

chapter twenty six

Betting

- 26.1 The regulation of betting is quite different from that of the other gambling activities we have been examining. That does not, of course, mean that it needs to be changed. It was forcibly put to us by a number of those who submitted evidence that there was no need to change a system which worked perfectly well. We have considered whether that claim is correct. We believe that while most of it works well there are shortcomings in the present system which should be remedied.
- 26.2 The most significant difference is that betting does not have the equivalent of the Gaming Board to oversee its activities. Spread betting is regulated by the Financial Services Authority; on-course betting at racecourses tracks is supervised by the National Joint Pitch Council; off-course betting has no regulator. Licensing of bookmakers is undertaken by licensing magistrates. Apart from age, there are no controls on those who work in betting shops. Permission to provide betting at racecourses is given by the Horserace Betting Levy Board through the issue of Certificates of Approval and licences to provide betting at greyhound tracks are issued by local authorities.
- 26.3 Our proposals on certain aspects of gambling which are relevant to betting are presented in earlier chapters. This chapter concentrates on the issues that are unique to betting. Chapter 19 deals with the licensing of corporate bodies and individuals and chapter 21 with the licensing of premises. We have proposed that the Gambling Commission license betting shop managers, brokers and public tic-tacs. In chapter 20 we have recommended that the demand test for betting shops should be abolished. In chapter 22 we have set out our recommendations that credit cards should be permitted to be used for gambling and that bookmakers may continue to offer credit. We have also recommended that advertising restrictions may be relaxed. We have proposed that money laundering compliance measures should be applied to betting. That chapter also deals with our proposal that casinos should be able to offer betting in addition to other activities, but that betting shops should not be able to offer any other gambling apart from a limited number of gaming machines. We have also proposed that alcohol should not be served in betting shops and that betting should not be permitted in pubs. Chapter 23 sets out our recommendation that betting shops should be permitted to have a maximum of four jackpot machines.

Betting shops

Opening hours

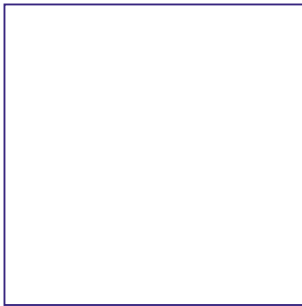
- 26.4 Chapter 21 sets out our view that the opening hours of gambling premises should be determined as a condition of the premises licence. It may be helpful to set out the current position on betting shops. Opening hours were restricted under the 1963 Act, but over the years the restrictions have been relaxed, particularly with the introduction of Sunday racing. However, betting shops cannot open on Good Friday or Christmas Day and opening hours are shorter in winter than in summer, when evening race meetings are held. Under our proposals, opening hours will be a matter for the local authority to determine.

Alcohol and amenities

- 26.5 In chapter 22 we discuss our reasons for not recommending that alcohol should be permitted in betting shops (and for not allowing betting in pubs). There are, however, other restrictions on the facilities that can be offered in betting shops. Any non-alcoholic drinks may be sold, but only pre-packaged food such as sandwiches, biscuits or cakes may be offered. Clearly the ban on anything other than non-alcoholic drinks must stay, but otherwise we see no need to retain these other restrictions. There are also restrictions on the material that may be displayed or broadcast in betting shops. We do not think it is unreasonable that such material is restricted to subjects on which bets may be made. **We recommend that betting shops should be able to offer any food as well as any non-alcoholic drinks.**

Betting on the National Lottery

- 26.6 The National Lottery Act prohibits bookmakers from taking bets on the UK National Lottery. This is the only event, subject to exclusions on grounds of bad taste, on which bookmakers are prevented from taking bets. Bookmakers in Great Britain do offer betting on the Irish National Lottery.
- 26.7 Bookmakers want to be able to offer betting on the UK National Lottery. Such a bet is likely to be attractive to some punters because a winning bet would pay very much more than the National Lottery for a correct prediction of, say, three numbers. It has been suggested to us that people would continue to buy their lottery ticket in addition to betting on the same numbers, because the risk of missing a very big win on the National Lottery would be too great to



bear. We note that the Culture, Media and Sports Select Committee recommended that betting should be allowed on the National Lottery. We recognise that any change could have an impact on National Lottery income, but that should not by itself rule out the possibility.

- 26.8 The National Lottery is outside our remit, but betting is within it. We regard this as a question about the regulation of betting and as such, **we recommend that betting on the UK National Lottery should be permitted.**

Betting tracks other than racecourses and dog tracks

- 26.9 The 1963 Act defines the term “track” very widely as “premises on which races of any description, athletic sports or other sporting events take place”. All such tracks on which there is regular betting (and those who operate them) would need to be licensed as we have described in chapters 19 and 21. Tracks with a “betting track licence” are most usually dog tracks, although this type of licence would also apply to betting at, for example, football and cricket matches.
- 26.10 Under the 1963 Act there is an exemption for tracks at which there is betting on no more than seven days a year. This is intended to allow bookmaking at occasional events, such as gymkhanas, without the need to obtain a track betting licence. In addition to the frequency of the event, a condition is that the police should be given seven days notice that betting will be taking place. An exemption of this kind should be carried over into new legislation, so that occasional betting can take place without the need for an operator to be licensed by the Gambling Commission, or the track to be licensed by the local authority. All the bookmakers operating at the event, of course, would be licensed. **We recommend that bookmaking should continue to be permitted on tracks on not more than seven days in any 12 months without the operator being required to seek a licence from the Gambling Commission or local authority. Seven days notice of the betting should be given to the police.**

Racecourses and greyhound tracks on non-race days

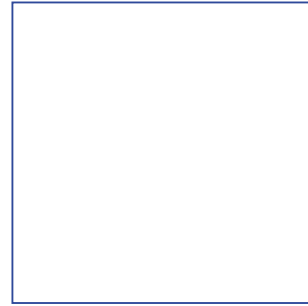
- 26.11 The use of racecourses for betting on non-race days is not currently permitted. The BHB takes the view that racecourses are under-utilised facilities. They would

like to be able to offer betting on non-race days on events other than horseracing, and gaming such as gaming machines. Similarly, the BGRB would like to offer dining and betting at a greyhound track on days when there is no racing at that track.

- 26.12 We understand the wish of racecourse and track operators to make greater use of their resources. However we are reluctant to propose a set of rules to cover this contingency. If the operators of racecourses wished to offer betting, alcohol, gaming and entertainment on non-race days we believe that they should be able to apply for a casino licence for such events, under our proposed licensing rules.

Restrictions on the entry charge racecourses may make to bookmakers

- 26.13 The horseracing industry would like to see the restrictions on the amount they can charge bookmakers for entry to racecourses lifted. The HBLB and the BHB have strongly recommended that section 13 of the 1963 Act, which limits the amount racecourses or dog tracks can charge bookmakers to five times the entry charge for the public, should be repealed. They argue that charges to bookmakers should be dictated by the market and not by legislation. The Rails Bookmakers Association and the National Association of Bookmakers are opposed to such a change. The NAB believes that Racecourses would try to price out bookmakers in order to benefit the Tote. The Rails Bookmakers assert that the five times rule protects the punter, and if it is abolished and bookmakers have to pay more for admission, the cost will have to met by the punter.
- 26.14 The presence and bustle of activity of on-course bookmakers at a racecourse is an integral part of the event, and we do not believe that it would be in the commercial interests of racecourses to price them out of the market. However, we do believe that the “five times” rule is an anachronism, and that racecourses and bookmakers should make their own commercial arrangements. At the same time we recognise the force of the bookmakers’ arguments and we would expect the competition authorities to intervene if racecourse owners acted unfairly. **We therefore recommend that the rules restricting charges for the entry of bookmakers to racecourses or dog tracks should be abolished.**



Ownership of tracks

- 26.15 Chapter 16 sets out our arguments for believing that competition, competition regulation and our proposed regulatory framework provide sufficient punter protection to obviate the need for any recommendations concerning the ownership of racecourses by bookmakers, the BAGS arrangements and the role of SIS. As far as the Starting Price system is concerned, we consider that the recommendations to reform the organisation and management of the starting price returners, made in the Arthur Andersen report¹, combined with our own proposals for the regulation of on-course betting, will provide adequate safeguards for the punter.

The Horserace Totalisator Board and totalisator betting on greyhound racing

- 26.16 A totalisator is a mechanised device for pool betting. It aggregates the total stakes paid into a pool. A predetermined percentage of the pool is deducted to cover the expenses of the operator and his profit. When the result of the race is known, the remainder of the pool is divided equally among the winning punters in proportion to their stakes. Totalisators offer a choice of pools on any one race or combination of races. There are differences between the operation of the totalisator run by the Horserace Totalisator Board (the Tote), which takes off-course as well as on-course stakes, and the totalisators run by licensed greyhound tracks (which take only on-course stakes.)

The Horserace Totalisator Board (Tote)

- 26.17 No pool betting at horse racecourses may take place unless it is authorised or conducted by the Tote. The Tote also has a monopoly on the conduct of off-course pool betting on British horseracing. It acquired the power to extend its pool betting activities to events other than horseraces in 1972, and to engage in bookmaking on any sporting event². Tote profits are devoted to the improvement of racing. The Home Secretary has announced that the Tote will be sold to a consortium of racing interests. This will coincide with the disbanding of the Horserace Betting Levy Board and the abolition of the statutory betting levy on horseracing. We understand that it is intended that the Tote should retain its monopoly position for a limited time after the sale, although the bookmakers have indicated that they might mount a challenge under competition law.

Totalisator betting on greyhound racing

- 26.18 The situation with regard to greyhound totalisators is rather different. Under the Betting, Gaming and Lotteries Act 1963, no pool betting on dogs may take

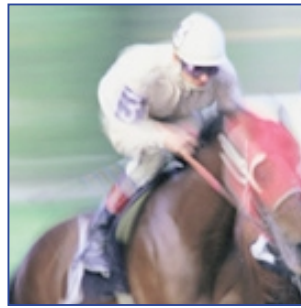
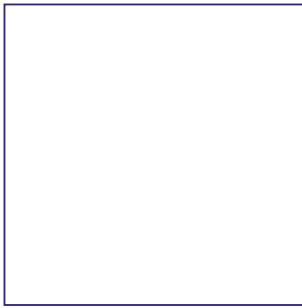
place except by way of on-course totalisator betting on a licensed dog track. Only the operators of licensed tracks (licensed by local authorities) may operate their own tote, or authorise someone else to operate it. The operation of on-course totalisators is governed by the Dog Racecourse Totalisator Regulations, which lay down a number of requirements including the display of information, the running of the totalisator and the statement and audit of accounts. There is no statutory betting levy on greyhound betting, although there is a voluntary levy.

- 26.19 The British Greyhound Racing Board recommended that the greyhound totalisator should have parity with the horserace totalisator and be permitted to accept off-track wagers. Section 16 of the 1963 Act restricts betting on greyhound totalisators to punters at the track while racing is taking place, or to punters at another track where there is racing going on at the same time (under the inter-track betting scheme). In chapter 16 we commented on the rather unsatisfactory arrangements for off-course and on-course fixed odds betting at greyhound racetracks where starting prices can be set by a very thin market. Off-course access to the tote would introduce a welcome element of competition and we believe this development should be encouraged. **We recommend that there should be off-course access to greyhound totalisators.**

Bookmakers rules

- 26.20 One of the major complaints of punters is that bookmakers make their own arbitrary rules, which are not clearly displayed, and are only pointed out to a punter when he goes to claim winnings – which may then not be paid or not paid in full. Certainly, during our visits to betting shops, we have seen bookmakers' rules displayed in such a way that they are not prominent or in print so small that they are difficult to read. The Independent Betting Arbitration Service (IBAS) gave the example of a punter who might bet £10 on a six horse accumulator at big odds, who could reach the shop's limit after the first four of his selections had won. Whatever happened to the final two selections his winnings could not increase, but if one of the two were beaten, his whole bet would be lost. IBAS have proposed that shops should be obliged to list their maximum payouts along with their rules. In the longer term, IBAS propose to produce model rules, adherence to which, they suggest, could be a statutory requirement.

- 26.21 We have heard from bookmakers that there are punters who engage in scams such as deliberately writing ambiguously on a betting slip so that they may claim a win on any one of several runners. It is reasonable that bookmakers should protect



themselves against dishonest activity by punters and against collusion between their staff and punters. We have noted that off-course betting shops do not produce computer generated printouts for the punter immediately the bet is laid, in the same way that many on-course bookmakers do. We understand the difficulty of doing that, given the complexity of the bets and the number of sporting events involved. The bet at a racetrack is usually a much more straightforward affair. However, a printout would ensure that there is no difference in perception between the bookmaker and the punter about the bet being laid and accepted. Such clarity could prevent a number of current disputes. We understand from IBAS that the use of technology in betting shops is being developed to produce a bet capture system, based on the Electronic Point of Sale (EPOS) process. That would certainly remove much of the basis of the disputes that currently occur. **We recommend that bookmakers' rules, and specifically the rules relating to the completion of betting slips should be clearly displayed. The Gambling Commission should have the power to scrutinise bookmakers' terms and conditions to ensure that they are fair and reasonable.**

Enforceability of gambling debts

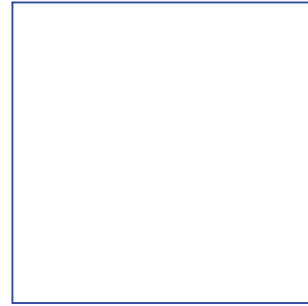
- 26.22 The Gaming Act 1845 (section 18) made contracts or agreements by way of gaming or wagering void and unenforceable, whilst making other betting transactions binding legal agreements. There are anomalies as a result of this legislation. For example, whereas betting debts are not generally enforceable, spread-betting debts are enforceable, and casinos can sue for payment of a cheque (but not on a contract).
- 26.23 We heard from the former officers of the, now defunct, National Association for the Protection of Punters and a number of punters who all stressed that betting transactions should be enforceable. Professor David Miers suggested that making debts enforceable would underline the responsibility of the individual and the importance of player protection.³
- 26.24 Some bookmakers, on the other hand, told us that the lack of enforceability worked more often to the punters' advantage, because they were not pursued through the courts for debts owed to the bookmaker as a result of gambling on credit; and because more money is owed to bookmakers by punters than by bookmakers to punters. They suggested that if debts were enforceable, bookmakers could be tempted to allow customers to run up big debts in the knowledge that they could sue for payment. We consider that if bookmakers were inclined to do that, the remedy could better lie in curtailing their ability to offer credit. We have not suggested that need be done, because we

do not think there is a real risk, in a regulated market, of bookmakers enticing customers to take more credit than they can afford.

- 26.25 We agree that the lack of enforceability of betting debts is an anachronism and should be remedied. **We recommend that all gambling debts should be legally enforceable.**
- 26.26 A further possible source of unfairness to the punter is what is known as the "palpable error rule." Bookmakers refuse to pay out winnings in cases where an employee has made an error during a betting transaction. An example would be where the employee has failed to photograph the betting slip. We fully understand that bookmakers wish to protect themselves from criminal collusion between punters and betting shop employees, but we do not believe that bookmakers should be able to protect themselves in this way from negligence by their employees. As a result of our recommendation that gambling debts should be legally enforceable, we assume that gambling contracts will be deemed to be consumer contracts, in the same way that other commercial transactions are.

Dispute resolution

- 26.27 The Independent Betting Arbitration Service (IBAS) currently deals with disputes concerning off-course betting and internet betting. IBAS told us that around 90% of the disputes it has dealt with were resolved in the bookies' favour. It believes this to be so because IBAS has had to rule on disputes according to the bookmakers' own trading rules, and bookmakers knew their own rules infinitely better than the customers. Many customers did not realise that they were tacitly agreeing to the bookmaker's own trading rules when they placed a bet in a betting office. IBAS considered that most disputes were due to a lack of information.
- 26.28 IBAS suggested that it should be compulsory for bookmakers to be members of an arbitration body, such as IBAS. The NJPC also said that punters should be confident that bookmakers would play by the rules and would comply with the findings of an independent body to resolve disputes. On-course betting disputes are currently resolved by the betting ring manager appointed by the NJPC. Resolution of these is assisted by the use of technology through the issue by the bookmaker of computerised betting slips at the time the bet is made, and by an audio recording of the transaction.
- 26.29 We do not think that there should be a statutory scheme for the arbitration of betting, or any other gambling disputes. That should be a matter for the industry. We recognise the good work that IBAS has carried out and we hope that the industry will



continue to support it, or a similar body. Our recommendation that betting debts should be enforceable should help to focus minds on the importance of resolving disputes without resort to the courts.

Corruption

26.30 Submissions received from the Jockey Club, the Metropolitan Police and the National Criminal Intelligence Service (NCIS) expressed concerns that bookmaking is an unregulated sector and offers money laundering opportunities. All three organisations, along with the Horserace Betting Levy Board, were concerned that there is considerable difficulty in identifying appropriate charges for those accused of corrupt activity such as doping, and recommended that there should be new, more substantive criminal offences relating to criminal offences in sport.

26.31 As we have discussed in chapter 16, the question of corruption in sport arising from collusion between bookmakers or punters and sporting participants is not limited to the sporting organisations which have given evidence to us. Concerns about relationships between bookmakers and sporting participants have recently had a high profile in cricket. Lord Condon heads the team appointed by the International Cricket Council to carry out an inquiry into corruption in cricket. He is investigating malpractice in England, but also co-ordinating investigations in other countries, and he told us that because of the opportunities to bet not only upon the final outcome of a sporting event, but upon individual events within it, there are increased temptations for participants to fix the outcome of those events. Fixing “an event within an event” is much easier than fixing the overall result, which it need not affect. This can be done alone or with the collusion of only one or two other participants. We note that Lord Condon’s interim report, published in May 2001 said that “*there are indications that some players and other are still acting dishonestly and to the order of bookies*”.

Criminal Offences

26.32 The general criminal law of corruption is contained in the Prevention of Corruption Acts 1889-1916, which cover both the public and the private sectors. The Home Office is committed to proposals for legislation which will reform the law and will contain a statutory definition of what is meant by “acting corruptly”. The proposals were set out in the White Paper issued by the Home Office last year “Raising Standards and Upholding Integrity: The Prevention of corruption”, which built on recommendations from the Law Commission of England and Wales.

26.33 The Jockey Club⁴ recommended that more specific criminal offences be introduced directly related to criminal behaviour in sport and related betting, for example:

- the doping of a racehorse or greyhound
- bribery of sports participants or officials
- corruption in connection with horseracing and other sports events, or in connection with betting on horseracing or other sports events.

The Jockey Club also recommends the establishment of a dedicated Police unit to cover gambling matters and corruption in sport.

Insider Trading

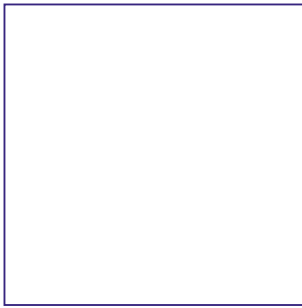
26.34 There is a grey area which has presented us with difficulties. In relation to most sporting events punters can seek to gain an advantage through obtaining and analysing information. But fairness should mean that all information is potentially available to all punters, should they wish to obtain it. If punters wish to bet by sticking a pin into the list of runners or because they like the horse’s name that is up to them but those who rely on information should be confident that information is accurate and available to all. That does not appear to be the case in a number of sports, most notably horse racing. We have considered whether it is possible to apply the rules relating to insider trading in financial assets and we sought advice from the Financial Services Authority (FSA).

26.35 The FSA pointed out that insider dealing is a criminal offence under the Criminal Justice Act 1993. That legislation applies only to securities. The Financial Services and Markets Act 2000 will give the FSA the power to introduce a new Code of Market Conduct which will inter alia deal with the misuse of information (that is, information which the market would expect to be made available to it), the creation of false and misleading impressions, and distortion.

26.36 The FSA considered the case where jockeys/trainers are passing on information to bookmakers that is relevant when assessing odds and the bookmakers are factoring this information into their odds, or where jockeys/trainers are placing bets themselves. They consider whether this could be analogous to insider trading, with odds being equivalent to the price of an asset. Insider dealing legislation indicates that there should be restrictions imposed where the information in question:

- has not been made public; and
- is specific and precise.

⁴Jockey Club (2000)



The restrictions that by analogy would be imposed would include not using the information (ie. trainers not putting on bets themselves), not disclosing the information and not encouraging others to use the information. The Jockey Club raised a number of concerns with us concerning relations between jockey and trainers on the one hand and punters and bookies on the other. Under Jockey Club rules, jockeys are not allowed to place bets but they can pass on information which can prove profitable to punters or bookies.

- 26.37 The FSA pointed out that debts relating to financial transactions are enforceable whereas gambling debts are not, hence the greater need to avoid insider trading in the former case. Our proposal to make gambling debts enforceable removes that difference. The FSA also questioned whether, in practice, betting on a sporting event at particular odds is analogous to dealing in a specific security. They comment that the insider dealer relies, in essence, on trading at a false price, to his advantage, ahead of his private information becoming public and moving the price. They suggest that, by contrast, the only information that would provide such a direct result for betting is that of match fixing, which would involve orchestration. We accept the argument but still believe that a similar principle can apply. The insider dealer, even when acting illegally, cannot be sure of making a profit, since his inside information might be offset by other news which moves the asset's price in the opposite direction. If we assume that our concern here is not with event fixing (which should clearly be prohibited and penalised) but with unfair access to information, the person who has or uses the information is dealing with probabilities and odds. He can make or lay bets at odds which do not reflect the probabilities. The outcome may not be certain; but repeated use of inside information would be profitable. Others (who may be bookmakers or other punters) would be cheated.

- 26.38 It could be argued that punters know this and are either resigned to the losses or hope that every now and then they will have inside information. But we believe that more rigorous steps should be taken to ensure fairness. (It is worth recalling that insider trading used to be prevalent in securities markets and is no longer tolerated.) We have some sympathy with the comment in the KPMG report for BISL⁵:

What is required is legislation that makes illegal the acquisition and use of privileged information by bookmakers and their staff. There has to be an impermeable membrane separating flows of privileged knowledge between those who take bets on and those who participate in the underlying activity on which betting takes place.

- 26.38 We consider that measures to improve the conduct of sportsmen, sporting officials or of punters are outside our remit. We do not think it should be the role of the Gambling Commission to monitor the behaviour of sportsmen. We can, however, propose measures to tackle the issue of the integrity of those who take the bets from punters. If, for example, the Jockey Club were to ban jockeys from making bets and a bookmaker knowingly accepted a bet from a jockey, we consider that the Jockey Club should deal with the jockey and the Gambling Commission should take action against the bookmaker. In our view, that would be the right division of responsibility.

- 26.39 We are not recommending that new criminal offences should be created for two reasons. Although we are not unsympathetic to the case that has been put to us, for example that there should be a specific offence of doping a horse, we do not consider that it is properly within our remit to make recommendations relating to such an issue. We have had to concern ourselves with matters that are more directly linked to the actual activity of gambling, although our proposals for the licensing of bookmakers would mean that swift action could be taken against any licensed person who became involved in attempting to influence the outcome of a race in such a way. Secondly, we consider that sports bodies could do more to regulate the participants in their sports, and they should not always look to the criminal law to enforce their regulations. We agree that the law on corruption could be clearer and suggest that the Home Office should consider whether the law could be clarified to meet the concerns we have heard. But overall, we consider that more could be done within the current framework to ensure that betting is fairly conducted. **We recommend that the Gambling Commission should work closely with the Jockey Club, and others, to ensure that betting is conducted in a fair manner and that there is not unfair access to information.** Areas they may wish jointly to consider might include whether the ban on betting should be extended to more people (for example, trainers).