Consultation: Reforming Competition and Consumer Policy – Gambling Commission response

[Please note: we have only listed the questions where we wish to give a response]

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

We have defined a consumer in a vulnerable situation as somebody who, due to their personal circumstances, is especially susceptible to gambling harm, particularly when a firm is not acting with appropriate levels of care.[1] Such consumers may be less able to understand the risks of gambling and the terms and conditions; consequently they may be at a higher risk of negative outcomes.

Gambling risks are unique to our sector, but being able to understand the terms and conditions is vital for consumers' interactions with businesses across all sectors. We think that a good starting point would be for ADR providers to make sure they understand the range of forms that vulnerability can take, and how many consumers could potentially be affected. In its research 'Financial Lives: The experience of vulnerable consumers'[2] the Financial Conduct Authority identified four characteristics that were drivers of vulnerability:

- Health – health conditions or illnesses that affect the ability to carry out day-to-day tasks
- Live events – major life events such as bereavements, job loss or relationship breakdown
- Resilience – low ability to withstand financial or emotional shocks
- Capability – low knowledge of financial matters or low confidence in managing money. Low capability in other relevant areas such as literacy or digital skills

It found that 46% of UK adults display one or more characteristics that fall under these four drivers. Of course, not all people with any of these characteristics will necessarily be vulnerable. But, this and other research (such as that by the Phone-paid Services Authority[3]) certainly point to a need for providers to consider consumer vulnerability more broadly and be prepared to offer a flexible service, rather than impose a one-size-fits-all process.

Such flexibility could feasibly include allowing a range of ways for a consumer to lodge a dispute, rather than simply directing someone to an online form, or allowing a friend or family member to lodge it on their behalf. They may also need more time to respond to an information request or have information provided in a different format.

We also suggest ADR providers should be strongly encouraged to share information about their services with organisations that assist vulnerable consumers, such as Citizens Advice.

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?

[1] Shard Financial Vulnerability Summit 2021: Reducing risks, tackling harms - Gambling Commission
[2] Financial Lives: The experiences of vulnerable consumers (fca.org.uk)
[3] PSA reviews its approach to vulnerable or at-risk consumers - Phone-paid Services Authority (psauthority.org.uk)

In the gambling sector, the eight-week limit for an operator to resolve a dispute is stipulated in our licence conditions and codes of practice (the 'rule book'). The limit was put in place following a review of complaints handling published in 2017. In setting the limit at eight weeks, we noted that this was generally in line with the practice in other sectors where ADR was mandatory.

In considering any change to this limit – which we would need to consult on for it to apply to gambling licensees – we would again want to learn from best practice in other sectors and take account of developments in technology that allow swifter access to and transfer of information.

Research[4] we carried out after the 2017 review suggests that a shorter limit could be achievable. It found that half of complainants received an initial outcome to their complaint within a week. Approximately a further quarter received an outcome within 4 weeks.

When introducing the eight-week limit, we did not include any exceptions for complex cases. A complaint can be referred to an ADR provider if unresolved after eight weeks, regardless of complexity. Allowing exceptions could enable an unscrupulous business to make the complaints process unduly protracted to the detriment of the consumer. It would also transfer power to the business if they were allowed to decide which complaints were to be classed as 'complex'. We suggest that making the time limit a hard and fast rule would incentivise businesses to make sure their complaints procedures could handle any dispute within the defined limit, and not allow them to rely on an opt-out.

Q67. What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?

The scope of the role as outlined in the 2015 ADR Regulations, and the proposals in the consultation, establish a solid foundation for making sure that providers are up to scratch. We suggest that authorities could look to build on those foundations by introducing sector-specific standards for the providers they oversee. Such standards would sit above the regulations.

The needs of consumers, and the expectations on providers, are unlikely to be the same across sectors. We introduced additional standards[5] for gambling ADR providers in 2018 and found they were a helpful way to highlight the specific areas we saw as needing to improve in gambling dispute handling.

Q68. What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?

In addition to the measures already proposed, government could review the information that ADR providers are required to publish about the cases they adjudicate. For example, as things stand, the providers' annual reports (as defined in the regulations) do not have to include figures on the proportion of cases were found in favour of either the consumer or the business. Such information would need to be published alongside appropriate narrative that

[4] Gambling-participation-in-2017-behaviour-awareness-and-attitudes (contensis.com)
[5] ADR-in-the-gambling-industry-guidance (ctfassets.net)

describes trends in cases they are seeing – a provider that finds in favour of the business the majority of the time is not necessarily biased against consumers.

We think that the Ombudsman Association's (OA) principles of good governance[6] are a sound basis for establishing a redress scheme and we referred to these when introducing the additional standards for ADR providers mentioned above. We suggest that government should consider whether the current regulations adequately reflect the thinking in those principles. It could even go further and consider whether the ombudsman model, as set out by the OA, sets standards that providers are encouraged to aim for even if they are not ombudsmen by name.

[6] Guide to principles of good governance | Ombudsman Association