Background

IBAS is the largest gambling-specialist Alternative Dispute Resolution (ADR) provider. We are a 'Complaint Handler' member of the Ombudsman Association.

A statistical summary of our annual workload can be viewed via this link.

Our 2020 Annual Report can be viewed via this link.

Consultation Question Responses

Q60. Should sector regulators' civil consumer enforcement powers under Part 8 of the EA 02 be reformed to allow for enforcement through an administrative model? What specific deficiencies do you expect this to address?

1.1 Paragraphs 3.33 - 3.35 of the consultation consider the scope for closer cooperation between the CMA and regulators to enforce consumer law.

1.2 In our experience, exclusively within the gambling sector, it falls upon IBAS as the leading provider of Alternative Dispute Resolution in the sector, more than it does on the Gambling Commission, the sector's regulator, to uphold and enforce the outcomes of the CMA's investigation into unfair terms in the online gambling sector (2016-19).

1.3 We understand the potential benefit of closer cooperation between the CMA and the regulator but it would be worth considering, in addition, how the CMA might assist those bodies considering individual consumer complaints with their work. Since the conclusion of the CMA's investigation into unfair terms in online gambling, IBAS has been unable to access CMA officials who undertook the investigation. A two-hour meeting once every six months would allow representatives of our adjudication team the opportunity to discuss how the CMA's findings from 2018/19 could be appropriately applied to evolving industry practice. It would allow us to effectively and confidently enforce the CMA's findings in our sector.

1.4 We do not see that this would adversely affect the aim of equipping the regulator to take broader enforcement action where required. Indeed, part of an effective ADR system should see the findings of the ADR provider being fed back to the regulator, informing the regulator of common complaint themes and providing evidence to support the regulator taking enforcement action where required.

Q65. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

2.1 Ideally the gambling sector should prioritise fair and appropriate treatment of vulnerable consumers such that they need to contact ADR providers very infrequently. Where ADR is required, the sector's regulator, the Gambling Commission, makes the appointment of an approved ADR provider a condition of holding a gambling operating licence. Gambling businesses must publish details of their appointed ADR provider and advise complainants how the ADR provider can be contacted at the conclusion of the company's own internal complaints process. We have noted and requested improvements in some cases where the language used by businesses in signposting consumers to ADR could be clearer in explaining who we are and what our role is.

Q66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

"3.84. Government would welcome views on whether regulators should aim to set a significantly lower threshold for consumers to exercise their right to access ADR and if so whether exceptions could or should be made to allow more time to resolve complex cases."

3.1 We largely support the widely held view that allowing businesses up to eight weeks to investigate consumer complaints is in most cases excessive and leads to avoidable delays.

3.2 There have been occasions we have identified where businesses have taken unreasonably long to respond to relatively straightforward complaints. The eight week period potentially allows businesses to under-resource the departments tasked to consider complaints.

3.3 Over two thirds of the consumers who approach IBAS have been provided with final decisions at the conclusion of the relevant business's internal complaints process in fewer than 28 days. This indicates to us that in most cases a reduced four week maximum period to consider complaints is easily achievable.

3.4 However, there is one area of concern specific to our work in the gambling sector. In the 2019-20 reporting year, 300 complaints (7% of the total formally considered) involved delayed payment of account balances to the complaining consumer. Gambling businesses are required to conduct checks on customers' source of funds in certain circumstances. In a small number of cases where suspicious activity is detected the business may seek the consent of the National Crime Agency to release funds to an account holder. That process is completed in most cases within the 8 week period that the business is currently allowed to consider a complaint. Reducing the maximum length for the internal complaint process to 4 weeks could put an uncomfortable emphasis on IBAS and other ADR providers in the sector to explain why we had been unable to progress that consumer's complaint when the 4 week period expired. It would increase the risk of inadvertently revealing to a complainant that their financial activity was under some form of external scrutiny.

3.5 With this in mind we note the consultation's reference to potential exceptions or exclusions if the maximum period for businesses to consider complaints is reduced.

Q70. How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

4.1 We are not supportive of a nominal fee to access ADR.

4.2 We believe that IBAS being free to access is a fundamental part of the service that we offer and that consumers understand us to offer.

4.3 We would be concerned that charging a nominal fee would risk the following consequences in particular:

4.3.1 Consumers misunderstanding that we were being paid to legally represent them and argue their case as opposed to reviewing their complaint independently.

4.3.2 Opening the door to charging consumers wishing to submit potentially 'frivolous' claims would see push back from some of the businesses which participate in our scheme and encourage some to recommend that we charged higher fees, in more categories of complaint – particularly where disputes had developed a personal or more antagonistic element.

4.4 The existing ADR regulations allow us to reject vexatious or frivolous requests for dispute resolution. We rejected 209 formal requests for ADR on that basis in the reporting year 2019-20 and informally explained to many others that we would be unable to help where their initial contact helped us to ascertain that the claim had no realistic prospect of success.

Comments on the "Alternative Dispute Resolution Impact Assessment"

C-Q 12: How adequate do you consider the assumptions on the time a consumer needs to spend on an ADR case?

5.1 The impact assessment estimates that a third of those using an ADR provider spend less than 4 hours dealing with the ADR provider/process.

5.2 We appreciate that different sectors and different providers offer different challenges, but we believe that the overwhelming majority of consumers should be able to use our service spending less than a total of 4 hours interacting with us.

5.3 Unless there was a failure with the ADR process we would say that in cases where consumers spend longer than 4 hours interacting with us, it is largely by the consumer's own choice.

C-Q 14: How accurate is it to assume similar compensation for ADR and court processes? What evidence do you hold that the same dispute would attract different levels of settlement through different routes?

6.1 We have relatively little evidence of different treatment of disputes by ourselves and the courts but, in any case, the nature of gambling disputes means that most cases involve a fixed sum under contractual dispute, more than payment of compensation for distress or inconvenience.

6.2 The impact assessment suggests that consumers could expect higher compensation payments where these are awarded in the courts. We have insufficient evidence to support or challenge that, but we have had feedback from consumers who have pursued a case, post ADR, and overlooked the risk of the court imposing the costs of the counterparty on them if their claim is unsuccessful. ADR may not always work always deliver as much compensation as legal action. The offsetting lack of financial risk should not be underestimated though.