

COMPLAINTS: IS POOR DISPUTE RESOLUTION BEHIND CONSUMERS' DWINDLING TRUST?

The Gambling Commission has identified failings in the way gambling companies resolve complaints. **Yue-Ting Fung** of Harris Hagan explains how it plans to tackle these, and wonders if this could improve perceptions of the industry.

In her World Regulatory Briefing at ICE this year, Gambling Commission (Commission) CEO Sarah Harrison said that “the gambling industry’s longer-term sustainability is hugely reliant on trust – a recognition that customers using products and services are valued, respected and treated fairly. Respect in this context [includes]...how [operators] handle complaints...”

Her words follow the discovery that since 2007, the number of consumers who perceive gambling as fair and trustworthy has almost halved, prompting serious questions as to why despite the Commission, operators and alternative dispute resolution (ADR) providers fulfilling their regulatory obligations, consumers remain dissatisfied.

Indeed, the Commission’s March 2017 review, *Complaints processes in the gambling industry* (the Review), suggests that the industry, as a whole, still has a way to go to provide effective handling of

consumer complaints and meet consumer needs. The Review summarises industry findings, with the Commission concluding that: “complaints processes in the gambling sector are not working as they should for consumers. In particular, [the Commission is] concerned about some areas where ADR providers and operators need to make changes to the way they do things. [The Commission acknowledges it] needs to make improvements to some of [its] own processes.” These changes are vital to ensuring that complaints processes are as clear, transparent and fair as possible.

The Review follows the introduction of the ADR scheme last year after the European Directive on ADR was transposed, and provides an insight into the industry’s implementation of the complaints and disputes requirements under social responsibility code provision 6 of the licence conditions and codes of practice (LCCP).

Existing complaints procedure

Outcomes of any disputes referred to an ADR provider must be reported by operators as a key event to the Commission. Operators must also disclose information on complaints as part of their regulatory returns.

Currently, where a consumer has a complaint about the outcome of a gambling transaction and the operator is unable to resolve the complaint, the consumer must be referred to its ADR provider, as set out in the operator’s terms and conditions. It is the ADR provider’s role to decide whether the operator must pay money to the consumer, or help the two parties come to an agreement.

Using their powers under the European regulations on ADR (the Regulations), the Commission has approved 11 ADR providers for the British gambling industry which meet the requirements of impartiality and fairness and independence. The table below summarises the complaints data taken from the annual reports of five of the approved ADR providers in 2016.

ADR entity	Disputes received	Issues frequently leading to disputes	Average time taken to resolve disputes (days)
Bacta ADR services	21	<ul style="list-style-type: none"> Machine malfunction Bingo callers not hearing players 	26
Centre for Effective Dispute Resolution (CEDR)	19	<ul style="list-style-type: none"> Unclear terms and conditions 	31
eCOGRA	359	<ul style="list-style-type: none"> Regulatory issues, specifically self-exclusion 	28
IBAS	6,486	<ul style="list-style-type: none"> Remote casino bonuses Bets placed after start of race Identity checks Unclear rules and promotional terms 	31
ThePOGG.com Ltd	7	<ul style="list-style-type: none"> Maximum bet restrictions Restricted games Self-exclusion restrictions 	21.5

Key challenges

In its review, the Commission highlighted the following areas requiring improvement:

- consumer access to satisfactory complaints procedures; and
- an effective structure which meets the full range of consumer needs.

The improvements proposed in the Review aim to make it easier for consumers to access complaints procedures and to introduce greater consistency as a way of raising industry standards on complaints procedures. The Commission emphasises that these steps are crucial if the industry is to develop consumer trust and ultimately sustain the industry long term.

Easier access to complaints procedures

From mid-2017, the Commission aims to introduce its proposal, starting with the adoption of an independent online tool, Resolver, to make the complaints procedure easier and more accessible for consumers. The tool is a free 'one-stop service' for consumer use and performs the following services:

- explains the consumer's rights in simple terms;
- helps the consumer to prepare an email using a template;
- allows the consumer to record all communications in the same place;
- creates a case file for the consumer; and
- tells the consumer when to escalate their case to the next stage.

The Commission is still in the process of collecting consumer feedback on its proposals (see end of article for further proposal details). It has also clarified in its Review that as the online tool is independent, operators "will not need to do anything for [the online tool] to be introduced", although it is not clear when Resolver will be implemented.

In addition, the Commission plans to review its definition of disputes to ensure that ADR providers are able to consider the widest range of gambling transaction complaints, to ensure consumers have adequate recourse where they have an issue with an operator.

Information requirements

The Review also highlights the need for more and better information provision, from: a) operators and ADR providers to the Commission; and b) the Commission and possibly operators to consumers. In an effort to provide transparency and build consumer trust, the Commission has stated its intention to provide clearer information on its website to help clarify its role in the complaints process, in particular, that it does not investigate individual complaints and also how the Commission uses the information provided by consumers.

In addition, the Commission is also considering the possibility of operators being required to disclose further information regarding their complaints policies and making these policies more visible. This follows Commission findings that the average length of terms and conditions for an online gambling operator is 9,500 words (approximately 21 A4 pages) and only 39% of the complaints policies the Commission sampled provided information on how long the operator expected to take in resolving a complaint.

Furthermore, as the Commission is concerned about the accuracy of the complaints data it receives from operators as part of their regulatory returns, it plans to improve its instructions to operators on data requirements, namely how and when to send data. The Commission will take action where it discovers incorrect information is being submitted.

New framework for ADR providers

In turn, information provision by ADR providers or lack thereof has prompted the Commission to propose a review of all 11 ADR providers against a new framework of requirements which will aim to ensure consistency and quality in the standard of customer service, decision-making and general support of the gambling industry. Any of these providers may withdraw from the Commission's approved list if they do not wish to meet the new standards. The new framework would benefit the Commission and operators alike in identifying target problem areas. In particular, the Review emphasises that complaints data should be

"very useful to [any competitive business] to help them identify areas that could improve their businesses, and potentially attract or retain more customers".

Upcoming reviews and proposals

The Commission's gambling operator-related proposals are as follows:

- to revisit the information the Commission provides to operators about when and how to record and report on complaints and disputes as part of their regulatory returns;
- to look more closely at the reports that operators submit to the Commission and to take action where these appear inaccurate;
- to consider making changes to licence conditions to require complaints policies to be more visible and more effective. The Commission will consult on any proposals for change before implementing them; and
- to consider whether there are short-term improvements that the Commission can make to improve methods of data collections on outcomes of disputes referred to an ADR provider.

From mid-2017, the Commission will begin providing information to Resolver to enable consumers to use the online tool to make complaints. The Commission will continue to issue the remaining proposals over the next few years, taking longer where any consultations are necessary.

The message from the Review is clear; the Commission wants to see operators striving for excellence in handling consumer complaints and not merely focusing on meeting legal and regulatory requirements.



Yue-Ting Fung is a paralegal at Harris Hagan and assists in all aspects of online and land-based gambling law. She assists the firm's lawyers with advice on major B2C and B2B operators, start-up operators, investors and financial institutions. Yue-Ting works mainly on operating and personal licence applications, as well as due diligence projects.