Q.67 To what extent do you agree with the proposal that gambling operators be required to conduct light touch financial vulnerability checks based on public data when a certain net loss threshold is reached?

Strongly disagree.

While we support measures to address risk of harm for people who bet on horseracing (or who participate in other forms of betting and gaming) – particularly where young adults are concerned - we have serious concerns about the proposals. These are as follows:

1. The proposed financial vulnerability checks are unprecedented, where participation in legal leisure and entertainment pastimes is concerned and threaten the right to privacy for bettors. The checks reflect an attitude of unnecessary and unwarranted exceptionalism towards betting as a pastime and horseracing as a sport (or else indicate 'slippery slope' consequences).
2. The proposals exceed the policy set out in the Government's White Paper. In particular, the consultation appears to overstate the extent to which these assessments will be genuinely 'frictionless', which is the clear stated government intention
3. As a result, the assessments have the potential to cause significant damage to the finances of horseracing in Britain, thus putting at risk the livelihoods of many of the 88,000 people employed within the sport and impacting the many millions of people who enjoy watching and betting on horseracing. The consultation fails to consider the potentially grave unintended negative consequences arising from the measure.
4. The Department for Culture, Media and Sport and the Gambling Commission have given strong indications that a programme of pilot studies will be instituted in order to ensure that the assessments are entirely frictionless. No information has been provided with regard to what form this pilot programme will take, which is, in itself a major omission from this consultation. We are therefore expected to respond to a proposal of significant importance to the future of horseracing before any tests to assess effects have been conducted.
5. The evidence presented in the consultation in support of the proposed measures is slight and highly selective. It does not support the consultation's contention that these checks are "necessary, suitable and proportionate". In particular, there are a number of important omissions from the presentation of evidence – and these omissions are likely to skew responses and undermine due process.
6. Failure to consider contingent or cumulative impacts against a backdrop of numerous changes to betting regulations in recent years, additional measures planned by the Commission and the DCMS; and other factors that may affect the efficient functioning of the betting market and the finances of horseracing.

67.1 Unprecedented intrusion on the privacy of citizens

The financial vulnerability checks proposed by the Gambling Commission and the DCMS are without precedent in Great Britain. This does not necessarily mean that such checks are unwarranted (although as we observe below, the evidence presented in support of them in the consultation is slight, incomplete and in some cases involves the misuse of Official Statistics); but it does mean that considerable care should be taken in introducing them. We do not consider that the consultation provides a compelling case for why betting should be singled out as a pastime for such measures. We observe that two studies by the Money and Mental Health Policy Institute (one of which the Commission relied upon in its 2021 call for evidence on affordability checks) have shown that levels of financial harm associated with online shopping are similar to those associated with online gambling.

The imposition of financial vulnerability assessments on bettors raises the prospect of either unwarranted exceptionalism (or discrimination) – or 'slippery slope' consequences that will in time lead to calls for similar checks to be imposed on use of the internet or online shopping or other activities some take exception to. The current checks equate to a £22 spend per day over 3 months (two cocktails or 1.25 packs of cigarettes). While the Gambling Commission has said that assessments will not be extended to non-remote betting, we note that its 2021 call for evidence on affordability checks did in fact envisage their application across all licensed betting venues (and we have seen evidence to suggest that affordability checks are already being conducted in licensed betting offices as a result of the guidance in the Gambling Commission's Enforcement report 2020). No explanation has been provided for this apparent change of policy (in part because the results of the call for evidence have still not been released) – or to justify the application of assessments to remote gambling only. We are unconvinced therefore that the policy will not be extended across the betting market in due course.

67.2 Proposed measures exceed policy set in the White Paper

The White Paper proposes a system of frictionless checks for financial vulnerability, which these proposals exceed. In particular we highlight our belief that the checks will not in fact be frictionless:

i) Bettors will be required to provide their consent for these checks to take place. An unknown number are likely to resent this and may therefore be unwilling to provide consent. Indeed, the recent survey of bettors conducted by the British Horseracing Authority ('BHA') (n=14,493) noted that 56% of responders who had been recently requested to fulfil an affordability check did not comply and moved on to an alternative operator.
ii) The proposals require that customers provide job titles to allow operators to make an assessment of likely salary. We consider that requests for this information are likely to be resented by customers. This view is supported by evidence from online bookmakers to whom we have spoken, who say that customers are generally reluctant to accede to requests. It is likely in our view that a very large number of bettors will refuse to provide this information on the grounds that it breaches privacy and is not obviously relevant to how they choose to spend their time and money.
iii) It is disappointing that the Commission has made no assessment of the extent to which the mandated information (job title) is already held by bookmakers, difficulties encountered in obtaining this information and the extent to which it is of any practical use in making assessments of financial vulnerability.
iv) In our view, the information is unlikely to be of practical use in making assessments about a person's financial vulnerability. As the Culture, Media and Sport Select Committee highlighted in a recent evidence session involving the Gambling Commission (Tuesday 5 September 2023), there is a limit to what operators can do to verify that a job title is accurate; while the ability to infer with any degree of accuracy an income level from a job title is questionable. The introduction of this measure therefore risks introducing damaging levels of friction in return for information of questionable value in identifying financial vulnerability.

The consultation does not make it clear what bookmakers are expected to do in the event that a customer does, for example, have a County Court Judgement on his or her record (something that a very large number of adults in Britain have). In the absence of guidance, it seems reasonable to speculate that bookmakers may be required to proceed to more intrusive checks. The lack of clarity on this point raises a further question of just how frictionless the assessments will in fact be (and therefore what impact they may be expected to have).

67.3 The threat to horseracing in Great Britain

It is precisely because these checks are unlikely to be frictionless that we think that the Gambling Commission and the DCMS may have vastly under-estimated their effect on the willingness of horserace bettors to bet with licensed and regulated bookmakers; and therefore the impact on the finances of horseracing in Great Britain.

The potential impact of the checks is illustrated by the Patterns of Play study conducted by the University of Liverpool last year (Forrest & McHale, 2022). It found that the top 2.5% of customers by annual stakes generated almost three-quarters of the total amount of money staked on horseraces and two-thirds of total expenditure (GGY). This demonstrates just how sensitive the finances of horseracing are to higher spending customers – and it is these customers who are most likely to be affected by the proposals in the consultation.

As we note in our response to Question 73, horserace bettors have higher than average incomes and typically stake at higher levels per bet than on other sports (reflecting the relatively limited number of events and markets by comparison with, for example, football betting or online gaming activities). Participation in horserace betting is also associated with low levels of 'problem gambling'.

The survey of bettors conducted BHA found that 52% said that they would either bet significantly less on horseracing or stop betting altogether in the event that the proposed checks were implemented. This would have a significant negative impact on funding for British racing through a fall in the Horserace Betting Levy and the decline in value of media rights deals.

67.4 Absence of information on pilot project

The DCMS and Gambling Commission have strongly suggested that a programme of pilot schemes will need to be instituted in order to understand practical issues of implementation, customer impact and the effect of changes on (amongst others) the betting industry and British horseracing.

On 5th September 2023, for example, the Minister, Stuart Andrew MP told the Culture, Media and Sport select committee *"We will, if necessary, pilot this to make sure that it is working. Only when we are confident that it has delivered the frictionless tests that we have envisaged will we then look at rolling it out."*

There is however, no information in the consultation on what form this pilot programme would take, how long it would run for, who would conduct it and how its independence and integrity will be safeguarded. This is a major omission, in our view. It means that the Gambling Commission is consulting on an entirely untested regulatory intervention with potentially significant economic and social consequences – but not consulting on how the testing process would work.

Given that the Gambling Commission is already presiding over an informal system of affordability checks (as indicated by its Enforcement Report 2020 and adopted, through fear, by many betting operators), an assessment of the effects of existing checks should be undertaken. Consideration should be given to alternative solutions – such as a requirement for all online gamblers to set deposit limits; and to strengthen controls on those limits (e.g. standardised cooling-off periods before limits can be raised) and the use of a myriad of online tools that operators can better use to judge a customer's vulnerability. The focus should be on addressing the risk of financial harm by the most appropriate means rather than imposing ever tighter controls on consumers, even where these are shown to be ineffective or harmful.

67.5 Slight and incomplete assessment of evidence

We are concerned that a proposal of this magnitude – in terms both of its impact on the personal privacy of millions of bettors and damage to horseracing - is supported by a very slight and selective presentation of evidence.

The consultation provides just one piece of evidence in support of 'light touch checks'*:*

"In our engagement with the Lived Experience Advisory Panel, we heard testimony concerning an individual who never bet more than £50 with an average stake of £8.01. However, this gambling was allowed to continue after there were instances of unpaid debt, and even bankruptcy. This continued gambling exacerbated the harms for a customer at a particularly vulnerable point".

We make a number of observations in relation to this evidence.

i) The evidence in support of financial vulnerability assessments (a measure that will affect 6.1 million accounts, by the Gambling Commission's estimation) is based on a case study of just one individual.
ii) It relies on second-hand testimony rather than on hard evidence. It is unclear what steps (if any) the Commission took to establish its veracity.
iii) The passage does not provide any information about the extent to which the individual's gambling contributed to the unpaid debt and bankruptcy. In the absence of any further evidence, it seems plausible to us that a large number of factors (including spending or investment decisions unconnected with gambling) may have contributed to the debt and bankruptcy. It is unclear (because it is not explained) whether what appear to be relatively modest levels of betting made a meaningful contribution to debt or bankruptcy.
iv) There is no little that continued expenditure of money on gambling for a person dealing with unpaid debts and bankruptcy will exacerbate harms – but this is likely to be true of expenditure on most goods and services. Context is required in order to assess the salience of this single case study.
v) While the Lived Experience Advisory Panel serves an important function in providing insights to the Commission, we observe that a number of members of the panel have been (and continue to be) involved in advocacy work that many would describe as 'anti-gambling'. The Commission needs to be aware of this when basing policies on evidence supplied by the panel – particularly where they are based on individual, unverified case studies.
vi) This is a poor and extreme example, one of many by the Gambling Commission. It is not proportionate or possible to expect an operator to conduct checks on someone betting £8 unless it was through consistent online casino activity in which case it should be picked up in time by pattern of play, not affordability. Was that individual allowed, for example, visit the pub, buy a takeaway meal, have a Netflix subscription? How far should the government go in controlling the minutiae of expenditure of an individual?

In addition, we observe that three critical pieces of consumer research are missing from the consultation document:

i) A survey of customer attitudes conducted by 2CV for the Gambling Commission in 2019
ii) The results of the 2020/2021 Call for Evidence on affordability checks
iii) The "quantitative and deliberative qualitative work with gamblers" commissioned by the Gambling Commission "to further build in the voice of gambling consumers".

i) The 2CV study

In 2019, the research firm 2CV provided consumer research on gambling consumer attitudes towards interventions. The overwhelming majority of respondents rejected hard interventions (see table 1 below). For reasons that are unclear, this evidence has not been included in this consultation and was not included in the call for evidence on affordability checks.

Table 1: Consumer attitudes to interventions (2CV/Gambling Commission, 2019)	
Question: Now imagine that you're on a roll, but you've spent way over the financial limit that you had set yourself. Would you like the company to…	
Response	**% agreement**
Do nothing	25%
Inform you that your behaviour is different than expected	15%
Inform you that your behaviour is different than expected, and suggest a pause / break from playing/betting	31%
Inform you that your behaviour is different than expected, and automatically pause your play/betting. You could override this by contacting the company if you wished	9%
Inform you that your behaviour is different than expected and automatically pause your play/betting. You can not override this	7%
Inform you that your behaviour is different and temporarily prevent you from playing/betting	11%
Do something else (please specify)	2%

ii) The call for evidence on affordability checks

On 18th January 2021, the Commission published a truncated version of its call for evidence on affordability checks (referred to in the present consultation as 'the survey'). 12,125 individuals responded to that survey (in addition to around 900 organisations and individuals who responded to the full call for evidence). More than two-and-a-half years later, the results of this survey (as well as broader findings from the call for evidence) have still not been released. The consultation does not explain why this is the case but the information collected in January and February 2021 has a clear bearing on the current proposals. This month (October 2023), in a response to a request for disclosure made under the Freedom of Information Act, the Gambling Commission stated: *"the results from this survey, alongside the responses to the current consultation on the topic of financial risk, will be published on the Gambling Commission website in due course".*

We do not understand why the Gambling Commission has elected to withhold the results of this survey until after the consultation has closed – particularly given the implication in its response that the evidence submitted in 2021 is relevant to this consultation. This is unhelpfully opaque, invites speculation about reasons for withholding information and may undermine trust in the process of public consultations.

We await the date of the 'due course'.

iii) New research

The consultation refers *to "quantitative and deliberative qualitative [research] work with gamblers"* to *"further build in the voice of gambling consumers"* and states "*this research will be published in due course".* As with the 2CV study and the 2020/21 call for evidence and survey, this seems to be an important piece of evidence that should be used to inform both the proposals themselves and responses to the consultation. It is unclear why the Commission elected to commence the consultation in advance of the publication of this research.

67.6 Failure to consider contingent impacts

The consultation provides no consideration of the likely effects of financial vulnerability and financial risk assessments in the context of wider legislative and regulatory change. In particular, we observe no attempt to consider the extent to which recent changes may have already addressed the problems that the Commission is seeking to address; and no attempt to understand the cumulative impact of a wide range of changes to the betting market also envisaged as part of the Gambling Act Review. This is particularly relevant given the Commission's questionable reliance on rates of problem gambling from between five and seven years ago (see our answer to Question 71).

Table 2: Major changes to gambling legislation and regulation from 2020 onwards		
Date	**Legislative and regulatory changes**	**Stated objective**
Changes since 2020		
April 2020	Ban on the use of credit cards for online gambling	*"To protect consumers"* from *"risks of harm"*
October 2020	Introduction of High Value Customers Code	*"To strengthen controls on how licensees incentivise high-spending customers"*
October 2021	Introduction of maximum speed of play for online slots-style games	*"To make [online slots games] safer for customers"*
	Ban on celebrating wins less than or equal to stake	
	Ban on autoplay function	
	Ban on reverse withdrawals	
	Requirement to display session loss and session duration for slots-style games	
October 2023	Introduction of new Remote Customer Interactions Guidance, including vulnerability considerations and minimum quotas for interaction	"To improve customer protections in online gambling"
Proposed changes		
	Stake limits for online slots-style games	*"To minimise the risk of runaway or rapid losses which can contribute significantly to gambling-related harm"*
	Speed of play limits for other online games (and other game design restrictions)	*"To reduce the speed and intensity of online products"*
	Direct marketing – product and channel opt-in requirements	*"To reduce risk of harm"*
	Remote game design	*"To make online products safer"*

Part of the issue is that the Gambling Commission has not adopted a systemic approach to evaluation of changes to market regulation. As a result of this, it is not possible to assess whether the issues of financial harm identified by the Commission may already have been attenuated. A failure to carry out a thorough assessment of cumulative and contingent effects is inconsistent with Provision 1 of the Regulators’ Code.

Q.68

N/A

Q.69 To what extent do you agree with the proposal that gambling operators be required to conduct enhanced financial risk assessments where there are very unusual patterns of loss? The purpose of such an assessment would be to act on the indicator of harm of unusual patterns of loss and assess gambling in the context of a customer's financial circumstances.

Strongly disagree.

We disagree with this proposal for the same reasons provided in our response to Question 67. In the interests of brevity and simplicity, we have not repeated these points in response to this question – but we wish the Commission to understand that they also apply.

In responding to this question, we have added in some additional information about the slight and partial nature of evidence cited by the Commission in support of the measures proposed.

69.1 Under-estimation of impact

The consultation appears to under-estimate the effect of the proposed measures on betting consumers and therefore the deleterious impact on the finances of horse and greyhound racing in Great Britain. On 11th October, we advised the Government that the proposed measures would cost horseracing around £250m in the five years following implementation (a figure based on analysis by the research firm, Regulus Partners). We also estimated that the current ‘informal’ system of affordability checks imposed via the Gambling Commission’s ‘Compliance and Enforcement Report 2019-2020’ has already cost racing £1bn in lost turnover. Our view is shared by the Jockey Club, The Racecourse Association, the Racehorse Owners Association and representative bodies of trainers, breeders, jockeys and stable staff. We urge the Gambling Commission to engage constructively with these organisations (as well as with the BHA) in order to gain a better understanding of the likely effects of the measures being proposed.

In addition to this general point, we make the following additional observations:

- The technology to deliver these checks has not yet been fully developed and, at present, only one Credit Ratings Agency (TransUnion) has proposed a model.
- The process of decision-making by Credit Ratings Agencies (‘CRAs’) is unclear; as are the obligations for bookmakers in receipt of a CRA check.
- We understand that current account turnover analysis is simply not available for a meaningful number of personal bank account holders in Great Britain. This issue is not referred to in the consultation document. We would like the Commission to explain what would happen to these customers.

69.2 Slight and incomplete assessment of evidence

As with financial vulnerability assessments, we consider that the presentation of evidence in support of enhanced financial risk assessments is extremely slight and selective. We again call attention to the same three critical omissions:

- The results of the 2021 call for evidence on affordability checks (particularly the results of the 'survey' of 12,125 individuals, many of whom are likely to have been racing bettors);
- The results of the 2019 survey by 2CV of gambling consumer attitudes towards operator interventions;
- The new research on customer attitudes, mentioned in the consultation but not actually disclosed.

In addition, we observe that the enhanced financial risk assessments in relation to 'binge gambling' and 'significant losses over time' are reliant on evidence of questionable relevance. These are described in the consultation as follows:

Binge gambling

"In a case which recently led to compliance activity by the Gambling Commission, a customer lost £36,000 in four days without appropriate financial risk assessment being carried out. This is above the disposable income the Office for National Statistics estimates was available to the median household for an entire year in 2021 (£31,400). As such, the rate and level of spending would have been unaffordable for the vast majority of UK households, and likely to indicate harm."

Sustained losses over time

"In a similar compliance case study identified by the Commission, a customer lost approximately £33,000 in three months without the operator carrying out any financial risk assessment. Compliance staff subsequently examined the information held by the operator on this customer, which suggested they had an annual income of £8,500. This suggests that, had the operator assessed the customer's financial circumstances earlier and more effectively, they could have acted to reduce the extent of financial harm suffered."

While these case studies reflect poor approaches to customer care, we observe that i) they involve levels of expenditure substantially higher than the thresholds being consulted upon; and ii) they are drawn from enforcement cases and so represent non-compliance with existing regulations. It is unclear why new regulations should be considered necessary to deal with existing issues of non-compliance.

In summary, we consider the evidence assembled by the Gambling Commission in this consultation to be both slight and highly selective. Given the seriousness of the changes being proposed, a more rigorous and balanced assessment of evidence is required.

Q.71 – To what extent do you agree with the proposed threshold of a financial vulnerability check based on public data (eg bankruptcy) if a customer has a net loss of £125 in a rolling 30 day period?

Strongly disagree

As noted in our response to Question 67, we support the Gambling Commission's ambition to address issues of financial vulnerability and unsustainable expenditure on betting, particularly for young customers. We have however a number of significant concerns about the solution identified by the Commission. In response to this question, we call attention to two technical items that have a bearing on this issue:

1. The measure is not supported by consumers.
2. A lack of transparency in how this threshold was calculated.
3. The questionable use of Official Statistics in determining thresholds.

71.1 Not supported by consumers – The BHA's survey referred to in our response to Question 67, shows that 84% of bettors disagreed or strongly disagree with the measure. This is consistent with the Gambling Commission's own research, conducted by 2CV mentioned above.

71.2 Lack of transparency - The consultation states that the thresholds for financial vulnerability checks have been determined in relation to three sets of information:

"a. Problem gambling rates and other information about harms to help assess the likelihood of harm.

b. Population level information about discretionary income to help consider the amount of money people have available.

c. The amount of money customers are currently spending on gambling to help consider proportionality of the threshold and spending patterns that are unusual."

The workings behind the calculation are not shown and so it is unclear how the threshold was determined. This is unhelpfully opaque and may present issues in the planned pilot project (as the calculation is likely to be central to the hypotheses being tested). This lack of transparency also poses issues in terms of understanding the long-term consequences of this policy (as we explain below).

71.3 Questionable use of Official Statistics - As noted above, the population prevalence rates of 'moderate risk' and 'problem gambling' are described in the consultation as "key information points" in setting the thresholds for checks. The Commission describes these information points as follows:

"Based on the 2016 combined Health Survey data for 'any online gambling or betting', the percentage of gamblers/bettors at moderate risk was 8.4 percent and the percentage of problem gamblers was 3.5 percent. Data from 2018 (which covered England only) reported the percentage of gamblers/bettors at moderate risk was 5.8 percent and the percentage of problem gamblers was 4.2 percent."

We consider this passage to be problematic for three reasons:

i) Misuse of Official Statistics - It implies that the 'problem gambler' and 'moderate risk gambler' populations are distinct (and may therefore be added together) when in fact they are not. The 'problem gambler' estimate provided for both 2016 and 2018 refers to a combination of results from both the Problem Gambling Severity Index and the DSM-IV questionnaires. The 'moderate risk gambler' estimate refers to results from the PGSI alone. In combining the figures in this way, the proportion of online gamblers estimated to be 'problem' or 'moderate risk' gamblers is skewed by double-counting (something that the Gambling Commission has itself acknowledged). This is because a meaningful proportion of survey respondents are classified as 'problem gamblers' according to the DSM-IV <u>and</u> 'moderate risk gamblers' according to the PGSI.

ii) Exclusion of current estimates - The Commission has excluded results from the most recent Health Survey for England, which showed a PGSI 'problem gambling' rate of 1.0% for online gamblers/bettors and a 'moderate risk' rate of 4.3%. While the 2021 results are not directly comparable to results from 2016 and 2018 (due to Covid induced changes to data collection), they remain Official Statistics. Moreover, they have good internal consistency. Indexing participation rates and overall problem gambling rates from the Health Survey for England 2018 against the Gambling Commission's quarterly telephone survey provides results similar to those published in the 2021 Health Survey for England. It is unclear to us why these results have been omitted entirely and why the Commission has elected to rely on figures that are between five and seven years out of date (and which therefore pre-date a significant number of changes made to market regulation in the name of harm prevention).

Table 3 below compares the figures presented in the consultation document with a more accurate analysis. It shows that the combined 'problem gambling/moderate risk' rates implied in the consultation are inflated by 5% for 2016, 14% for 2018; and that the most recent figures (for 2021/2022) are substantially lower (53% and 40% respectively) than in 2016 and 2018.

Table 3: Misuse and correct use of problem gambling and moderate risk gambling estimates

Survey	Problem gambling		Moderate risk	Combined	
	PGSI/DSM	PGSI	PGSI	Double-counting	Corrected
Combined Health Surveys 2016	3.5%	2.9%	8.4%	11.9%	11.3%
Health Survey for England 2018	4.2%	3.0%	5.8%	10.0%	8.8%
Health Survey for England 2021	1.5%	1.0%	4.3%	5.8%	5.3%

iii) Plans to change reported rate of 'problem' and 'moderate risk' gambling not mentioned – In February 2024, the Gambling Commission plans to introduce a new Gambling Survey for Great Britain. This new survey will be carried out online (rather than through face-to-face household interviews). The Gambling Commission has conceded that this creates the risk of over-reporting rates of gambling participation and problem gambling. Results from a pilot survey published in May 2022, showed a PGSI 'problem gambling' rate of 1.3% - around 500% higher than in the most proximate NHS Health Survey for England. Significant concerns have been raised about the reliability of the GSGB (for example, in the Racing Post) and the Commission has stated that it makes *"no apology"* for changing this key statistic. The consultation however, fails to mention these plans (despite the fact that it is a 'key information point'). This raises a critical question: if the combined 'moderate risk' and 'problem' gambling prevalence rate was used to determine these thresholds, will those thresholds be lowered in the event that reported rates increase in February next year (purely as a result of arbitrary – and potentially unscientific – changes to prevalence surveys).

Q.72 To what extent do you agree with the proposed threshold of a financial vulnerability check based on public data (eg bankruptcy) if a customer has a net loss of £500 in a rolling 365 days?

Disagree.

We disagree with this proposal for the reasons cited in our responses to Question 67 and 71 (above). We support the Commission's stated objectives but consider that its proposals are poorly considered, entirely untested and will have potentially disastrous consequences for British horse and greyhound racing.

Specifically, we observe that the Gambling Commission is proposing to bring in checks on consumers in relation to a mean spend per day of just £1.37. We also refer the Commission to the BHA's consumer survey, which found that 83% of respondents oppose (disagree, strongly disagree) this measure.

Q.73 To what extent do you agree with the proposed threshold for a financial risk assessment related to binge activity of more than £1,000 in a relevant period of a rolling 24 hours?

Strongly disagree.

We disagree with this proposal for the reasons cited in our responses to Questions 69 and 71 (above). We support the Commission's stated objectives but consider that its proposals are poorly considered, entirely untested and will have potentially disastrous consequences for British horse and greyhound racing.

We observe a number of specific points:

- Consumers do not support this proposal and only a small minority are likely to comply;
- The measure risks stimulating black market activity;
- It is questionable whether the check will actually identify binge activity;
- Horseracing will be disproportionately affected.

73.1 Consumers do not support this proposal

The BHA's consumer survey found that 56% of respondents oppose ('disagree' or 'strongly disagree') this measure. Only 8% of respondents indicated that they would regularly comply with checks while 76% stated that they would either stop betting or move to another operator.

73.2 Risk of stimulating black market activity

The BHA's consumer survey found that a large minority (40%) said that they would consider using an unlicensed operator for betting in the event that they were required to undergo a financial risk assessment; while 11% said that they had already received approaches from the black market.

73.3 It is questionable whether checks will identify binge activity

We observe that the term "binge" is likely to be an inappropriate (and potentially offensive) description of the behaviour of many horserace bettors. By way of example, a racehorse owner occasionally betting (and spending) £1,000 at a meeting and then not betting again for several months would not be considered unusual. It would reflect the nature of his or her personal engagement with the sport and would not be a "binge". The fact is that, under the Commission's proposals, these types of customer will be routinely ensnared by financial risk assessments (if this is not already taking place under the informal regime of 'affordability checks'). We refer the Commission to the finding in the BHA consumer survey that 26% of bettors claim to have experienced affordability checks under the existing, informal regime. The *Racing Post* has highlighted this situation in recent years – for example:

- 14th October: *'They are like -Frankenstein's monster and the -ramifications will be dreadful' - Racing Post readers on affordability checks*
- 13th October: *I have been hit by affordability checks - we need to do our bit over this shocking invasion of privacy*
- 9th October: *John Gosden warns a 'torrent' of bettors are heading to black market in stark warning over affordability checks*
- 3rd February: *'Terrifying and ridiculous' – jumps icon Nicky Henderson condemns affordability checks*

73.4 Horseracing will be disproportionately affected

It is instructive to consider the following research findings in relation to betting on horseraces:

73.4.1 - On average, bettors have higher than average incomes: analysis of results from NHS Health Surveys (2015, 2016 and 2018), which show that participation in horserace betting increases monotonically from the lowest income quintile (6.5% participation) to the highest (14.2%). Betting on horseracing is also significantly more popular in the least deprived areas of Great Britain (9%) compared with the most deprived (6%).

73.4.2 - Betting follows different patterns to other forms of gambling: The Patterns of Play study (Forrest & McHale, 2022) observed that mean staking levels were three times greater among bettors in the least deprived areas of the country (£22 median stake in the least deprived decile) compared with bettors in the most deprived areas. They also observed a *"a greater propensity to incur high one-day losses when betting on races";* but noted that betting on horseraces was less frequent than for betting on other sports. Their analysis showed that, *"horse betting GGY was drawn disproportionately from less deprived areas".* Despite the higher staking and one-day loss levels observed in betting on horses, net expenditure (GGY) was lower than for football and other sports; and significantly lower than for online casino and slots games.

73.4.3 - Betting is associated with relatively low levels of 'problem gambling': Analysis of NHS Health Surveys consistently shows that betting on horseraces is associated with relatively low levels of 'problem gambling'. The Health Survey for England 2018 showed that non-remote horserace bettors had the lowest 'problem gambling' rate of any non-lottery activity (this information has not yet been released in respect of the Health Survey 2021). Analysis of results from the UK Data Archive show that rates of 'problem gambling' are nil or close to nil for people whose only gambling activity (except lottery) is either non-remote horserace betting or remote betting.

73.4.4 Betting is associated with good mental health: Analysis of results from NHS Health Surveys shows that betting on horseraces is associated with lower risk of depression (assessed by the Warwick-Edinburgh Mental Well-being Scale) than i) gambling consumers in general; and ii) non-gamblers.

73.4.5 – Betting is associated with high mathematical intelligence: a study of horserace bettors in Finland (Suhonen et al., 2022) – which used data from the Finnish military and the country's betting monopoly - showed that horserace bettors have, on average, higher mathematical IQ scores than the general population. One of the study's authors, Professor David Forrest commented: "Our research found a strong correlation between men with a high IQ and those who take part in skilled gambling, such as betting on horse racing."

In summary, the proposed £1,000 check is likely to have a disproportionate impact on horserace bettors because on average they are:

- wealthier;
- place higher individual bets;
- are more likely to experience higher one-day losses;
- but bet less frequently than other bettors.

At the same time, betting on horseraces is associated with:

- Low levels of 'problem gambling';
- Elevated levels of mental health and well-being.

In this way, the measure appears ill-targeted.

Q.74 To what extent do you agree with the proposed threshold for an enhanced financial risk assessment related to significant losses over time of more than £2,000 in a rolling 90 day period?

Strongly disagree.

We disagree with this proposal for the reasons cited in our responses to Questions 69 and 71 (above). We support the Commission's stated objectives but consider that its proposals are poorly considered, entirely untested and will have potentially disastrous consequences for British horseracing.

Similar to our observations in response to Question 73, many horserace bettors would not consider the expenditure of £2,000 in a three-month period (or roughly £22 a day) to be unsustainable. There is a risk therefore that a large number of higher-spending – and entirely unproblematic - horserace bettors will become ensnared by the proposed assessments.

The BHA's consumer survey found that 64% of respondents opposed ('disagree' or 'strongly disagree') this measure.

Q.75 To what extent do you agree with the proposal that thresholds for the enhanced financial risk assessment are lower for those aged under 25 to £500 in a rolling 24 hour period and £1,000 in rolling 90 day period?

Neither agree nor disagree.

We support the Commission's intention to apply greater protections to adults below the age of 25 years, recognising the presence of factors that may make the age group as a whole more vulnerable to harmful gambling than other age groups. While we disagree with the consultation's proposals for financial risk assessments in general, we consider that measures to address financial vulnerability and financial risk should incorporate additional protections for young adults.

The BHA's consumer survey found modest support (25% of respondents) for this measure; although a small majority (54%) still opposed it.

Q.76 To what extent do you agree with the proposed definition of net loss for financial risk assessments which is that net loss is the loss of deposited funds with a particular operator ie excluding bonus funds and restaked winnings? In particular, please flag any potential risks and technical difficulties with implementation of this proposed approach.

Agree

We consider this an appropriate definition of net loss; but observe from our engagement with bookmakers that net loss thresholds would be very difficult to implement on a practical basis. We understand that thresholds based on net deposits would be simpler for bookmakers to deploy.

Q.77 To what extent do you agree with the proposed approach to enable a recent overall net position to be taken into account when a threshold is met? In particular, please flag any potential risks and technical difficulties with implementation of this proposed approach.

Agree.

Q. 78 To what extent do you agree with the proposed approach that would set a timeframe whereby recent overall net position could be taken into account for 7 days in relation the binge threshold and 90 days for the losses over time threshold?

Disagree.

We do not believe it is logical to set a prescribed timetable with regards to a customer displaying 'binge' like behaviour.

If an individual is on what could be considered a 'gambling binge', it means displaying unusual betting behaviour in a single gambling session that should be flagged up by an operator's social responsibility function. In that scenario, the net position of the customer would only be one of the factors used by the operator to make an intervention.

When assessing losses over time, we would suggest that a 90-day view is too short and that at least a 6-month view of a customer's overall P&L is far more appropriate. It is clearly possible to have an extended run where you make a significant net loss as a bettor, but in the same way, it is also possible to have an extended run where you make a significant net profit, and it is clear to us that sufficient time should be allowed for losses to be balanced out (and vice-versa) before a check is made.

Q.79 To what extent do you agree with the proposed approach that would mean that a bet would only be counted as a loss when it is settled as a loser?

Strongly agree

We strongly agree with this approach – each bet placed should be seen as a two-part transaction with the staking being part one, and the settling of the bet, depending on whether it is a winner or a loser, being the second part of that. It would clearly be incorrect to just assume at the point of staking that money is lost.

As we have observed above however, our understanding is that thresholds based on net losses are likely to be hugely complex and impracticable for bookmakers. We recommend that an assessment of the viability and suitability of net loss thresholds be undertaken as part of the scoping work for the planned programme of pilot tests.

Q.80 To what extent do you agree that a financial vulnerability check would include publicly available data relating to an active county court judgement (CCJ), high court judgment (HCJ), administration order (AO) or decree, or equivalent?

Agree.

Some of this information may be helpful in assessing risk of financial vulnerability but in the absence of tests or scoping studies, this is unclear. The value and validity of using these data should be subject to the pilot tests recommended by the DCMS. We note that each year around one million judgements are made in county courts in Great Britain – and these judgements remain on record for six years. This indicates that a meaningful proportion of adults (and therefore bettors) will have a CCJ on their records.

It is also unclear what action bookmakers should take in the event that a CCJ is disclosed. It is likely, in our view, that different bookmakers will take different actions. Based upon current experience of affordability checks, this will lead to ever tighter restrictions on bettors through enforcement action, special measures and ultimately greater prescription.

Q. 81 To what extent do you consider that aggregated data should be included in a financial vulnerability check in relation to postcode?

Strongly disagree

The use of postcodes to determine how much an individual should be permitted to spend is problematic and may even involve unfair discrimination (because certain postcodes may have heavy weightings towards specific ethnic groups, for example). Within any given postcode, there is likely to be significant variance in terms of income and wealth; and its value to assessing financial vulnerability is therefore unclear.

As the Gambling Commission acknowledged in its recent evidence hearing before the Culture, Media and Sport Select Committee, it is far from clear how far a customer's postcode might be used to identify financial vulnerability – and in a way that does not risk unfair discrimination.

The BHA's consumer survey found that 86% of respondents opposed this measure.

Q.82 To what extent do you consider that aggregated data should be included in a financial vulnerability check in relation to a customer's stated employment status and job title, and cross-referencing to open source data about the average income for that occupation?

As we note in our response to Questions 67 and 69, we have serious concerns about the effect on bettors (and therefore on horseracing) from asking for employment status and job title. It clearly fails the 'frictionless' test that the Government has insisted must be applied to these assessments, because consumers do not typically expect to provide this information when purchasing goods and services. It is relies on self-certification, which the White Paper describes as being *"unlikely to be an adequate basis for a thorough and accurate risk assessment"* and cannot be used in any meaningful way to make an assessment of income. It is likely therefore, that bookmakers will ultimately be required to seek verification – effectively triggering customer due diligence checks.

As the Gambling Commission acknowledged in its recent evidence hearing before the Culture, Media and Sport Select Committee, it is far from clear how securing a customer's occupation might be verified or whether it would in fact help to identify financial vulnerability.

The BHA's consumer survey found that 86% of respondents opposed this measure.

Q.83 To what extent do you agree with the proposed requirements for data that must be included in an enhanced financial risk assessment for credit performance data and income and expenditure data, including current account turnover data?

Strongly disagree.

Q.84 Please give your reasons for your answer. In particular, are there any other types of information that you think it would be valuable to gather at these thresholds to understand potential financial risk?

The consultation provides insufficient information in relation to this matter. It is unclear what information the Credit Reference Agency checks are prepared to share with bookmakers to meet the 'minimum data' standard (where CRAs share 'only the minimum amount of data required to fulfil the new purpose'). In its assessment, the Information Commissioner's Office refers to "zero-knowledge proofs" – confirmation that an individual is not at financial risk, but without revealing further information regarding financial status. The consultation appears to exceed the boundaries of this opinion by assuming that CRAs will be willing to share current account turnover data and credit performance data with bookmakers.

We are unaware that any scoping studies have been completed in relation to the use of CRAs to determine financial risk or that any tests have been conducted (or even designed). It would have been helpful, in our view, had such tests been conducted in advance of the consultation. In the absence of such information, it is difficult to make any assessment of the desirability or likely consequences of the measures proposed. We note that, where a CRA is unable to provide an assessment, the fall-back position is to use open banking or to ask for documentation from a customer. It is possible therefore that the consultation has significantly underestimated the level of friction that will in fact accompany the assessments. We note too that in the absence of controlled testing, it is difficult to assess whether the CRA ratings will be accurate, fit for purpose and not arbitrary or unnecessarily restrictive.

Finally, we note that these credit checks and current account turnover information may be helpful in assessing financial risk where people on regular monthly income and expenditure; but are less useful where people living in retirement and homemakers are concerned. Critically, they take no account of wealth, which consumers legitimately consider is theirs to spend on their preferred pastimes.

The BHA's consumer survey found that 87% of respondents opposed this measure.

Q.85 In limited circumstances, it may be necessary to obtain information directly from the customer to understand financial risk. In these circumstances, we have proposed that the information must enable assessment of income and expenditure. Should the Commission set out further minimum requirements to ensure the data provided is meaningful but minimised? If so what should these requirements be?

We are concerned, in the first place, that the circumstances under which bookmakers will be required to obtain information from the customer will be far less limited than the consultation states. It is well evidenced that consumers resent providing documentation or find it inconvenient. We understand from engagement with bookmaking firms, that around 90% of bettors refuse to provide documents when asked. If this is correct, the impact of the financial risk assessments will be far more swingeing that the consultation suggests.

For this reason, it is critical that the Commission conducts a rigorous and suitably independent process of scoping studies (including an assessment of the impact of existing affordability checks) and pilots in order that the complexities and consequences are understood prior to imposition. This programme should consider alternative approaches to achieving the policy objectives.

As we note in our response to Question 73, affordability checks are already taking place with the BHA's consumer survey finding that 26% of bettors have already experienced one.

Q.86 To what extent do you agree with a 12 month time-frame for the validity of the financial vulnerability check?

Agree.

Assuming that these checks are proven to be genuinely frictionless, we consider that 12 months is a suitable time-frame for such checks, balancing the needs of consumer protection and the prevention of unnecessary inconvenience or intrusion.

The BHA's consumer survey however, found that 72% of respondents opposed this time-frame; reflecting more general antipathy towards the proposed regime of financial risk assessments.

Q.87 To what extent do you agree with a 6 month time-frame for the validity of the financial risk assessment?

Disagree.

Assuming that these checks can be proven to be – in 90% of cases – genuinely frictionless, they should also be conducted on a 12-month time-frame in order to prevent unnecessary bureaucracy and unreasonable inconvenience for customers. It should be recalled that financial risk assessments are to be applied in situations where a customer spends £1,000 in a 24-hour period or £2,000 over 90 days; and these are described as indicators of "binge" behaviour or "unsustainable losses". The fact is that for many horserace bettors, expenditure of £1,000 would not be considered a "binge" (indeed, the term is unhelpfully loaded for what is supposed to be a morally neutral consultation) and expenditure of £2,000 would not be unsustainable. As we highlight in our response to Question 73, the measure will have a disproportionately negative impact on horseracing because of i) the popularity of betting among people on high incomes, relatively high staking and one-day loss levels; and ii) the low association between horserace betting and 'problem gambling' (and the high association between betting and positive mental health).

The proposal therefore risks inflicting on regular horserace bettors the inconvenience, indignity and displeasure of intrusive checks every six months. The consultation supplies no evidence whatsoever in support of this measure, despite its acknowledgement that "repeating assessments frequently is likely to be disproportionate to the risks and burdensome for both the customer and the operator."

Q.88 To what extent do you agree that it is proportionate that deposits and gambling may continue while a financial vulnerability check is taking place?

Strongly agree.

We agree with the Gambling Commission's proposal that a customer should be able to continue to bet while a light touch financial vulnerability check is taking place – and it is correct to point out that the vast majority of customers would not have any risk flags identified as part of the check. Disrupting the activity of a bettor while a check is taking place would mean that the check is not frictionless and thus undermine the objectives of the proposed checks as stated by Government. It would also lead to customers potentially closing their accounts out of frustration, moving to other operators, or worse, setting up accounts with unlicensed operators.

Q.89 To what extent do you agree that it is proportionate that gambling may continue while a financial risk assessment is taking place, but that further deposits would be paused?

Disagree.

We do not agree that further deposits by a customer are paused while a financial risk assessment is taking place. As the consultation document sets out, not every customer who undergoes an assessment will have further risk flags identified about betting in their financial context. Our own engagement with stakeholders and racing bettors has shown high levels of concern about preventing further betting and that pausing deposits is a highly disproportionate measure that would disrupt the vast majority of customers who bet on horseracing.

Moreover, the low thresholds proposed in this consultation will lead to a disproportionate number of horserace bettors being subject to both vulnerability checks and financial risk assessments. The unintended consequences of this – and preventing many of these from making further deposits that may coincide with a busy time in the racing calendar – would be high numbers of customers choosing to bet with unlicensed operators.

Q.90 We have not proposed any set requirements for how quickly a financial vulnerability check must be completed. Do you have any comments on whether such requirements would be necessary?

The feasibility and appropriateness of such a measure should be considered as part of the planned pilot project.

Q.91 Please provide any views you may have on the best way for gambling operators to inform customers about the potential collection of their financial data for these purposes.

The feasibility and appropriateness of such a measure should be considered as part of the planned pilot project.

Q.92 What feedback do you have on the requirement on operators for manual review of the assessment data, together with all of the other information they hold on the customer to make a proportionate decision on any action to be taken?

Our understanding, from engaging with a number of bookmakers, is that a requirement for manual review of the assessment data would be significantly labour intensive; and they are unaware of evidence that it would be more effective than automated checks, which are widely used in other settings (such as loan applications).

Q.93 Does paragraph 7 of the proposed requirement 3.4.5 (enhanced financial risk assessment) which confirms that operators can only use the information collected for the purpose of the assessment, provide sufficient clarity that the information must not be used for any other purpose?

There is some confusion on this point arising from the Commission's responses to questions about the existing informal system of 'affordability checks', which according to a variety of reports, is already being imposed on bettors. The Commission has stated that such checks are not the responsibility of the regulator and have in fact been instituted for commercial reasons. This introduces a fairly broad interpretation of what the Commission's considers to be 'commercial reasons'.

In its 'Enforcement and Compliance Report 2019-20', the Gambling Commission stated that operators were required to request highly sensitive personal documents (including bank statements, pay slips and tax returns) where spending on gambling exceeded "the national average". The Commission's inability to clarify whether this guidance should or should not be observed affects any interpretation of the term "commercial reasons". In other words, if it is the view of the Commission that existing checks are carried out for reasons of commerciality and not compliance, it suggests a wide degree of latitude may be adopted for the proposed financial risk assessments.

Q.94 What factors should be considered in relation to implementation timeline and piloting?

The pilot should be a genuine pilot, used to understand the effects on consumers and the market of such checks. It should therefore include within its scope of possible outcomes, particularly on younger customers, a decision not to proceed but to identify instead more appropriate solutions.

We note that operators already apply checks at a variety of different thresholds. There may be value therefore in undertaking a review of the effectiveness of financial risk checks already in place across the market. This could be done through the provision of data from large operators (as with the Patterns of Play project).

Given the unprecedented nature of the checks on adult consumers being proposed, we consider it important that the pilot is subject to genuinely independent and transparent evaluation. It should be conducted on an arms-length basis from the Gambling Commission and consider conflicts of interest, such as researcher involvement with advocacy groups.

Q.95 Do you consider that there should be any specific appropriate recordkeeping requirements?

N/A

Q.96 Do you have any evidence or information which might assist the Commission in considering any equalities impacts, within the meaning of section 149 of the Equality Act 2010, in the context of the proposals set out in this section of the consultation relating to light touch financial vulnerability checks and enhanced financial risk Impact assessments?

There is a risk that financial vulnerability checks based upon a person's postcode may be unfairly discriminatory. For example, official demographic data shows that certain ethnic groups are over-represented in areas of multiple deprivation.

Q.97 If you have relevant information, please provide an estimate of the direct costs associated with implementing the light touch financial vulnerability check.

N/A

Q.98 If you have relevant information, please provide an estimate of the direct costs associated with implementing the enhanced financial risk assessment.

N/A

Q.99 Do you have any comments on the assumptions underpinning the impact assessment set out in Annex A of the white paper?

The impacts on horseracing have, thus far, been under-stated. We have set our position out in a letter to the Secretary of State, dated 11 October 2023, a copy of which has been sent to UKGC also. It is a significant concern that the suggestion that only 0.3% of accounts will be affected by affordability checks, is again refuted in the results of the recent BHA lead survey, which showed that 1 in 4 UK horseracing bettors have been asked for financial information, a significant proportion of whom chose not to engage with.

ENDS

October 2023