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The Gambling Commission's role: defending sport's integrity

There have recently been a number of incidents where prominent athletes have been accused of being involved in corrupt activities involving betting. Jody MacDonald, a Solicitor with Couchmans LLP, examines how the Gambling Commission identifies and deals with instances of corruption in sport through its licensing conditions, the offence of 'cheating at gambling' under section 42 of the Gambling Act 2005 and the activities of the Sports Betting Intelligence Unit.

Sports betting is rapidly becoming one of the most popular forms of gambling with hundreds of millions of pounds being staked on the outcome of sporting events each year. Regrettably, the growth of sports betting increases the risk of corrupt elements damaging the integrity of sporting competitions.

2010 saw high profile match fixing allegations and tabloid betting stings against members of the Pakistan Cricket team and snooker's world number one, John Higgins. Sports as diverse as greyhound racing and lawn bowls have also been affected.

The groups seeking to profit from illegal sports betting are sophisticated, hard to detect and even harder to prevent. The unanimous view is that the only effective defence against them is a co-ordinated response from sport governing bodies (SGBs), the betting industry, the Gambling Commission and the police. Much has been written about the role of SGBs and the betting industry in this 'coalition' but less well documented is the role of the Gambling Commission and the newly formed Sports Betting Intelligence Unit housed within it. The Commission has now gone some way to addressing this by

publishing the decision making framework it uses in relation to betting integrity matters.

Licence conditions

The Gambling Commission is responsible for regulating commercial gambling in Great Britain. It grants operating licences and has the power to investigate and prosecute offences under the Gambling Act 2005 (the 'Act').

The licence conditions set by the Commission contain various provisions intended to assist in identifying irregular betting on sport. Condition 15.1 requires betting operators to provide the Commission and the relevant SGB with information they suspect may relate to an offence under the Act, a breach of the relevant SGB's rules or lead the Commission to consider making a bet void.

The effectiveness of this provision depends on betting operators taking a proactive approach to the disclosure of information; a process which is time consuming and costly for them. There is a concern that SGBs and betting operators have differing views as to when behaviour is sufficiently suspicious to warrant a report. Some have called for greater consistency and transparency in this area and the Commission has confirmed it is currently considering whether it should amend the licence conditions to achieve this.

'Cheating' under s.42 of the Gambling Act 2005

On paper one of the most effective tools at the disposal of the Commission in the fight against illegal sports betting is the offence of 'cheating' under s.42 of the Act, which carries a maximum penalty of two years imprisonment. A person commits an offence under s.42 if he:

- cheats at gambling; or

- does anything for the purpose of enabling or assisting another person to cheat at gambling.

Whilst we may all be becoming more used to hearing about sportspeople being embroiled in betting scandals and even some being disciplined by their SGB, it would come as a surprise to hear of one being convicted of a criminal offence and jailed. This is because in the three years since s.42 came into force, there have not been any full prosecutions under it in relation to sport betting. Why is such a powerful deterrent seemingly not being used?

The Commission has now published details of its decision making framework in relation to betting integrity issues and it provides an interesting insight into the possible reasons behind the lack criminal prosecutions being made.

In the framework, the Commission sets out a range of factors that will influence whether or not a case will be pursued as a criminal matter, including what would be the most effective and timely deterrent and sanction, available resources and the harm to / impact on victims, including the sport or betting customers. The Commission stresses repeatedly that it will often be more appropriate for matters to be pursued by an SGB rather than the Commission or police as a criminal prosecution, particularly where a 'swift and significant' sanction can be applied by the SGB under its rules. Even if an issue is deemed potentially criminal, the Commission may decide 'disruptive action' is the most effective way to address it. This again involves a referral back to the relevant SGB and in some instances, betting operators.

There are certain 'overriding factors' that will mean a criminal investigation is pursued by the

Commission, including where it is considered appropriate to take a case to prosecution in a particular sport (or against a particular type of participant) where a theme has developed in order to provide a deterrent effect, or where a precedent could be set and needs to be legally tested. These overriding factors could be behind the current criminal prosecutions being pursued against Pakistan cricketers Salman Butt, Mohammad Asif and Mohammad Amir, and former Essex county cricketer Mervyn Westfield for their alleged involvement in (separate) instances of match fixing.

The contents of the Commission's decision making framework may make slightly worrying reading for anyone keen to see criminal sanctions being used as a more significant deterrent to those thinking of becoming involved in irregular sports betting. The Commission leaves itself numerous opportunities to decide that it would be more appropriate for a matter to be dealt with by an SGB under its rules. SGBs in particular may be worried that the apportioning of responsibility falls on their side too often. Perhaps they can rely on further support from the recently created Sports Betting Intelligence Unit?

The Sports Betting Intelligence Unit (SBIU)

The SBIU is a pan-sport intelligence unit housed at the Commission. It was created in June 2010 on the recommendation of a government commissioned panel of key figures in the betting industry, legal profession, police, players, fans and sports governing bodies. Chaired by Rick Parry, it produced a report into how to uphold integrity in sport and associated betting (the 'Parry

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Report').

In its decision making framework, the Commission has confirmed that the SBIU is intended to receive intelligence from all sources (SGBs, betting operators and the general public) and establish whether there is any potential criminal activity by ascertaining whether there is an identifiable event, participant and betting party, the scope and scale of the activity and whether there are links to other cases. If the SBIU establishes that there is potential criminal activity, the Commission decides how to progress the case. The SBIU may be engaged again later in the process if further development of the case is needed.

The SBIU's terms of reference state that it will produce 'intelligence products' to inform investigative decisions and may monitor specific events or individuals but will not undertake general pre-emptive monitoring of betting markets or sports events (this will remain the responsibility of betting operators and SGBs). The Parry Report also envisaged the SBIU would provide 'pooled intelligence' to support SGBs and betting operators in their own anti-corruption efforts. However, in practice, it seems there are restrictions under the Gambling Act and more generally under human rights and data protection legislation that reduce the SBIU and the Commission's ability to fulfil this role.

One significant and contentious issue that has yet to be resolved is how the SBIU should be funded. For the moment, the Commission funds the SBIU from existing resources. The Commission makes reference in its decision making framework to the fact that its budget is being reduced and in any event was set according to workloads created by the operators it regulates (the inference being

that the SBIU has been somewhat foisted upon it). As with many other issues regarding the funding of anti-corruption activities in relation to sport, SGBs, the government and betting operators have differing views about who should contribute what. Given the rise in discovery of cases of illegal betting on sport, if a lack of funding is hampering the SBIU, then it remains to be seen how long this issue can be avoided.

Conclusion

The threat posed by corrupt elements in sport and sports betting cannot be combated without a coordinated effort from SGBs, gambling operators, the Commission and police. Some of the criticism the Commission has faced for its seeming inability to bring criminal prosecutions under s.42 may die down now that it has published details of its decision making framework and the factors that it considers have been made clearer. A successful prosecution in either of the cases currently under investigation regarding cricket would also go a long way to enhancing its reputation as an effective force. However, the accusation could be made that due to a lack of funding, disappointing levels of co-operation from a police force which is itself over-stretched and unwieldy legislation, the Commission's assessment of who is the most appropriate body to deal with an instance of corrupt behaviour in sport or associated betting will too often result in a matter being passed back to SGBs, who may be expecting more support in a fight against corruption that is not going to get any easier.

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