

CARE response to EU Commission Green Paper: On on-line gambling in the Internal Market

Submission made by Lauri Moyle, CARE gambling policy officer, on behalf of CARE

About CARE

CARE is a UK based Christian social policy charity that seeks to combine caring initiatives with public policy research and public policy shaping initiatives. We work in Westminster, Brussels, Strasbourg, Edinburgh, Belfast and Cardiff. We represent roughly 60,000 Christians around the UK who support our work financially and in other ways.

We first became involved in policy relating to gambling and problem gambling in particular in 2007, around the time when the final elements of the UK Gambling Act 2005 were being implemented. At this juncture it became apparent that there were public safety problems, especially in relation to remote gambling which was then beginning to be widely advertised. This was due to the Act, for the first time, allowing gambling to be advertised. The Act stipulates that gambling companies that have a license in the UK or EU, or which are located in other white listed jurisdictions, are allowed to advertise their products online, on TV or terrestrially in the UK. Although we have on occasions engaged with public policy debates about gambling per se, our particular specialism is the protection of the vulnerable in relation to remote gambling which we have addressed in both the UK and EU policy arenas.

Our method use in this submission and our recommendations

The Commission Green Paper has set out 51 questions in relation to the regulation of remote gambling in the EU. Our focus in this submission is to engage with as many of these as possible homing in particularly on the correlation between remote gambling and problem gambling, the weakness of current UK legislation and the opportunity for enlightened change. We recommend that:

1. The Commission at the very least clarifies current EU law, making it plain that it is absolutely appropriate for member states to have tougher regulation for remote gambling (including banning remote gambling) than terrestrial gambling because of the higher problem prevalence figures associated with it and for this to be deemed to be wholly in accordance with single market principles.
2. However, we also believe that some coordination between member states, possibly through the facilitation of the EU institutions, should be promoted to ensure that member states' robust regulatory frameworks can be upheld through tough mechanisms, such as financial transaction blocking to and from websites based either in or outside the EU that do not comply with legislation at member state level. To this end we recommend that the Commission produces a white paper which outlines how the EU institutions will help provide security for citizens of member states in the EU from websites based outside of the EU, or in other EU jurisdictions, that sell their services without the express licensing permission of the member state in which they operate.

Substance of our argument

In this submission we will demonstrate that the current regulatory framework is failing vulnerable people in the UK in relation to remote gambling, highlighting UK Government sponsored research which shows evidence for a link between higher rates of problem gambling and remote gambling. In so doing we will also argue that there is a lack of rigorous regulation around websites that do not currently have to apply for a license from the UK Gambling Commission in the UK and thereby adhere to a standard code of conduct.

Specifically, there is a need for the UK Government to implement the suggestions it made in the UK Department for Culture, Media and Sports Consultation on the Regulatory Future of Remote Gambling in Great Britain¹. While the UK Government has announced that it will make regulatory changes, it has not outlined how it would enforce the requirement for all UK facing gambling websites, irrespective of where they are based, to have a UK gambling license in order to operate in the UK.²

In pressing for these changes, it is important to underline that they are entirely consistent with the intentions of the 2005 UK legislative framework:

*In this Act a reference to the licensing objectives is a reference to the objectives of—
(a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
(b) ensuring that gambling is conducted in a fair and open way, and
(c) protecting children and other vulnerable persons from being harmed or exploited by gambling.*³

CARE has a specific focus on (b) and (c), which we believe are of paramount importance in relation to protecting against addiction, and in the more extreme cases suicide.

We respectfully ask that the Commission considers both the UK's licensing objectives (which we believe are not currently being met by UK regulation) and the concerns of the European Parliament, as found in the European Parliament resolution of 10 March 2009 on the integrity of online gambling (2008/2215(INI)), with which we very much identify.

¹ The consultation documents can be accessed here
<http://www.culture.gov.uk/consultations/6743.aspx> (retrieved 15 July, 2011)

² http://www.culture.gov.uk/news/ministers_speeches/8293.aspx

³ <http://www.legislation.gov.uk/ukpga/2005/19/section/1> (accessed on 17th June 2011)

Problem gambling in the UK in relation to remote gambling: The statistics

In 2007 the Gambling Commission published its second Gambling Prevalence survey, which, while not constituting a study that measures **causality** of problem gambling, did show the levels of problem gambling in the UK and the relevant corollaries to specific forms of gambling. While there was no increase from the 2000 survey in the overall levels of problem gambling, the 2007 survey for the first time included questions relating to remote gambling, and showed that out of the 5 forms of gambling most associated with problem gambling, 4 were forms of gambling in which one participates solely or mainly online, namely: spread betting, betting exchanges, the use of fixed odds betting terminals (excepted), online gambling in a casino type game or bingo and online betting.

At the time the survey was published we pointed out that this did not provide a compound problem prevalence figure for gambling using the internet per se. This was an important oversight and we pressed the UK Minister, Shadow Minister and UK Gambling Commission for this figure but no figure was published.

However, after we asked the question and not necessarily because we did so, the Gambling Commission published secondary research from the dataset of the prevalence study on gambling and the internet, produced by Mark Griffiths from Nottingham Trent University, Jim Orford of Birmingham University and a number of experts from NatCen, the organization which conducted the survey originally. The study showed that the rate of problem gambling amongst those who chose to gamble online was higher at 5%⁴ than for the population at large (0.5-0.8%)⁵. A further overall secondary analysis of the Gambling Prevalence survey 2007 showed that there was a link between problem gambling and online roulette.⁶ In both cases the researchers urged caution in analysing their results, but nevertheless made it clear that they believed internet gambling and problem gambling need to be looked at again. In the first study, the experts even argued that the UK Government should take a particularly close look at regulating remote gambling because of its specific and peculiar nature i.e. the lack of natural boundaries such as 24 hour accessibility, the ease of access etc.

Fast-forward to the 2010 UK prevalence study released earlier this year in February and the results are even more worrying. Overall problem gambling rates have

⁴ Internet gambling: a secondary analysis of findings from the 2007 British Gambling Prevalence Survey October 2008 (p.12)
<http://www.gamblingcommission.gov.uk/pdf/Internet%20Gambling%20secondary%20analysis%20of%20findings%20from%20the%202007%20BGPS%20-%20Oct%202008.pdf> (accessed on 17th of June 2011)

⁵ UK Gambling Prevalence Survey 2007 (p. 76)
<http://www.gamblingcommission.gov.uk/PDF/British%20Gambling%20Prevalence%20Survey%202007%20-%20Sept%202007.pdf> (accessed 17th June, 2011)

⁶ British Gambling Prevalence Survey 2007: Secondary Analysis (executive summary p. 6)
<http://www.gamblingcommission.gov.uk/pdf/BGPS%202007%20Secondary%20analysis%20-%20Oct%202008.pdf> (accessed on 17th June, 2011)

increased to 0.9% of the population as a whole⁷, and the figure for any online gambling excluding the national lottery, (this time included in the main body of the study) increased to 5.3%⁸, a rise of 0.3% from the figure produced by the Griffiths-Orford secondary research study of the 2007 figures.

Finally, a meta-analysis of prevalence surveys produced by the Swedish based Centre for public sector based research (CEFOS), found that:

“interactive Internet gambling, casino gambling, electronic gaming machines, and high-stakes unregulated/illegal gambling are often relatively closely associated with PG [problem gambling]...”⁹

We therefore conclude that remote gambling needs special attention in relation to regulation, at least at national level, and, while we readily admit that traditional forms of gambling are used far more frequently by most UK citizens and also need due attention, the UK Government and the EU Commission need to act in order to protect vulnerable people from online gambling, particularly as it is a growth industry.

Consultation on the regulatory framework of remote gambling websites

In the years following the release of the 2007 prevalence survey, CARE met with both the UK Department for Culture, Media and Sport officials and the then UK Minister, Gerry Sutcliffe MP, who agreed with us that the regulatory framework around remote gambling was not working and needed to be revisited. No doubt the move by major UK based gambling companies to relocate their remote gambling operations out of the UK into other EU and white-listed jurisdictions, and the ensuing loss of tax revenue, was a big part of the decision to revisit the legislative framework.

Nevertheless it was a very welcome decision from CARE’s perspective as we believe that the current settlement in the UK, whereby any remote gambling proprietor in any part of the world, whether or not they are appropriately licensed, can offer their service within the UK without any UK standard of protection for the vulnerable (and if they are based outside of the EU, any legal recourse to individual gamblers in cases of a dispute), is unreasonable. This settlement does not fulfil the spirit of the 2005 Act in relation to its licensing principles outlined above.

While it is true that the current UK regulatory framework has built-in market mechanisms which underpin the regulatory logic, we believe that allowing remote gambling companies to advertise their services terrestrially, on television and online: (a) does not provide enough of an incentive for companies to come under UK or EU regulation, (b) does not ensure an equal standard of regulation within a specifically UK licensed regulatory code of conduct and (c) in some senses undermines the very licensing objectives of the 2005 Act – specifically advertising normalises gambling

⁷ UK Gambling Prevalence Survey 2010
<http://www.gamblingcommission.gov.uk/PDF/British%20Gambling%20Prevalence%20Survey%202010.pdf> (accessed 17th of June, 2011)

⁸ Ibid. p. 96

⁹ What are the most harmful forms of gambling? Analyzing problem gambling prevalence surveys
CEFOS Working Paper 12, 2011 Abstract http://www.cefos.gu.se/digitalAssets/1327/1327132_cefos-wp12.pdf (accessed 17th June, 2011)

and in so doing increases the likelihood that problem gambling will grow simply because more people will gamble.

The consultation document was published in March 2010 and closed on the 18th of June 2010, after the General Election.

The consultation document suggested that the current regulatory framework is not working. The document, giving an indication of which way the Government might want to go, seems to express the view that it would be best to require all remote gambling companies accessing UK markets to apply for a UK Gambling Commission licence and to criminalise those who operate in the UK without such a license. As to measures of enforcement for these proposals, it leaves open the possibility for secondary legislative power to be given to the UK Minister in order to implement either the blocking of websites which operate illegally in the UK, or of blocking of financial transaction to and from such websites. CARE welcomed both of these suggestions. We recommended the threat of financial blocking as the simplest measure.

CARE also trusts that following court cases at the European Court of Justice and because the French model, as far as we understand, implements financial blocking, and the Italian model currently implements ISP filtering, that there are good precedents in place to show that such measures are proportionate and in line with free market principles and therefore calls upon the Commission to make it plain that these actions are legitimate and necessary mechanisms to protect citizens of individual member states.¹⁰

CARE very much welcomed the fact that the new UK Minister, John Penrose MP, decided to run with the consultation because the proposed plans seem sensible, proportionate and legal under current EU case law. To date he has only made a formal statement to the effect that legislation would change, that the UK would require foreign based remote gambling service providers to obtain a UK license, however he has not made clear how this requirement would be enforced.

European Parliament non-binding motion

While we don't feel it is necessary to go into the detail of developments in other European member states, or indeed the developments at the European Courts with regard to member states rights to regulate remote gambling, we do want to draw the Commission's attention to the European Parliament non-binding motion, which was overwhelmingly accepted by a vote of 544 MEPs for the motion with 66 against and 75 abstaining. It is entitled ***Integrity in online gambling*** and stresses that:

¹⁰ Article 30 of the Treaty establishing the European Community is particularly relevant here: "*The provision of article 28 and 29 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures, possessing artistic, historic or archaeological value; or the protection of industrial and comers and property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between member states.*"

“gambling services are to be considered as an economic activity of a very special nature due to the social and public order and health care aspects linked to it, where competition will not lead to a better allocation of resources, which is the reason why gambling requires a multi-pillar approach; emphasises that a pure Internal Market approach is not appropriate in this highly sensitive area, and requests the Commission to pay particular attention to the views of the European Court of Justice regarding this matter;”¹¹

And also says: *“Considers that self-regulation regarding the advertising, promotion and provision of online games is not sufficiently effective and therefore emphasises the need for both regulation and cooperation between the industry and the authorities;”¹²*

The motion can be accessed at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2009-0097+0+DOC+PDF+V0//EN>

Despite the fact that we have only cited two parts of the motion, we would commend it in its entirety to the Commission for careful consideration.

Not long after the motion was passed, the EU parliamentary elections took place and new commissioners were appointed to the Commission. Whereas the previous Commissioner for Internal Markets was against looking into remote gambling, the new Commissioner made it one of his priorities. The commitment by the Commissioner to look again at the issue of regulation in the EU is an encouraging development. In the meantime we hope that the UK will move to tighten its regulatory framework in order to prevent an increase in problem gambling.

Conclusion and Recommendations

We have shown that remote gambling is particularly related to problem gambling in the UK and that other indicators suggest that this is also the case internationally. We have shown that the current UK regulatory framework has not worked, as evidenced by the increase of problem gambling overall, and an increase in problem gambling in relation to online gambling specifically. That there is international as well as national evidence, provided by a government body authorised to regulate the licensing regime of remote gambling in the UK, shows that more needs to be done to regulate remote gambling and that, while there has been movement on the issue both at EU and UK governance level, little has yet been done to protect the people who are suffering as a consequence of addiction to remote gambling. We are pleased that the UK government has said it wants to introduce new and more robust legislation regarding remote gambling and would encourage it to make this a top priority. At an EU level there is much to be done:

- 1) *The Commission should make it clear that: a) implementing proposals to restrict (or ban) remote gambling at the point of purchase is a legitimate form*

¹¹European Parliament resolution of 10 March 2009 on the integrity of online gambling (2008/2215(INI)) clause 2 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2009-0097+0+DOC+PDF+V0//EN>

¹² *ibid.*

of protecting the citizens of an EU member state b) blocking financial transactions to and from gambling service providers that do not have the relevant member state license is legal, proportionate and appropriate.

- 2) *The Commission should produce a white paper which outlines how the EU institutions will proceed to provide security for citizens of member states in the EU from websites based outside of the EU and from websites based in one member state operating into another member state but not licensed by that member state. It should ensure that member state regulatory frameworks can be upheld through tough mechanisms, such as financial transaction blocking to and from websites based either in or outside the EU, that do not comply with legislation at member state level.*
- 3) *The Commission should, as per the European Parliament opinion on gambling integrity regarding self-regulation, and especially given recent evidence in the form of the UK Gambling Prevalence Survey 2010 (which has shown that problem gambling figures have increased), require that the codes of conduct for licensed websites in member states are independently reviewed, so as to measure their effectiveness. These reviews should be conducted each year and placed in the public domain.*

Finally we would like to thank the EU commission for conducting this review.

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