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An Affordable Wager: The Wider Implications of Regulatory Innovations to Address Vulnerability in Online Gambling

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Abstract: The British government is introducing new regulatory measures to address gambling harm, including affordability checks on online players that rely on cross-operators data sharing. This article seeks to understand these measures, and their limits. Section 1 recaps what we already know about differentiated restrictions on access to gambling, including as manifest in recent state-industry efforts to deploy online gambling technologies to identify and preempt gambling harm. Section 2 summarises agreed and proposed changes to British online gambling regulation since 2019, focusing in depth on affordability checks for players and the related imperative to develop a 'single customer view' of play. Section 3 outlines two grounds for concern about the measures, rooted in the industry's enthusiasm for affordability checks, and ii. the implications for groups of customers who may already be disadvantaged and hyper-surveilled. I raise these concerns in an attempt to identify a way out of an impasse, such that urgent concerns about gambling harm do not translate so readily into regulatory efforts to differentially restrict access to ever-expanding groups of adults considered vulnerable.

"An approach to customer interaction which includes consideration of financial context can allow tailored interventions for the minority who are showing signs of gambling which is likely to be unaffordable to them (suggesting loss of control or harm), while allowing those who are not gambling in ways likely to be harmful the freedom to spend their money as they wish. There has been widespread support for this principle" (White paper on gambling reform for the digital age, DCMS, 2023, p. 40).

Introduction: On Wagers and Impasses

Allow me a within-my-means wager. Although rules are in flux, I bet that recent measures to enhance vulnerability and affordability checks on online gamblers in Great Britain[2] will be extended, as part of a more general overhaul of gambling law. As I explicate below, for online play the national regulator (the Gambling Commission, henceforth the Commission) proposes using data on disposable income, including by postcode,

to ascertain whether individual spending might indicate risk of gambling harm. It also suggests using other data on markers of potential vulnerability and financial harm such as county court judgements, ill-health or disability, bereavement, being a victim of domestic violence, and/or having caring responsibilities (Gambling Commission, November 2020, p. 5). Further, the regulator advocates cross-operator data-sharing, including on affordability, to create a 'single customer view' that can identify the vulnerable (Gambling Commission, November 2020, p. 31). These measures are also central to the UK Government's 2023 White paper on 'gambling reform for the digital age,' currently under consultation. This proposes a check for financial vulnerability using open-source indicators "such as County Court Judgements, average postcode affluence, and declared bankruptcies" (DCMS, 2023, p. 42) if an online gambler loses more than £125 net in a month, or £500 in a year. Enhanced, more personalised affordability checks, accessing information about "factors like discretionary income" (DCMS 2023, p. 42)

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[2] Under the 2005 Gambling Act gambling control in Northern Ireland is substantially devolved, meaning that gambling law reform debates are currently focused on Great Britain (rather than the United Kingdom).

would be triggered at higher rates of loss. (Disposable income is the total amount available, after taxes, to spend; discretionary income is the amount left after necessary living costs are taken into account).

At first glance, a positive outcome to my wager may appear reason for celebration. In 2022, 27% of people in Great Britain took part in online gambling (Gambling Commission, September 2022a), a rise from 14% in 2012 (House of Lords, 2020, p. 9). This expansion has generated considerable concern about consumer harm. While the most recent statistics show stable overall rates of problem gambling (at 0.3% of the population), and of moderate risk and low risk gambling (1.1% and 1.8%), online gambling on slots, casinos, or bingo has a higher rate (8.5% - see Gambling Commission September, 2022a). A wide and growing range of politicians, media outlets, and academics have demanded that the British government act on gambling harms (e.g. Griffiths et al., 2020; Wardle et al., 2021), such that enhanced vulnerability and affordability checks for online play have generally been welcomed rather than critiqued (e.g. House of Lords, 2020; Davies, 2021; Regan et al., 2022; Wardle et al., 2023, p. 155). These innovative measures are also being closely watched by other regulators around the world as a possible model.[3]

With this article, I seek to start a deeper, more critical conversation about these proposals. More specifically, to understand these new rules and explain their wider relevance I make three steps. In section one, I show that online gambling data has become central to state projects of sorting responsible from at risk players, due to technologies that promise to identify, and pre-empt, gambling harm. I summarise what we know already about the limits, and risks, of these technologies. To underscore what appears to be new about current affordability and vulnerability initiatives, in section two I explicate a series of regulatory measures (either in force, about to be in force, or under consultation) to require vulnerability and affordability checks for online gamblers. Finally, in section three, I outline two grounds for concern about these measures, rooted in the industry's enthusiasm for affordability checks, linked to the profit-making potential of the data to be shared; and ii. the likely disproportionate impacts on groups of customers who may already be disadvantaged and hyper-surveilled. These downsides underscore the urgent need for a wider conversation about the risks of affordability checks.

To explain my own stakes in this argument more explicitly, I should note that I make my rhetorical wager not to win anything, but because I am trying to find my way out of an impasse. With others, I have tried to document the harms that exist in commercial and non-commercial gambling, including online. However, with others, I am also worried that dominant solutions to gambling harm can disproportionately impugn the irresponsibility of predictable groups of consumers, and fail to address systemic unfairness, exploitation, and extraction (Bedford 2015; 2018; 2019; 2022; 2023). As the British debate about gambling has become increasingly polarized (see section two), I have found myself located between, on one side, those who dismiss concern with harm caused by commercial gambling, and, on the other side, those arguing that there is no safe level of gambling, and advocating for access to be differentially restricted for adults who are poor, disabled, widowed, younger, or elderly. The following article is an attempt to identify a way out of this impasse, such that urgent concerns about gambling harm do not translate so readily into a solution – affordability checks reliant on corporate data sharing about disposable incomes– that may prove counter-productive, and that direct resources away from other harm reduction measures.

Methodologically, the article takes a wider approach to law and regulation than utilised by some gambling law scholars. I do not just look at leading cases, or primary legislation, but also at what are sometimes considered 'lower' levels of regulatory activity such as licensing and permit granting, and Commission enforcement action (Bedford 2015; 2018; 2019). In this regard, along with many others, I use the study of regulation as a pathway into what Michael Moran (2003) calls 'low politics, a world of mundane technicalities' (p. 33), or what Mariana Valverde (2011) has termed 'lowly legal mechanisms' (p. 297), and 'everyday legal governance' (2005, p. 55). For this article, I tracked the way that affordability checks have appeared in British gambling regulations, and official consultations and policy debates about changing those regulations, from 2019 (when a new national strategy to reduce gambling harms came into effect) until the April 2023 White paper (which proposes a series of reforms of gambling regulation). In particular, I examined the Licensing Conditions and Codes of Practice (LCCP), and corresponding guidance, issued by the Gambling Commission to specify "the manner in which facilities for gambling are provided" (s. 24 of Gambling Act, 2005). Within the LCCP, a special set of Social Responsibility (SR)

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[3] The UK's Gambling Commission has repeatedly claimed that other regulators seek to learn from its approach. See e.g. Rhodes (2021; 2022) and Gardner (2022).

codes elaborate obligations on licensed operators. These SR codes have a higher status than ordinary code provisions.[4]

In previous research I have examined the effects (including the unintended effects) of regulatory enthusiasm for player tracking as a solution to gambling harm via extensive fieldwork (Bedford, 2019. I summarise some key lessons from this research in section one. However, with affordability checks I am exploring a set of in-flux proposals that are not fully in effect. One must be very cautious about using in-flux rules to determine, let alone analyse the consequences of, a direction of legal travel. It is also the case that the key regulatory references to affordability are, currently, in guidance, rather than in 'harder' forms of rules like the LCCP itself, or in legislation (though this is likely to change if the White paper is implemented as planned by summer 2024). Nonetheless, there are a number of strong indications, summarised in section two, suggesting that online gambling regulation in Great Britain is moving towards mandated monitoring of affordability for substantial numbers of people, and that this, in turn, is fuelling requirements for commercial actors to share a wide range of data. In section three, I offer an early analysis of the likely downsides of such a shift, reliant in part on the lessons from section one. I do so in full awareness that future studies of implementation, attentive to differential impacts on different groups of people, will be required as part of any robust future conversation about affordability checks.

Section 1: Gambling Regulation, Differentiated Access, and Faith in New Technologies to Reduce Harm

Most states do not straightforwardly prohibit all forms of gambling for all adults. Rather, differentiated restrictions on access to gambling have often been a way for states to show their ability to control markets and prevent social harm (Bedford, 2019; 2022; 2023). While gender, class, and race-based distinctions have long been made regarding which activities count as gambling and which are investment (e.g. de Goede, 2005; Kreitner, 2007; Loussouarn, 2013), or charity (Bedford, 2015; 2018; 2019), lawful engagement in activities defined as gambling has also long been limited to certain groups of adults. As Australian economist Julie Smith (2000) notes (quoting the work of Viti de Marco, an early public finance expert), "the gambling of some people is

punished for the purpose of maintaining public morality, and the gambling of others is legalised for the purpose of obtaining a public revenue" (quoted in Smith, 2000, p. 120). Historically, enforcement of general anti-gambling laws often selectively targeted particular groups, such as Black players and organisers of numbers games in Chicago and New York (Haller, 1991; Harris, 2016), or Chinese immigrants in South Africa who were betting on dominoes (Louw, 2019).

Within this broader critical literature on differentiated gambling regulation, three insights are especially useful for understanding affordability checks. Firstly, state concern with harmful gambling is increasingly manifest via joint industry-state efforts to 'responsibilise' consumers and identify the deviant (Reith, 2004; 2013). Promises to sort between those who can and cannot handle speculative play can thus be part of the "government 'integrity guarantee'" (Smith, 2000, p. 136) upon which commercial gambling relies, involving practices that reassure the public that gambling is properly controlled. Responsible gambling efforts targeted disproportionately on those whose consumption is always considered suspect (such as Indigenous people, young people, and poor people) may hereby function to retrieve the respectability of gambling more broadly, and show that the state is acting, alongside gambling corporations, in the public interest. Australian gambling scholar Fiona Nicoll (2019) argues that in such moments the problem gambler "becomes the foil against which commercial gambling is celebrated as a means of supporting free enterprise and charitable causes" (p. 219). Focusing on Australian efforts to restrict the gambling of Indigenous benefits recipients, she notes that:

> The ideological tension between 'freedom to gamble' and 'freedom from gambling' in liberal political debates has very real implications for different populations….We need to attend to the role of gambling in making specific populations the target of punitive welfare policies which involve more or less direct exercise of force through surveillance and policing functions of the state. (Nicoll 2019, p. 16)

Secondly, and relatedly, states have taken increasing interest in the governmental use of commercial gambling

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[4] Under s. 82 of the 2005 Act, operating licences are subject to the condition that gambling operators comply with SR code provisions issued under s. 24. Hence while ordinary codes set out good practice, and have a status more akin to softer, voluntary guidance, a breach of a SR code may lead the Commission "to review the operator's licence with a view to suspension, revocation or the imposition of a financial penalty, and would also expose the operator to the risk of prosecution" if an offence has been committed (see Gambling Commission, 2022 *Social Responsibility Code 3.4.3*, preamble p. 1). Hence guidance on SR codes has a harder legal edge.

data and technologies to sort the responsible from the at risk (Bedford, 2019). Most obviously, player tracking technologies built into gambling machines – initially designed to improve personalised marketing in Vegas casinos – were subsequently retooled for responsible gambling purposes, to enable pop up messaging on excessive spending or time playing (Schüll, 2012). Commercial surveillance technologies to monitor and shape player behaviour have a dual, and arguably inherently conflictual role here: to enable more effective marketing so as to accelerate consumption, while also promising to increase safety (Schüll, 2012, p. 276; see also Hancock, 2011, p. 161; Reith, 2013; Kingma, 2015; Bedford, 2019, pp. 268-300).

Thirdly, as I have argued in an extended study of trends in bingo regulation, there is a particular interest in using new commercial *online* gambling technologies to protect consumers (Bedford, 2019). Paradoxically, given generally higher rates of harmful gambling online (see introduction), the ease of data collection and sharing has led many to argue that online gambling is potentially far *safer* for consumers than retail gambling, and that its cutting-edge player-tracking technologies should be extended to all gambling forms. Online gambling is an especially important *resource* for state regulatory power here, because its technologies offer unprecedented opportunities for surveillance, and subsequent restriction of access, including via pre-emptive identification of potentially problematic, disordered, or risky gamblers, or those vulnerable to becoming such. Specifically, online gambling is an especially fertile sector for the development of algorithmic regulation, where knowledge is generated by computational systems that search massive amounts of data for correlations, and that subsequently use the knowledge to adapt the regulated environment. Researchers, regulators, and gambling companies have been jointly interested in such potentials for a while, collaboratively investing in a pro-innovation narrative of online gambling technologies (see in-depth discussion in Bedford, 2019). Over a decade ago Bwin, a major online betting company, paired up with academic researchers to try and develop predictive algorithms that could identify patterns of disordered gambling, both among those who already have gambling-related problems and those who may develop them in future (LaPlante et al., 2012, p. 172). An initial meeting between the company and researchers established the shared common ground that "the Internet should provide a safer context within which to gamble or conduct other e-commerce because the behaviour of consumers could be carefully monitored and any aberrations from patterns of normal behaviour

could be technologically identified" (LePlante et al., 2012, p. 165). Other researchers have focused on behavioural tracking tools such as PlayScan (developed by Swedish gambling monopoly Svenska Spel) and Observre (developed by Israeli gaming company 888), both of which claim to detect problematic gambling online before it reaches the clinical threshold of a problem gambling diagnosis (Griffiths, 2012). The common thread to this work is a claim that it is far easier to mitigate problem gambling when "all activity is electronically recorded and linked to an identifiable individual," including because behavioural markers of risky play can be identified, and used "for the purposes of proactively altering the player and/or implementing some type of automated restriction/intervention" (Williams et al., 2012, p. 20).

I have argued elsewhere that such joint state/industry/researcher faith in the harm-reduction potentials of commercial gambling data is often misplaced, and may be harmful (Bedford, 2019). In particular, the Gambling Commission has previously advised moving retail players away from using cash, towards more easily trackable gambling on account, as a harm reduction measure. This advice rests on claims about account-based play as safer that, in turn, rely on celebratory, pro-innovation narratives about new gambling and payment technologies. Yet many low income people, and older people, use cash to help limit spending (Bedford, 2019, p. 268-300), such that encouraging customers to play on account can increase risks. Some parts of the land-based gambling industry are especially keen on account-based play precisely *because* it can automate spending, especially for machine players.

The Commission's newer interest in vulnerability and affordability checks for online players raises a distinct set of concerns, however. In the remainder of this article, I outline the key features of this more explicitly differentiated approach to responsible gambling consumption (section two), and I examine its broader implications for profitable narratives of technological innovation, and for player surveillance (section three). My aim is to prompt a wider and more critical conversation about these measures, especially among those who wish to prevent harm to players.

Section 2: Regulation of Harm in Online Gambling: Current Trends in Great Britain

"The reality is that it is simple to identify customers that *may* be at risk of harm, based on financial, time and behavioural indicators and applying knowledge about average consumers or

knowledge about individual consumers."
(Gambling Commission, November 2020, p. 5,
original emphasis).

"Our vision for remote gambling is that the risks
are mitigated, and that we maximise the use of
technology and data to protect people in a
targeted way at all stages of the customer
journey" (DCMS, 2023, p. 30).

Section 2.1: A New, Pro-Technology Approach to Gambling Harm

Social responsibility obligations were placed on
licensed gambling operators under the 2005 Gambling
Act, especially via the third licensing objective
(protecting children and other vulnerable people from
being harmed or exploited by gambling).[5] Within the
broader LCCP issued by the Commission, a special set of
Social Responsibility codes elaborate obligations on
licensed operators (see methods discussion above).

Such obligations notwithstanding, in recent years the
Commission and Conservative government have come
under growing criticism, linked to a widespread sense
that gambling harms are increasing, and that regulators
have been asleep at the wheel. Public perception that
gambling is fair and can be trusted fell from 49% in 2008
to 29% in 2020 (Gambling Commission, April 2021, n.p.).
In 2019 a new National Strategy to Reduce Gambling
Harms was launched. This prioritised harm prevention,
and better treatment and support for those afflicted
(Gambling Commission, 2019; Advisory Board for Safer
Gambling, 2020, p. 3). In December 2019, the
Conservative Government was re-elected, with a
manifesto commitment to review the Gambling Act
2005, to strengthen protection. In February 2020, the
National Audit Office issued a highly critical report on
gambling regulation, singling out the Commission's
"cautious approach to changing regulations" on
gambling machines in betting shops (NAO, 2020, para.
19)[4] and its lack of clarity on consumer vulnerability
(para. 2.11-3). Its first recommendation was that the
Commission "articulate clearly how it interprets which
consumers may be vulnerable, under what
circumstances, and how its work is intended to address
this" (para. 22a). In July 2020 the House of Lords
Gambling Industry Committee published a report

entitled *Gambling Harm— Time for Action* (2020)
containing distressing testimony from players who had
been targeted with inducements to continue gambling,
despite having already lost life-changing amounts. The
report concluded that "gambling operators have made
hay exploiting the *laissez faire* regime that has existed
hitherto, while successive governments and regulators
have failed to keep up with the revolution in the UK
gambling sector" (p. 6).

The approach to regulation, and to harm, is in
considerable flux as a result of this barrage of criticism.
One relatively settled change is that the Commission now
identifies its vision as a market in which players are
"supported to gamble safely and protected from harm"
(Gambling Commission, April 2021, p. 4). To this end,
operators are expected to "work collaboratively with
each other to reduce the risk of harm from gambling;
invest in technology to identify risks and intervene
effectively to prevent crime and consumer harm;…
actively identify and appropriately manage risk and
emerging risk" (Gambling Commission, April 2021, p. 14).
Relatedly, the understanding of harm has shifted "from
solely counting the number of problem gamblers in the
population" (Advisory Board for Safer Gambling, 2020, p.
1) towards more comprehensive measures. 'Gambling-
related harm' is now defined as "the adverse impacts
from gambling on the health and wellbeing of individuals,
families, communities and society" (Advisory Board for
Safer Gambling, 2020, p. 11; see also Public Health
England, 2021).

The 2023 White paper confirms that gambling
regulation is increasingly oriented to public health, social
responsibility, and harm prevention. It is underpinned by
a concern with strengthening protections for vulnerable
groups (including the financially vulnerable, and those
aged 18-24) and with targeting state intervention "to
prevent addictive and harmful gambling" (DCMS, 2023,
p. 2). This approach involves more research on links
between gambling and problems such as suicide, debt
and other financial harms (e.g. reduced credit scores, use
of food banks, homelessness); relationship breakdown
(e.g. divorce; separation; use of relationship services);
crime (including domestic violence and abuse), and
"health harms and their social and economic burden"
(Advisory Board for Safer Gambling, 2020, p. 2), including
mental health harms such as increased anxiety and

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[5] See s.1 Gambling Act 2005 on the licensing objectives; see s.22 on the Commission's duties related to social responsibility, including ensuring that gambling is conducted in a fair and open way, and protecting children and other vulnerable persons from being harmed or exploited.

[4] The maximum stake for B2 gambling machines (which had proliferated in betting shops) was cut from £100 to £2 in 2019. On the harms of these machines, for both players and betting office staff, see Cassidy, 2020.

stress; feelings of shame and stigma; insomnia; and self-harm (Advisory Board for Safer Gambling, 2020, p. 6). There is widespread consensus about the urgent need to improve data on at-risk groups, and to identify the causal pathways explaining their vulnerability (Public Health England, 2021; DCMS, 2023).

Moreover, there is considerable interest in using new technologies to facilitate innovative protections for players, especially online. The White paper notes that while "particular elements and products within online gambling are associated with an elevated risk of harm" (DCMS, 2023, p. 4):

> the online environment also provides many opportunities to make sure people are gambling safely. All online play is account-based, and recent years have seen significant strides in the development of harm detection algorithms which monitor every aspect of a customer's gambling to spot signs of risk and trigger interventions without human input (29-30).

In the remainder of this article, I zero in on one dimension of this revised, pro-technology approach to gambling regulation: the Commission's attempts to improve operator monitoring of affordability, to address differentiated vulnerability in online play.[5]

Section 2.2: Affordability checks: the Cutting Edge of a New Approach

Given the confusing and in-process nature of these attempts, I have summarised the key steps in the regulatory journey via a timeline (Figure 1), supplemented with narrative below.

The expanded use of affordability triggers was prompted in part by social responsibility failures related to VIP customers in land-based casinos (Gambling Commission, 27 June 2019). In response, closer monitoring of individual spending, and better use of relevant population-level risk identification frameworks, emerged as a key regulatory innovation, with the Commission issuing a 2019 report on the need to enhance affordability checks. Its' final paragraph recommended that operators use benchmark triggers based on disposable income levels of their customer base, "to ensure vulnerable customers are identified as early as possible and interacted with appropriately" (Gambling Commission, 27 June 2019, n.p.).

Although the concern about affordability first emerged in relation to casinos, the rules to tackle it quickly influenced the regulation of online play. In February 2019 the Commission issued a response to a consultation on improving age and identity certification for remote gambling. Some participants in that consultation argued that licensees could, and/or should, use information about a customer's financial circumstances and lifestyle, such as bank statements, income, credit checks, and expenditure, to inform the licensee about how much that customer could afford to gamble (see discussion in House of Lords, 2020, p. 84).

In July 2019, a new social responsibility code provision (s. 3.4.1) was issued, requiring remote operators to interact with customers in a way which minimises the risk of those customers experiencing harms associated with gambling. The accompanying guidance (Gambling Commission, July 2019) required operators to monitor customer activity closely, from when accounts are opened (s. 2.3), and to use a range of indicators (including on time gambling and amount spent) to identify customers at risk of harm (ss. 2.12-2.18). The 2019 guidance on 'affordability and a customer's personal circumstances' noted that "Historically, gambling operators have not systematically considered customer affordability when developing their customer interaction policies" (Gambling Commission, July 2019, s. 2.8), relying instead on deposit or loss thresholds as prompts. Such thresholds should, the guidance stated, be set to realistic levels, based on the company's Great British customer base, using average available income figures from the Office of National Statistics, ONS (Gambling Commission, July 2019, s. 2.10). In particular, thresholds should reflect awareness of the difference between disposable and discretionary income, since "most people would consider it harmful if they were spending a significant amount of their discretionary income on gambling" (Gambling Commission, July 2019, s. 2.11). Here we see a shift towards greater regulatory interest in data on discretionary income (the amount left after necessary living costs are taken into account); the original, casino-derived rules on affordability were concerned with disposable income (the total amount available, after taxes, to spend).

In July 2020 the House of Lords Select Committee on the Gambling Industry published its report into gambling harms, containing key recommendations

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[5] Affordability checks aim to address two risks: money laundering, and also "whether customers are spending an affordable amount" and hence whether their play indicates vulnerability to gambling harm (Gambling Commission, June 27 2019 27, n.p.). I have addressed money laundering elsewhere, as it relates to measures to reduce cash use in the UK and Canada (Bedford, 2018; 2019).

Figure 1: Timeline showing key developments in affordability checks and the Single Customer View from 2019 to April 2023.
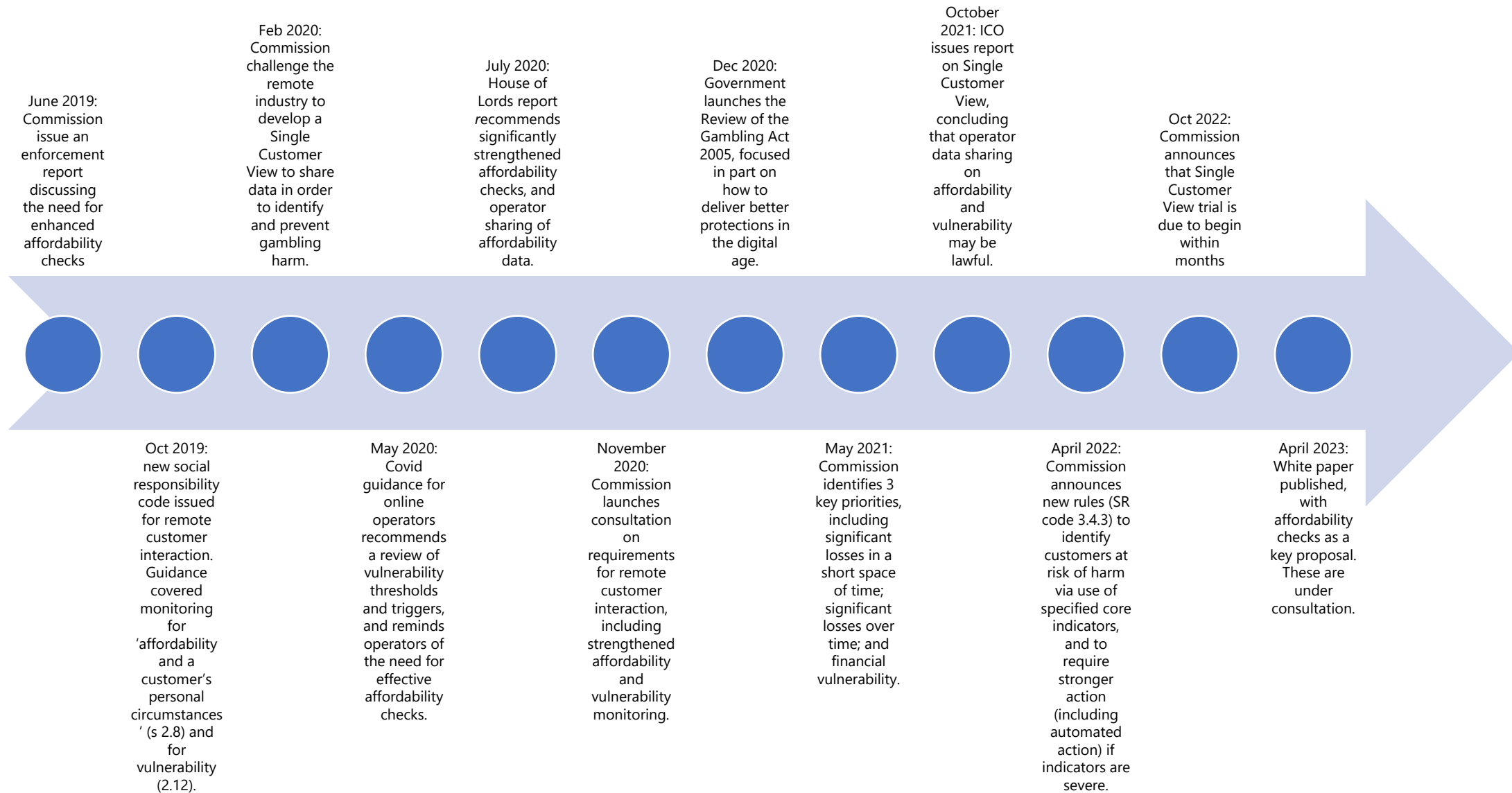
on affordability. The report asserted that "affordability checks are critical to any attempt to make gambling safer and reduce problem gambling" (House of Lords, 2020, p. 83). Individual level checks were crucial, since "what can be an enormous sum and totally unaffordable for most people is, for some, small change" (House of Lords, 2020, p. 84).[8] It argued that existing guidance on affordability "leaves much to the discretion of individual operators," and fails to "state in the most explicit terms that it is now the duty of operators to develop policies which will enable them to identify when customers are betting amounts they cannot afford, and to cease accepting their bets" (House of Lords, 2020, p. 85). It also repeatedly asserted that online gambling companies have "the resources to discover what is affordable" (House of Lords, 2020, p. 7; see also p. 85). They need to be reassured that they can lawfully share this affordability data with other operators (see below), and they must be made to apply that data for harm prevention purposes.

In November 2020 the Gambling Commission undertook a consultation on further changes to remote customer interaction requirements, to strengthen rules on identifying vulnerable customers, and intervening – including via automated means – when people show signs of vulnerability, harm, or "gambling beyond their means" (Gambling Commission, November 2020, p. 1). The Commission defined "a customer in a vulnerable situation as somebody who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care" (Gambling Commission November 2020, p. 26; see original definition in Gambling Commission 2018). The category of "life events' that should trigger a vulnerability alert included "if an individual is experiencing financial difficulties, is homeless, is suffering from domestic or financial abuse, has caring responsibilities, experiences a life change or sudden change in circumstances such as divorce or bereavement, job loss." (Gambling Commission November 2020, p. 26). Other indicators of vulnerability included making complaints (including making negative comments about the company in chatrooms), and refusal to use gambling management tools (Gambling Commission, November 2020, p. 8).

With regard to affordability checks specifically, in a section headed "What is the issue?" the Commission explained that:

Individuals spending more than they can afford to lose is one of the harms most commonly associated with a gambling disorder, and the harms can be significant even at spending levels which can be seen as low. The level of spend on gambling at which harms begin to occur will depend on the consumer's discretionary income. If a consumer can only fund their gambling by using funds that are needed to support necessities, this is unsustainable (Gambling Commission, November 2020, p. 15).

Using information from enforcement proceedings, it gave six examples of customers gambling excessive amounts, with inadequate affordability checks; the average amount lost was £35,700 (p. 18). Although enforcement action was ongoing (p. 17), the Commission wanted stronger rules, including "that operators must conduct defined affordability assessments at thresholds set by the Commission" (p. 9). Its proposals rested on a mixture of general data on average levels of household expenditure, and matching player profiles to ONS data on household expenditure by disposable income (p. 20). This data led the Commission to initially suggest a £100 per month affordability threshold for losses (p. 21). However, the threshold suggestion was subsequently dropped from its recommendations, much to the relief of leading operators (O'Boyle, 2021).

Crucially, the Commission did not expect operators to conduct affordability assessments alone. Its 2020 consultation anticipated "that the majority of affordability assessments will be supported by the use of third-party providers, to validate or supplement information collected from customers directly" (Gambling Commission, November 2020, p. 22). Most commonly, this would involve providers utilising insights based on postcode level data, including average property price, to suggest household affordability level. Credit reference agencies may be able to supply data on other income indicators, such as mortgage payments and other essential expenditure. Publicly-available 'adverse information', such as county court judgements, may also be used to help provide "an indication of an individual's financial position" (p. 22). If better collaboration with the financial sector were enabled, banks could also help

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[8] In this respect the report compared the individual who had gambled (and lost) £2 million in one night [see *Aspinall's Club Ltd v Fouad Al-Zayat* [2008] EWHC 2101 (Comm)], with the retired postman who had previously self-excluded from a casino but who was allowed to buy-in for £60,000, losing a quarter of it (House of Lords 2020, 84).

address vulnerability relating to unaffordable play by potentially blocking payments.[9]

The full consultation response, and a new SR Code Provision on remote customer interaction, finally appeared in April 2022 (see Gambling Commission 2022, Social Responsibility code 3.4.3). The new code provision included 14 new or updated requirements on licensees. For example, indicators utilised to identify harm or potential harm associated with gambling must now include customer spend, patterns of spend, time spent gambling, gambling behaviour indicators, customer-led contact, use of gambling management tools, and account indicators (Gambling Commission 2022, Social Responsibility code 3.4,3, requirement 5). Licensees must also tailor actions based on the number and type of harms exhibited (Gambling Commission 2022, Social Responsibility code 3.4.3, requirement 9), and these must include taking strong action "as the immediate next step in cases where that is appropriate, rather than increasing action gradually" (requirement 9c), including by using automated processes (Gambling Commission 2022, Social Responsibility code 3.4.3, requirement 11).[10]

Guidance on the new code provision 3.4.3 – including on the Commission's approach to customer vulnerability – was provided in June 2022 (Gambling Commission, June 2022), and was due to come into effect on 12 September 2022, but it was withdrawn at the last minute. The stated reason was that industry had requested an extension to the timeframe, and that the government had taken this opportunity to consult further. Most of the code provision 3.4.3 itself was brought into force, but the parts that refer to Commission guidance are not in effect. In November 2022, the Commission launched a consultation on the June 2022 guidance, running until late January 2023 (Gambling Commission, November 2022).

According to that November 2022, 'under consultation' guidance, vulnerability monitoring is a continuous process. Licensees would be required to consider the factors that might make their customers more vulnerable to experiencing gambling harm; understand whether a customer is at greater risk of experiencing gambling harm and to what extent, and take timely action in response to the information they have available, including via through automated, immediate measures if indicators of harm are strong

(Gambling Commission, November 2022, p. 18). Operators are required to monitor continuously to ascertain the appropriate actions, since "a vulnerable situation can be permanent, temporary or intermittent, and may be related to health, capability, resilience, or the impact of a life event such as a bereavement or loss of income" (Gambling Commission, November 2022, p. 23, Proposed formal guidance under SR Code 3.4.3, s.3c.).

Key information that licensees are required or advised to use includes that gained from identity verification, assessment of affordability and source of funds for anti-money laundering purposes, interactions with customer services, chat rooms and player forums, and complaints (Gambling Commission, November 2022, p. 24, Proposed formal guidance under SR Code 3.4.3, s.3d). Factors specified in the under-consultation guidance that might make an individual more vulnerable to gambling-related harm include poor physical or mental health, physical or cognitive impairment, side effects from a brain injury or medication, addiction being a young adult, being an older adult, financial difficulties, homelessness, domestic or financial abuse, caring responsibilities, experiencing a life change or sudden change in circumstances, having a higher than standard level of trust or appetite for risk, and having difficulty accessing product information because of poor literacy or numeracy skills, knowledge, dyslexia (Gambling Commission, November 2022, p. 24, Proposed formal guidance under SR Code 3.4.3, s. 3f). Indicators that can be used to identify harm or potential harm include "amounts spent compared with other customers, taking account of financial vulnerability," "frequent complaints about not winning," "amounts spent, taking into account affordability," amount of time spent gambling; and "time of day gambling, e.g. late night" (Gambling Commission, November 2022, p. 15-16, Proposed formal guidance under SR Code 3.4.3, s. 5b). On affordability specifically, the proposed 2022 guidance on affordability assessments under SR 3.4.3 (Gambling Commission, November 2022, p. 28, Proposed formal guidance under SR Code 3.4.3, s. 4f) reiterated the 2019 guidance on SR code 3.4.1, on using ONS data on levels of household income, and being aware of the difference between disposable and discretionary income when setting thresholds (see also Gambling Commission, November

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[9] Most banks already provide opt-in blocking for gambling payments (although it does not apply to National Lottery tickets). However, the proposal here is that blocks be made on the basis of a risk score generated by a company, rather than after customer request. See discussion in House of Lords (2020).

[10] In a concession to data protection concerns, these automated processes must be manually reviewed, with customers given the opportunity to contest the decision (Gambling Commission 2022, Social Responsibility code 3.3.4, requirement 11). See further discussion of the Single Customer View below.

2022, p. 13). However, it stated that this guidance will be updated based on future consultations.

Finally, the April 2023 White paper proposed a range of new regulations in line with the emphasis on affordability. These will be subject to consultation over the coming months, with planned implementation in Summer 2024. Specifically, the White paper proposes introduction of "a more prescriptive and risk-based model… where remote operators are required to investigate the customer's financial circumstances in response to certain loss triggers to understand if their gambling is likely to be harmful to them" (DCMS, 2023, p. 40). These affordability checks are a response to the burdens of harmful gambling on the poorest people, including the unemployed and those living in deprived areas (DCMS, 2023, p. 233). Two types of affordability check are proposed:

i. a financial vulnerability check using open-source indicators "such as County Court Judgements, average postcode affluence, and declared bankruptcies" (DCMS, 2023, p. 42). This would be triggered if a player lost more than £125 net in a month, or £500 in a year.

ii. an enhanced spending check "which provides much greater insight into a customer's financial situation by accessing more personalised data to consider factors like discretionary income" (DCMS, 2023, p. 42). This would be triggered on any account with net losses exceeding £1000 in a day or £2000 in 90 days. The trigger amounts for the enhanced check are to be halved for adults aged 18-24 (e.g. to £500 in 24 hours, or £1000 in 90 days) (DCMS, 2023, p. 43).

The White paper estimates that, in the first year the measures are in place, c20% of online gambling accounts will be subject to a financial vulnerability assessment, and c3% will be subject to an enhanced check (DCMS, 2023, p. 44). These checks will be 'frictionless' for most customers because they will be conducted online by credit references agencies, or via sharing of banking data: "Further information will only be requested from customers as a last resort where it is necessary to complete an assessment" (DCMS, 2023, p. 4). It will be for the operators to "respond appropriately to any identified risks on a case-by-case basis, taking into account all the information they know about the customer" (DCMS, 2023, p. 4).

It is not that the government is setting a general limit on how much British adults can gamble, then. In fact, the White paper expressly disavows that aim (DCMS, 2023, p. 4). Rather, the affordability checks will enable an operator "to understand if a customer's gambling is likely to be harmful *in the context of their financial circumstances*" (DCMS, 2023, p. 26, emphasis added). In particular, the checks aim:

> to protect those vulnerable cohorts for whom even relatively modest gambling losses could be in itself harmful, for example by limiting income available for necessities. This is particularly relevant in light of the rising cost of living which we recognise is likely to exacerbate issues around financial vulnerability (DCMS, 2023, pp. 39-40).

In turn the enhanced checks will pay "especially close attention to those who lose unusually large sums *relative to both other customers and other likely outgoings*" (DCMS, 2023, p. 39, emphasis added). Interest in discretionary income data again stands out.

Section 2.3: The Single Customer View

> "There is no doubt that this can be done" (House of Lords Committee report on *Gambling Harm—Time for Action*, on the Single Customer View, 2020, p. 87).

In terms of where this rapidly-evolving work on affordability fits within the broader ecosystem of regulatory work on gambling harm, besides the further consultations planned the Commission is working "on best practice in the use of algorithms in identifying and taking action to minimise harm" (Gambling Commission, November 2022, p. 20). Most importantly, work on customer vulnerability and affordability relies on another stream of work on sharing data across operators to identify at-risk customers, referred to as a 'single customer view (SCV) (Gambling Commission, November 2022, p. 3). Multi-operator, cross-sector self-exclusion has been in place for land-based gambling for many years, and GAMSTOP, implemented in 2018, also provides players with the ability to self-exclude from online gambling operated by different companies. The SCV goes considerably further, however, allowing operators to monitor online gambling across different accounts, in order to be more proactive about identifying and preventing gambling harms. This is considered important because some people who experience harm will not take up gambling management tools themselves

(Information Commissioner's Office, 2021, para. 4.9). Moreover "online gamblers hold an average of three accounts, with a significant proportion of younger gamblers holding more," and health survey data suggests that customers who take part in multiple gambling activities have an increased risk of harm (Gambling Commission, October 7 2021, np).

The SCV emerged after the Gambling Commission was criticised by the National Audit Office for its limited capability to identify vulnerability and consumer harm. In February 2020, the Commission set the remote gambling industry a challenge, to come up with a cross-operator solution "using technology to facilitate a single view of consumer activity…to make gambling safer" (Gambling Commission, February 11 2020, np). The regulator held an event on the SCV idea; more than 100 gambling and technology specialists attended, including from leading firms such as 888, Bet365, Betfred, GVC, Sky Bet, and William Hill (Gambling Commission, November 6 2020, p. 74; Gambling Commission. February 11 2020). The event was also attended by the Information Commissioner's Office (ICO), the UK government body charged with upholding information rights in the public interest, and promoting openness by public bodies and data privacy for individuals. The Betting and Gaming Council (a gambling industry body representing leading remote operators) was charged with coordinating the sector's response to the Commission's SCV challenge. In turn, the 2020 House of Lords report discussed how a SCV was crucial for effective affordability checks, since it would help prevent a customer turned down on affordability grounds from one operator from "placing bets with another operator who may not have access to the same data against which to test affordability" (House of Lords, 2020, p. 86). Online gambling operators gave evidence that they "have a huge amount of data on our customers" (House of Lords, 2020, p. 86 but that they could not share it with other operators because of concerns about violating data protection rules in the General Data Protection Regulation (House of Lords, 2020, p. 86). The ICO provided a formal response to the Committee inquiry, stating firmly that these concerns were unwarranted: "data protection legislation does not prevent gambling operators from sharing the personal data of their vulnerable users" (Information Commissioner's Office, 2020, p. 4).

In November 2020, the Gambling Commission was accepted into The Regulatory Sandbox, an ICO initiative designed "to support organisations who are creating products and services which utilise personal data in innovative and safe ways for public benefit" (Gambling Commission, October 7 2021, np). The aim was to give a steer about how the SCV (in conceptual form, rather than as an actual pilot) could be developed in line with data protection laws, in order "to allow data, which already exists around individual player behaviours to be aggregated to drive better decision making, actions and evaluation to reduce gambling related harms across all online gambling operators" (ICO, 2021, para. 1.5). According to an October 2021 report on that initiative, the ICO found that online gambling operators currently use a range of behavioural data to identify and guide interactions with individuals who may be at risk of gambling related harm, including time and money spent gambling, refund requests, use of multiple payment methods, bonus or offer requests, adverse information supplied (e.g. declaration of a gambling problem or relevant circumstances revealed to customer service staff), and payday spending (Information Commissioner's Office, 2021, para. 4.7). However data collected varies across operators, and licensees have discretion in how they identify at-risk customers and make interventions (Information Commissioner's Office, 2021, para. 4.8). It concluded that operator sharing of data relating to individuals identified as at risk may be lawful, depending on the arrangements.[11]

The Commission's response to the ICO's report outlined the next steps as involving industry trials of a proposed solution (Gambling Commission, October 7 2021). In an October 2022 speech to international gaming regulators, the Commission's CEO Andrew Rhodes said that a SCV trial is set to begin "in the coming months" (O'Hagan, 2022, np). In turn, the 2023 White paper mentions that the Commission "intends to consult on mandating participation in a *cross-operator harm prevention system based on data sharing*, following assessment of the currently live operator trials" (DCMS, 2023, p. 4, original emphasis). The precise interaction between the SCV and the financial checks outlined above

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[11] Specifically, sharing of behavioural data may be lawful under Article 6 (1)(f) 'Legitimate Interests' or under Article 6 (1)(e) 'Public Task' of the UK GDPR (Information Commissioner's Office, 2021, para. 4.11). If changes were made to gambling legislation or the LCCP making such sharing a legal requirement, Article 6 (1)(c) 'Legal Obligation' would also apply. In the ICO's view, changing the guidance alone would not provide a legal obligation (para. 4.13). Moreover, some of the data - notably around problem gambling as a health status (para. 4.25) - may qualify as special category data under GDPR, requiring an Article 9 processing condition. Article 9 (2)(g) of the UK GDPR, 'reasons of substantial public interest,' may apply (para. 4.28) – reasons may include 'Safeguarding of children and individuals at risk' and/or 'Safeguarding of economic well-being of certain individuals' (para. 4.29). Further analysis of actual initiatives, rather than conceptual plans would be required to ensure the sharing is necessary and proportionate, and to ensure that any automated decision-making complies with Article 22 of the UK GDPR.

remains unclear (DCMS, 2023, p. 225), but the White paper's regulatory impact assessment model assumes a very close relationship, such that "a SCV prevents any spending with another operator where one applies a restriction" (DCMS, 2023, p. 225). While the mechanics of the SCV are a work in process, then, the direction of travel – and its link to affordability checks for financial vulnerability – is manifestly clear.

Section 3: The Likely Downsides

There is a lot to say about these measures, and there will be even more to say as the details are clarified. In this final section, I outline briefly why the measures, as currently framed, give me pause. I focus on two already-apparent downsides of the proposed measures to monitor vulnerability and affordability:

i. the industry's enthusiasm for affordability checks; and
ii. the wide definition of vulnerability used, and its implications for groups of customers who may already be disadvantaged. I suggest that these downsides give critical gambling scholars, and harm reduction advocates, reason to pause the embrace of affordability checks. In so doing, I am acutely aware of how industry actors – in gambling and elsewhere – routinely use requests for a delay in action, and more consultation, as part of their standard lobbying playbook when confronted with rules that may harm their operations (Petticrew et al. 2017. However, my suggestion for a pause is motivated by the opposite concern: that gambling operators will potentially benefit enormously from the approach currently being enacted, while the risks of intensified surveillance of spending remain under-examined.

Section 3.1: The Industry's Enthusiasm for the SCV

"Despite the challenges and complexities, when it comes to safer gambling, technology is our friend." (Wes Himes, Executive Director for Standards and Innovation at the Betting and Gaming Council, an industry body for online gambling companies, announcing a trial of a 'Single Customer View' scheme to share data on those most at risk of gambling harm. Betting and Gaming Council, 2022, np).

Firstly, the SCV initiative is warmly welcomed by the remote gambling industry. This should give regulators, and researchers, pause for thought, given the industry's less than stellar track record in using gambling data to benign effect. For example, having fined the company 888 UK for social responsibility failures in 2017, in March

2022 the Commission announced another £9.4 million fine for social responsibility and money laundering failures (Gambling Commission, March 1 2022). 888 UK is a subsidiary of the same company that pioneered online gambling surveillance for harm-prevention purposes (see section 1), suggesting that the data being gathered does not necessarily translate into effective player protection.

Moreover, industry actors who gave evidence to the House of Lords inquiry argued that affordability checks were the crux of the solution to gambling harm, and these claims were taken at face value. Kenny Alexander, then CEO of GVC (now Entain, a major global online gambling company), summarised the position as he saw it:

> Affordability is absolutely key. There is a huge desire for the industry to get to a standard view among all licensed operators, all using the same affordability checks, all agreeing and making the same decision about an individual player if they were to come to that business. … We could take one view of a player, so that he is not spending an amount with me and the same with Ulrik [Bengtsson, of William Hill].… If we can address it and get it right, I think that the number of problem gamblers in existence today—a magnitude of about 400,000—will come down significantly once that plays through over the next three to five years. (Q 136 (Kenny Alexander), House of Lords, 2020, p. 83).

The Committee's only response to this evidence was to query why the scheme should take 3-5 years to implement (p. 83). William Hill's Ulrik Bengtsson also gave evidence, and again the Committee welcomed his suggestions:

> The really important thing is that these limits and affordability checks are for individuals. There have been some suggestions of one level for everyone, which clearly would not work. I want to make that clear. (Q 136 (Ulrik Bengtsson)). With that we wholly agree. (House of Lords, 2020, p. 84).

There was no curiosity about why major operators are so enthusiastic about the SCV solution. There was no discussion about how gambling companies use existing data to target marketing, tailor the product offer, and/or refuse bets from people who win too much. Data that could be shared in the SCV, according to the ICO's 2021 report, includes total deposits; average deposit level; deposit level variance and deposit frequency; loss %; and

average stake (Information Commissioner's Office, 2021, pp. 28-29). There was no discussion about how sharing that data could potentially boost profits enormously. The 2023 White paper, in turn, states firmly that "we will ensure this data sharing (on the SCV) is never used for commercial purposes" (DCMS, 2023, p. 4), but it gives no grounds for why players should trust that assurance.

The high level of trust being placed by the Commission (and some researchers) in online gambling companies to co-design the SCV is especially confusing given that some of the companies positioned as experts have a frankly shocking recent record of player protection. In 2020 (the same year that it testified to the House of Lords about the need for data sharing) Entain won 'Safer gambling Operator of the Year' at the industry's premier awards event (Entain, 2020). In 2021, the company began piloting a bespoke, trademarked behavioural tracking safer gambling programme called Advanced Responsibility and Care (ARC), where 'extended behavioral indicators (are) used to identify players potentially at risk" (Entain, 2021, n.p.). It also launched a £5 million partnership with the US-based research unit that had previously worked with Bwin on developing algorithmic approaches to safer play (see section 1). In 2022, Entain were fined *£17 million* for social responsibility and money laundering failures (Gambling Commission, August 17 2022). The current CEO has warned shareholders that the company expects to incur another substantial fine as part of a current investigation into bribery offences (Partridge, 2023). It is also negotiating a deferred prosecution agreement with the Crown Prosecution Service, and is under investigation by HM Revenue and Customs. And yet the online gambling industry is still considered an appropriate co-regulator, able to design the approach to data sharing central to affordability checks.

In addition, regulators are positioning safer gambling software companies as neutral experts in this conversation, rather than as profit-making entities lobbying for an approach that would benefit them handsomely. In one example, the House of Lords Committee (2020) discussion of "How to measure affordability" described safer gambling software company beBettor as:

> a gambling compliance data processing company assisting gambling companies with the issue of affordability. They told us that they help gambling companies understand how much their customers can afford to gamble before experiencing financial harm, and measure gambling activity data within their network of

operators against these affordability estimates. (p. 351).

beBettor estimates affordability through mapping individual customer data against publicly available sociodemographic and economic data sources; it then sells screening affordability software to the online gambling industry. Like other companies involved in the space, it offers what we might think of as a data-driven 'integrity guarantee' (Smith, 2000, p. 136) that relies heavily on partnerships between regulators and commercial entities. There is a distinct lack of curiosity about the material interests that the latter have in this arrangement.

Relatedly, the affordability checks and SCV solution further bolster the aforementioned pro-innovation framing of online gambling technology as potentially safer for players, meaning that the industry can argue for lower stake limits online than are operative for land-based play. Although proposing to introduce a new stake limit for online slots, for example, the White paper rejected the idea of simply transferring the current stake limit (of £2) used for electronic gaming machines in the land-based sector, because "of the wider system of protections in place online. For instance, the opportunity for data-driven monitoring of online play may justify a higher limit for online products than in relatively anonymous land-based settings" (DCMS, 2023, p. 56). Accordingly, the government will consult on a stake limit of up to £15. While enhanced player tracking may appear to involve heightened controls on gambling operators, then, if we look closely, we see widespread industry enthusiasm for sharing affordability data, and significant material benefits accruing from a pro-technology approach to social responsibility monitoring.

Section 3.2: The Downsides of Differentiated Affordability Rules for Players

The second concern is that the definition of vulnerability being deployed in this solution to gambling harm is both overly-wide, and insufficiently attentive to more systemic issues such as game design, and stake/prize ratios. The government's proposed approach is to allow some players to lose £2 million (see footnote 12), and others just £125, rather than to impose a general limit on stakes, or play speed, or losses per session, or to require that games involve a fair average return to players. Indeed, the proposed new rules would create a population of people for whom heavy losses (including in binges) are explicitly acceptable, while intervening when others lose relatively small amounts, or spend a lot of time (but not a lot of money) playing. Likewise, the

suggested regulatory solution to players being misled by the deliberate obfuscation of odds of winning, or exploited by random number generated games of chance being pitched as involving skill, is to heighten surveillance of those who report dyslexia, or those with mental health diagnoses, rather than to insist that products offered are fair in the first place. We are moving towards a far more explicitly differentiated approach to regulating online gambling, wherein certain groups are targets for enhanced (potentially automated) restrictions on how they use their money, or time, but operators are otherwise left free to run games that may be manifestly exploitative. Such operators are also expressly allowed to continue restricting accounts when customers gamble too successfully: the White paper merely proposes that the conditions under which this occurs be outlined in the terms and conditions of play, and that players are provided with explanations when restrictions are applied (DCMS, 2023, p. 27).

Moreover, the regulatory approach proposed involves a constant slippage between group-based categories of those considered generically vulnerable, and individuals with habits that mark them as potentially at-risk of financial or other harm (including spending "unusual amounts of time" gambling – see Gambling Commission, April 14 2022, p. 10). The examples of at-risk or vulnerable people are both expansive (those with caring responsibilities; the bereaved; the indebted; young adults; older adults) and very selectively targeted (those living in certain postcodes; the unemployed; the disabled; the mentally ill; customers who express anger at companies who have taken their money for poorly-explained or unfairly-designed games). Proposals would entail increased surveillance of those who not only manifest indicators of harm in their play patterns, but who may have socio-demographic characteristics that suggest propensity to be at risk of manifesting them in future. Most obviously, we must ask how this expansive category of vulnerable consumers – especially the unemployed, and those living in deprived areas overlap with groups always-already identified as problematic consumers, lacking self-control, or insufficiently mature. Likewise, we need to ask about whether affordability checks informed by third-party data would have disproportionate impacts on groups already subjected to intense surveillance.

In this regard, the proposed triggers for enhanced checks (£1000 of losses in a day, or £2000 in 3 months) are so high that one wonders about their efficacy. They

will capture a very small number of accounts (an estimated 3%), and even then, operators are not obliged to cut off play. In the face of data showing high losses from binge gambling, wide discretion about next steps is granted to an online gambling industry that is heavily reliant on a relatively small number of high spending players for profitability.[12]

However, the proposed trigger for financial vulnerability assessments (net losses of £125 net in a month, or £500 in a year) would capture around 20% of accounts. Rather than consider the proportionality and equity concerns involved in gathering, and sharing, data about the significant number of people who hold these accounts, the White paper offers assurances that most of the players affected will not notice. In its discussion of the impacts of its proposed affordability measures (annex A), and based on conversations with credit reference agencies (CRAs), the ICO, and the Commission, the White paper estimates that CRAs or other data providers "can provide "frictionless" financial vulnerability checks for all customers at the lower thresholds", and 'frictionless' enhanced checks for 80% of customers who hit the relevant thresholds (DCMS, 2023, p. 224). Half of the remaining 20% will likely be subject to what it termed 'semi-agreeable checks' (e.g. open banking), while the remaining 10% will be subject to 'disagreeable checks,' such as manually providing payslips or bank statements (DCMS, 2023, p. 223). Because some operators already ask for financial information from customers, to comply with existing rules on affordability checks, the hope is that "CRA-enabled background checks will bring much lower friction and not interrupt the customer journey" (DCMS, 2023, p. 225). This limited discussion of how most customers will not experience friction sidesteps urgent concerns about the minorities likely to be heavily impacted, and the broader wisdom of regulators drastically enhancing the role of profit-making entities in sharing consumer data.

In turn, the White paper argues that its approach to gambling harms will "have a positive equalities impact" because "some gambling harms are more prevalent within certain protected characteristics (e.g. young people and potentially certain ethnic groups) and also among socio economically deprived groups)" (DCMS, 2023, p. 234). This claim is in line with some research suggesting that harmful gambling is more prevalent in certain groups (e.g. young adults; socio-economically deprived groups; the unemployed; some ethnic groups;

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[12] For recent studies of the industry's reliance on a high spending minority – some of whom are classified as problem or at risk gamblers – see, inter alia, Fiedler et al., 2019 and Wardle et al 2023.

and those living in ethnically diverse postcodes) (DCMS, 2023, p. 233). Hence the proposed measures to monitor affordability for online play appear a positive step in tackling health inequalities. Furthermore, there is no research showing "any significant adverse equalities effects from these measures" (DCMS, 2023, p. 234).

At this stage, it is impossible to ascertain the equalities impacts of the new affordability rules, because we do not know enough about their mechanics. The Commission's consultation on its proposed 2022 guidance on remote customer interaction is, however, a useful indicator. This explicitly asked for views about the potential equalities impacts of the proposed guidance (Gambling Commission, November 2022, para. 66), but the Commission simultaneously asserted that their guidance had already taken risks of disproportionate effects into account. For example, proposed guidance advises that decisions to cease the business relationship or restrict a customer be "tailored to the customer's individual circumstances *and not based solely on personal, demographic or other factors for the customer*" (para. 64, emphasis added). In most cases, guidance suggests action in the form of offering support, rather than imposing solutions on customers (para. 64). Moreover, neither SR Code Provision 3.4.3, nor the proposed guidance on it, require that operators assess *all* of their customers for vulnerability, or that *all* customers share information on factors that may indicate vulnerability (para. 65). Rather, guidance on vulnerability "primarily focus(es) on circumstances where operators should identify indicators of vulnerability from information available to them" (Gambling Commission, November 2022, para. 65). The problem, however, is that the information available to them (postcode data; credit scores; information on payday lending; publicly available adverse information) is already skewed in ways that disadvantage particular groups of people. Moreover, even if demographic factors, or disability, or ill-health, are not the *sole* grounds for restrictions, they must be taken into account. In other words, the proposed individualised tailoring is reliant on group-based assumptions about vulnerability that require interrogation.

The risk of over-regulating groups long regarded as suspect consumers is increased by the fact that the current approach gives operators wide discretion to set thresholds for harm indicators (para. 35), and to decide subsequent actions, while at the same time mandating that the number of customer interactions, annually, is at least in line with problem gambling rates for the relevant gambling activity, as published by the Commission (requirement 14 of SR 3.4.3; see also Gambling

Commission November 2022, para. 58). Rates vary from 8.5% with online gambling on slots, casino or bingo, to 1.3% for lotteries (Gambling Commission November 2022, para. 14.b). The justification for not giving detailed guidance on harm thresholds and actions is that operators should "implement processes which suit their product and consumers" (Gambling Commission, November 2022, para. 35) rather than adopt a tickbox approach. The risk of this target-driven but discretion-heavy approach is that operators reach for the most convenient proxies of vulnerability, and – to fill their quota of interactions - interact disproportionately with customers who fit certain demographics, or who have other characteristics that mark them as always-already problematic consumers. Hence while it is unclear how this 2022 proposed guidance will interact with the work-in progress affordability checks, it is apparent that the equalities impact of this overall approach to regulating gambling harm requires considerably more reflection.

Conclusion

This article was motivated by an impasse: how to critically evaluate recent regulatory measures to address online gambling harm by increasing surveillance of affordability, without dismissing concerns about the harms caused by commercial gambling. While these measures are in flux, I have argued that a trend is clear, and needs to be taken seriously. In response, we urgently need to have a wider conversation about the risks of intensified surveillance, affordability checks, and profit-making data sharing. My aim in this piece has been to start this conversation, to open space for academic debate about affordability checks in a way that is attentive to the dangers of such interventions.

At a general level, I have argued that the control of gambling is a crucial marker of the UK government's ability to manage risky consumption, and sort those who can handle self-governance from those who cannot. Tighter gambling regulation is being used to show that the state is responding robustly to the individual, familial, and social harms wrought by exploitation of vulnerable people and uncontrolled extraction of profit. While use of commercial gambling data for state security purposes originated in casinos, more recently online gambling data has become central to state projects of sorting and monitoring, due to technologies that promise to identify, and pre-empt, gambling harm. These factors mean that developments in online gambling regulation warrant our close critical attention.

While not disputing the harms caused by online gambling, I have argued that we need to reflect more carefully on the downsides of efforts to differentially

restrict access on affordability grounds. We risk endorsing a solution that would give commercial gambling operators greater access to immensely valuable data, and benefit software companies offering proprietary screening tools that mix customer data with data from third-party providers or processors (banks; credit card companies), and public data collected for other purposes (postcodes, county court judgements). We also risk over-regulation of groups long regarded as insufficiently mature, and ramped-up surveillance of us all via merging of private and public databases about our leisure, while opaque, misleading, and unfair products continue unchecked.

So, where does this leave us, and why should we care? In Great Britain, we are left in flux, waiting for yet further consultations while parliamentary time for debate on new legislation fades. I can imagine some readers objecting that we still do not know enough to make a call about these plans: we'd need to see what the precise vulnerability triggers are and what the guidance ultimately says about affordability, vulnerability, and equalities. Then we'd need to monitor how the new rules are implemented by different companies, to empirically evaluate impacts on players. I am involved in a piece of research in this vein myself, working with a colleague in public health to robustly evaluate law and policy measures intended to prevent gambling harm for their effects on different groups. However, all of that will take time, and meanwhile the general direction of travel accelerates, towards greater mandated surveillance, more differentiated access, and increased blurring of the categories of vulnerability and affordability. I have explained why, in my view, we need to reflect more on these measures now, because we already know enough to be concerned about the likely downsides.

Others would likely dismiss the downsides, pointing to the serious harms wrought by commercial gambling deregulation in the UK, and asserting that, in light of such harms, disproportionately limiting the access that some groups have to remote gambling is hardly a serious public policy problem. Respectfully, I think that they are mistaken. Although claiming to offer enhanced control, ramping up surveillance of affordability in this way will likely do little to make gambling safer, or fairer overall. Rather, it will offer an integrity guarantee that companies can potentially exploit, including to argue for higher stake limits on online slots than are allowed in retail gambling. It will differentially restrict access to already stigmatised groups of people, reinforcing existing assumptions about who is a responsible consumer and who is always-already irresponsible. It will fuel the merging of private and public databases in ways

that should concern us all. It will potentially take resources away from interventions that would work better (including low stake limits on online slots). Given these very serious downsides, I would rather lose my wager, and instead help win a pause such that we can design better solutions.

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