

Some thoughts on IBAS Adjudication¹

Introduction

This article stems from a legal opinion I was asked to provide I respect of an alleged gambling debt that an individual was seeking to enforce against a well known bookmakers. The details of that bet are not particularly relevant as I was asked to provide an opinion on the specific issue as to whether it was reasonable for the claimant to pursue his case through the adjudication service offered by the Independent Adjudication Service Limited ('IBAS') rather than by way of court proceedings. The backdrop to the seeking of this opinion was that legal aid to fund litigation to pursue this matter had been refused by the Scottish Legal Aid Board ('SLAB'). The criterion for civil legal aid eligibility includes, *inter alia*, the issue of reasonableness to use public funds to support a case, and in particular, makes reference to whether other channels which exist to resolve the matter at hand have been exhausted². The view of SLAB was that in the circumstances the complainer should pursue his claim through IBAS rather by way of court proceedings. This note reflects on the role of IBAS adjudication and some of the issues that surround recourse to this forum of dispute resolution in the context of legally enforceable betting debts.

IBAS

IBAS is an independent third-party organisation which provides dispute resolution services for the gambling industry, including resolving disputes arising between gambling operators and individuals over placed bets.³ IBAS was established in 1998 and although it changed its nomenclature from the "Independent Betting Arbitration Service" to "Independent Betting Adjudication Service" in 2007, the service has remained broadly similar throughout its period of existence. Prior to 1998 and in an era in which gambling debts were legally unenforceable in the UK, those with disputes with gambling operators had few avenues of redress. The inception of IBAS was hence seen as a very positive development and the organisation received significant backing from the gambling industry.⁴ Since the enactment of Gambling Act in 2005⁵ which *inter alia* rendered gambling debts legally enforceable, and by way of the Gambling Commission⁶ Code of Conduct,⁷ all gambling operators must make

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² Under the Legal Aid (Scotland) Act 1986, s.14.

³ See <http://www.ibas-uk.com/>

⁴ See <http://www.ibas-uk.com/> - 'About IBAS'

⁵ The Gambling Act 2005 s.334 repealed the prior statutory bars to enforcement. Section 335 provides: (1) "The fact that a contract relates to gambling shall not prevent its enforcement.

(2) Subsection (1) is without prejudice to any rule of law preventing the enforcement of a contract on the grounds of unlawfulness (other than a rule relating specifically to gambling).

⁶ The Gambling Commission was set up under the Gambling Act 2005 to regulate commercial gambling in Great Britain.

⁷ See the Conditions and Code of Practice at

<http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20betting%20-%20October%202010.pdf> at p. 21

provision for recourse to independent third party dispute resolution processes.⁸ IBAS is one such recognised body under the Code. Although there are other third party organisations that exist to resolve gambling disputes in the UK, IBAS is the most established, comprehensive and popular service and the main gambling operators such as Coral, Ladbrokes, William Hill and Paddy Power are registered with the service.⁹ While independent of gambling operators, IBAS has been funded by way of a levy charged at a fee of £45 per retail unit operated since 2013.¹⁰

How IBAS adjudication works

Operators registered with IBAS must advertise the availability of the IBAS adjudication service in clear and neutral terms to their customers.¹¹ The process, which is free of charge to customers, can only commence when all internal complaints procedures have been exhausted and begins by a reference made by the customer to the scheme on a designated form, normally within 6 months of the dispute arising. The basic adjudication procedure is set out in rules 8-10 of the IBAS Terms and Conditions as follows:

When a Dispute is referred to IBAS, the Customer will be requested to make a written submission setting out all of their reasons for believing that they are entitled to their claim. The submission should include the full circumstances of the Dispute and, where relevant, reference to any relevant rules of the Operator. The Customer should also send any documents or evidence held including statements from any witnesses, and an indication of any evidence relevant to the Dispute which the Customer believes that the Operator might hold.

Upon receipt of a completed claim form from a Customer, and following clarification of any queries, IBAS will require the Operator to make a full written submission to IBAS of the circumstances of the Dispute. Any submissions should be made by a senior member of the Operator's staff, and should include details as to the primary point of contact which should be used by IBAS.

The submission should include any staff comments or actions and where possible provide supporting evidence of all factual assertions, including all relevant data stored on computer systems. Operators should refer to the relevant part of their rules and say how they apply in the circumstances of the Dispute. Operators should say if they do not have a rule covering the circumstances of the Dispute, or if the Customer could not have been aware of the rule in question for whatever reason. Where Disputed wagers have involved communication systems and/or technology, the

⁸The Gambling Commission is currently consulting on changes to its regulatory code including altering the name of independent third party services to Alternative Dispute Resolution ('ADR') entities - see <http://www.gamblingcommission.gov.uk/pdf/Proposed%20amendments%20to%20LCCP%20consultation%20document%20September%202013.pdf>

⁹ For the full list see <http://www.ibas-uk.com/registeredOperators.php?start=a-zA-Z0-9>

¹⁰ See IBAS 2012 Annual Report at http://www.ibas-uk.com/pdf/IBAS_R&A_2012.pdf

¹¹ IBAS Terms and Conditions at <http://www.ibas-uk.com/terms.php>

*Operator must submit a report into their systems that addresses the issue giving rise to the Dispute.*¹²

The adjudication service hence operates largely on a 'documents only' process. The Panel member hearing the case may ask for further details from the parties in respect of documents received to assist determination but is not bound to do so. Personal appearance by the parties before the Panel member is proscribed.¹³ Decisions taken by IBAS Panel member are communicated to both parties with reasons simultaneously.¹⁴ The Panel member will first look to make a determination by way of reference to the relevant operator's rules but if no such rule exists, the Panel "imposes its own rule based on what it perceives is consistent with fair practice and accepted industry standards."¹⁵

Decisions rendered through the IBAS scheme are not legally binding and in accordance with the requirements of the Gambling Commission that such schemes operate without prejudice to the right of either party to bring a case before the civil courts, any decision rendered will not bar a court action consequently being raised. Nonetheless, IBAS state that "the independent view of the panel would have some weight in any legal dispute between a company and customer"¹⁶. Operators that refuse to act in accordance with a Panel determination may be de-registered from the scheme¹⁷.

There is no right of appeal from an IBAS decision, save that by virtue of rule 25 of the Terms and Conditions:

*IBAS may, in its absolute discretion, undertake a review of a ruling which it has issued but then only in exceptional circumstances and provided that a request for review is received within 40 days of the notifying of the decision to the parties. The decision to review will rest solely with the Chief Executive and will only be undertaken if there is compelling evidence to suggest that a ruling may have been wrong, for example, if it is clear that the Panel has adjudicated upon the basis of factually incorrect information or if it appears that there has been an obvious misinterpretation of the relevant rules.*¹⁸

Discussion

On the one hand, it may seem that those in dispute with bookmakers over alleged unpaid winnings have little to lose by seeking to resolve the matter through IBAS. IBAS is well

¹² IBAS Terms and Conditions at <http://www.ibas-uk.com/terms.php>

¹³ IBAS Terms and Conditions at <http://www.ibas-uk.com/terms.php>

¹⁴ In complex cases, a full complement of Panel members may meet to discuss a case.

¹⁵ *How IBAS Works*, at http://www.ibas-uk.com/ibas_help.php

¹⁶ See http://www.ibas-uk.com/faq_cust.php

¹⁷ IBAS Terms and Conditions at <http://www.ibas-uk.com/terms.php>

¹⁸ IBAS Terms and Conditions at <http://www.ibas-uk.com/terms.php>

established and recognised by the Gambling Commission as an independent third party dispute resolver. Reference to IBAS allows operators to meet their responsibilities under the Gambling Commission Code of Practice. IBAS is well used. It has also grown in popularity in terms of references to adjudication - from 1,694 in 2002 to 4,170 in 2012.¹⁹ The process is free, likely to be relatively quick, and cases deliberated upon by a Panel of experts. Although any outcome would be binding upon the parties within the terms of the scheme, this would not prejudice the right of individuals to raise a consequent civil court action although it remains unclear what kind of weight IBAS determinations would have in any subsequent litigation.

On the other hand there are some concerns regarding reference to IBAS that require discussion. The first issue pertains to the impartiality of IBAS. Anecdotal claims about alleged industry bias in IBAS are not new.²⁰ As noted above, although IBAS is independent of the gambling industry, it has nonetheless since 2013 been funded by a levy imposed directly upon operators.²¹ This arrangement provides more of a direct link between operators and IBAS than was hitherto the case. It should be noted, however, that although the new funding arrangements may thus raise questions around industry bias, they do not, *per se*, evidence any actual impartiality on the part of IBAS. Equally this kind of funding model is not uncommon for such bodies. In addition, IBAS is clearly viewed by the Gambling Commission as independent and impartial and there is at least limited transparency to its operations in that it does publicise case studies of some decisions rendered on its website and annual reports. Moreover, to enhance impartiality in decision making, the Panel is independent from the organisation and administration of IBAS. Furthermore, Panelists are not employees of IBAS and are not set targets or quotas.²²

One must acknowledge, however, that the environment in which the IBAS scheme operates has altered considerably. While IBAS and other similar services were hitherto often the only option for customers in dispute with operators from which to seek redress, the situation has altered significantly since the Gambling Act 2005 served to reverse the former position and make provision for the legal enforceability of gambling debts. It follows then that the decisions and practices of IBAS, as well as the contractual rules of operators that represent the first reference point for the IBAS panel in ruling on any dispute, have not necessarily developed in a manner which is consistent with the (now) applicable law. So for example, the legitimacy of operators' rules which reserve the right to withhold payments in cases of mistakes, as well as the rules imposed by the IBAS Panel in their decisions (where no

¹⁹ IBAS Annual Report 2012

²⁰ See, for example, the written evidence to UK Parliament Culture, Media and Sports Committee by Paul Mundy <http://www.parliament.uk/business/committees/committees-a-z/commons-select/culture-media-and-sport-committee/publications/>. It is worth noting that none of the IBAS determinations highlighted in the case studies section of the IBAS website seem to favour the punter - <http://www.ibas-uk.com/adjudCase.php?adjudID=38>.

²¹ IBAS was previously funded via the price paid by operators for media rights.

²² IBAS Annual Report 2012

operators' rules apply) to reflect betting industry conventions have not yet been tested by the law. Indeed it has been suggested that IBAS has tended to interpret and formulate betting rules in ways which favour operators over customers and not always in a justifiable manner when one compares established IBAS approaches with interpretations of the underpinning law that arguably now apply to gambling disputes – not least when the impact of the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations is taken into account.²³

In the case referred to me, an opinion of counsel had already been sought in respect of the merits of the claim, for which a reasonable prospect of success in court for the pursuer had been predicted. Against such a backdrop it is understandable that an individual may seek to take their chance in court rather than be subject to a more informal procedure. Moreover, it should be noted that IBAS rulings do not entail the awarding of compensation although it would be expected that bookmakers would make payments that reflect any ruling against them tendered.

It is also important to recognise that IBAS specifically reserve the right to refuse to hear a dispute which is referred to it. One such ground for refusal is that the dispute would be better left for resolution by a court.²⁴ In this sense, and bearing in mind the short-form process of IBAS adjudication, and limited scope for post-decision review, it could be argued that some more complex cases are not wholly suitable for resolution by IBAS. The case which was the basis of my opinion was one such complex matter requiring, for example, consideration of corporate insolvency laws which may be beyond the capacity of IBAS Panelists to determine and perhaps not conducive to proper determination within the truncated IBAS procedure. It is worth noting that similar adjudication processes as operated in other dispute areas such as construction has more generally of late been seen as inappropriate for more complex matters.²⁵

Conclusion

In sum, it is likely that in many cases IBAS adjudication shall present an efficient and effective form of dispute resolution in the gambling arena for punters and bookmakers alike. It has an established track record, is recognised by the Gambling Commission and generally enjoys a solid reputation. In view of the foregoing discussion, however, there may be some instances in which mandatory recourse to IBAS adjudication, in the sense that legal aid is withheld for court proceedings on the basis that this route is available, can be seen as

²³ See J. Davey, "Gambling Contract Law: A Difficult (Re)birth? J.B.L. 2013, 6, 614-641 at 625 referencing an IBAS decision redolent of imposing a duty on customers to clarify their intentions as regards bets to the operators; at 627, discussion of IBAS acceptance of operators' rights to limit the apparent authority of staff, viewed as an "[un]justified inference"; and at 633-634, IBAS acceptance of operators' rights to refuse to honour bets taken in error .

²⁴ <http://www.ibas-uk.com/terms.php>

²⁵ See for example the views of HHL Coulson QC in *William Verry (Glazing Systems) Ltd v Furlong Homes Ltd* EWCH 1338 (TCC) at para 40.

unreasonable. This is especially so in cases which seem complex or well-grounded in law against a new backdrop of legally enforceable gambling debts.

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