looks at the nature of in-play betting and the approach taken by regulators in Australia and the UK.

In the 2005 Champions League final, AC Milan was 3-0 up against Liverpool at half time. One Norwegian Milan supporter reportedly placed an in-play bet of £10,167 with William Hill on the Italian side going on to win the match, at odds of 1/100. He was no doubt confident of winning his £101.67 at the end of the match, however, in a fantastic turnaround, Liverpool clawed the score back to 3-3 by the end of the match and then won in a penalty shoot-out. Things no doubt looked a little rosier for the over 100 UK punters who bet on Liverpool to win at half time, at odds of around 100/1, and Ladbrokes estimated that bookmakers lost more than £2 million on the outcome of that match¹.

In-play betting (sometimes known as in-running betting) is nothing new, but the rise of online betting and software advances have brought with them the chance for punters to place a large number of bets during the course of a match or race and even to trade those positions as events develop. The opportunity to lose a

lot of money in a short space of time and potentially to chase those losses during an event has led to calls for in-play betting to be banned.

In Australia, operators have sought to get around the general prohibition on online in-play betting by providing a facility for customers to make a live telephone call via the website to place their bets (known as 'click to call'). Australia is now clamping down on this practice and, in June 2016, operators in the Northern Territory were sent a letter by the Northern Territory Racing Commission giving them 28 days to stop. Australia's federal Government has plans to put through a bill later in the year which will close the loophole and clarify that this type of service is banned throughout Australia².

Australia's position is likely to have been influenced by a review of research published in 2015 in the *Journal of Gambling Studies*³. Research considered in this review found that, in a sample of Australians, the risks of problem

gambling increased with impulsive responses to betting opportunities, including in-play betting. Among a group of 'heavily involved bettors whose activity exceeded that of 99% of the sample'⁴ a subgroup, who were slow to adapt their betting behaviour to live action betting, maintained a high level of betting which escalated over a few days' play⁵. However, these studies did not seek to measure problem gambling, so while a small sub-group of bettors have been identified as demonstrating concerning behaviours in response to in-play opportunities, this cannot be said to amount to evidence that this type of product increases problem gambling.

The British Gambling Commission has been giving careful consideration to the potential risks posed by in-play betting, namely the risks to vulnerable members of society, sports integrity and also fairness to customers. Since November 2014, it has been gathering data from operators which has indicated that this type of product makes up over a third of



the revenue for betting operators⁶. In its Gambling Participation Survey in 2015, the Commission found that 27.4% of online gamblers who use in-play betting facilities were classified as problem gamblers, as compared to 10.9% of all online gamblers. Of those online gamblers who did not bet in-play, only 5.4% were classified as problem gamblers. The Commission warns, in its September 2016 Position Paper on in-play betting⁷, that, due to the small sample size, the data should not be considered as indicative. It is also worth noting that although concerning, these figures do not necessarily show causation: it may simply be the case that those with an existing gambling problem or tendency to problem gambling are more likely to take part in in-play betting. In relation to risks to vulnerable users, the Commission concludes that it expects its licensees who offer in-play betting to be in a position to identify those at risk from problem gambling by capturing patterns and changes in play.

As well as problem gambling concerns, in-play betting is seen by some as presenting risks in relation to match-fixing. The short time frame during which betting occurs can make the identification of suspicious betting patterns more difficult and, because in-play offers more betting opportunities during a sporting event, there are more outcomes for sports participants to influence. In 2013, the European Parliament urged Member States to ban all forms of live sports betting, stating that “these have proved to be very vulnerable to match-fixing and therefore pose a risk to the integrity of sport⁸.” The British Gambling Commission has clearly given serious consideration to

this call, but, after reviewing reports by the Asser Institute⁹ and the Sorbonne - ICSS Sport Integrity Research Programme¹⁰, concluded that “there is limited evidence to show that the risks are greater than those associated with pre-event betting¹¹”.

It is worth noting that the approach of the Commission will differ from that in other countries due to the fundamental principles of the British regulatory regime. While other jurisdictions are tending to open up the market for remote gambling on a piece-by-piece basis (for example starting by allowing sports betting then moving on to other forms of betting and casino activities once they are convinced these will be safe), Britain’s Gambling Act 2005 requires the Commission to aim to permit gambling, so far as it is reasonably consistent with the licensing objectives¹². In light of this provision and its risk based approach to regulation¹³, the Commission would need convincing evidence of the risks presented by a particular gambling product before it was able to remove it from the market.

There is more to the Commission’s approach than a lack of evidence for a ban. The loss of an important source of revenue for a number of large operators will no doubt have weighed in the balance but another very real concern, which clearly influenced the thinking of the Commission, is that if an existing product is banned then customers currently enjoying that product are likely to look to illegal and unregulated providers in order to continue. This takes customers completely outside the protections offered by the regulator, including the requirement to monitor

customers for behaviours indicative of problem gambling or match-fixing. This concern was raised in Australia by Gaming Minister Peter Styles who said that the government should approve in-play betting or risk customers being pushed to offshore operators¹⁴ but, in Australia, this risk was apparently outweighed.

At least in Great Britain, for the time being, in-play betting is here to stay. Confident in the knowledge that the Gambling Commission is not about to prohibit this type of product, existing operators and new entrants to the market are free to explore exciting new ways to offer in-play betting. Developers of new products should, however, bear in mind the boundary between betting and gaming. Betting is defined as making or accepting a bet on (a) the outcome of a race, competition or other event or process, (b) the likelihood of anything occurring or not occurring, or (c) whether anything is or is not true¹⁵. Gaming, on the other hand, is “playing a game of chance for a prize¹⁶”. Any product that fits both definitions is to be treated as gaming (except for pool betting, which is to be treated as betting)¹⁷. At some point a product which offers customers the opportunity to place a number of different types of bets very quickly in an exciting format may begin to appear more like customers are playing a game and, at this point, it must be licensed as gaming. Luckily, the problem can be remedied fairly simply by adding remote casino activity to an existing remote betting operating licence but operators should be aware that, the faster and more exciting the product, the higher the scrutiny will be by the Commission to ensure vulnerable players are protected.



Image: ThomasDeco / Shutterstock.com

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3. <http://link.springer.com/article/10.1007/s10899-015-9571-9>
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6. <http://www.gamblingcommission.gov.uk/pdf/In-running-betting-position-paper.pdf>
7. Ibid.
8. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0218+0+DOC+PDF+V0//EN>
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10. http://www.theicss.org/wp-content/themes/icss-corp/pdf/SIF14/Sorbonne-ICSS%20Report%20Executive%20Summary_WEB.pdf?lbisphreq=1
11. <http://www.gamblingcommission.gov.uk/pdf/In-running-betting-position-paper.pdf>
12. Section 22, Gambling Act 2005.
13. <http://www.gamblingcommission.gov.uk/pdf/statement-of-principles-for-licensing-and-regulation.pdf>
14. <http://www.smh.com.au/business/northern-territory-backs-inplay-betting-20160131-gmhvsf.html>
15. Section 9, Gambling Act 2005.
16. Ibid, Section 6.
17. Ibid, Section 16.

NEWS IN BRIEF

Criminal charges brought in YouTube FIFA gambling case

Two men appeared at Birmingham Magistrates' Court on 16 September 2016 charged with alleged offences under the Gambling Act 2005, in what is likely the first criminal prosecution case in relation to video game gambling. Dylan Rigby and Craig Douglas have been charged following a Gambling Commission ('GC') investigation into the defendants' involvement with YouTube channel FutGalaxy. Both men have been charged with advertising unlawful gambling; Rigby has been charged with providing facilities for gambling while Douglas has been charged with inviting children to gamble.

FutGalaxy made use of the 'FIFA Ultimate Team' ('FUT') mode of EA Sports' FIFA series, in which users are rewarded with a virtual currency, coins, for succeeding in the game. These coins can be used to buy 'player packs,' which contain players to add to a user's team in the game; the specific players received in a pack are randomised. FutGalaxy allowed players to purchase such packs through its own website via FIFA coins. Players could also bet coins on the results of real-life football fixtures, or on the performance of FIFA game players via FutGalaxy's 'Twitch Bets' feature.

"We may see a dip in the number of eSports betting sites available in the UK, as unlicensed sites may shut down their services but continue to operate in other countries," said Isabel Davies, Legal & Business Analyst at Purewal & Partners LLP.

Singapore regulator agrees exemptions for two operators

Singapore's Ministry of Home Affairs ('MHA') declared on 28 September 2016 that Singaporean operators Singapore Pools ('SP') and Singapore Turf Club ('STC') will be able to launch legal remote gambling in Singapore, with both operators reportedly set to begin online offerings in November this year.

The operators applied in July 2015 for Certificates of Exemption, permitted for charity and non-profit operators under Singapore's Remote Gambling Act ('Act'). The Certificate allows an operator to provide remote gambling services in Singapore to players present in Singapore. Since both the STC and SP are Government-owned and give all profits to charitable causes, they were "natural candidates for the exemptions," said Yap Wai Ming, Partner at Morgan Lewis Stamford LLC.

The exemptions are subject to the operators maintaining certain safeguards, for example preventing bettors from gambling on credit, while the MHA has promised regular operator audits.