HOUSE OF LORDS

Select Committee on the Social and Economic Impact of the Gambling Industry

Corrected oral evidence: Social and Economic Impact of the Gambling Industry

Tuesday 3 September 2019

4.40 pm

Watch the meeting

Members present: Lord Grade of Yarmouth (The Chairman); Baroness Armstrong of Hill Top; Lord Butler of Brockwell; Lord Foster of Bath; Lord Smith of Hindhead; Lord Trevethin and Oaksey; Lord Watts; Baroness Wyld.

Evidence Session No. 5 Heard in Public Questions 44 - 49

Witnesses

Susanna FitzGerald QC, Barrister, former Trustee of GamCare; Professor Julia Hörnle, Professor of Internet Law, Queen Mary, University of London

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Suzanna FitzGerald QC and Professor Julia Hörnle.

Q44 **The Chairman:** Good afternoon. I hope we have not kept you waiting for too long. Thank you for helping us with this inquiry. You have seen the form: we will share the questions out and it will be a fairly relaxed discussion.

The first question is from me. The Gambling Act 2005 abolished the demand test and replaced it with an "aim to permit" clause. It also introduced a risk-based approach to regulation. Do you think the current terms of the Act enable the Gambling Commission to prevent and reduce gambling harms in the way that was envisaged in the national strategy in 2019? Are these in sync? Who would like to go first?

Professor Julia Hörnle: I think there is a tension in the Act, which is perhaps unavoidable, between, on the one hand, liberalising gambling as a legitimate business and permitting gambling and, on the other hand, managing the risks stemming from gambling because to a certain extent these two aims point in opposite directions. It is inherent in the regulation of gambling itself, unless there is a limited monopoly system, as in Norway, or you prohibit gambling, which you cannot enforce because of the online internet dimension—operators simply relocate abroad and target gambling services via the internet remotely into the British market. To some extent, therefore, even if you think that a prohibition is desirable, it may not be enforceable.

I have just done a large-scale study for the European Union where we spoke to the gambling regulators in the European Union and looked at the enforcement methods; the enforcement of gambling regulation varies between European member states and the enforcement techniques that they use such as website blocking, payment blocking, working with the banks, restricting advertising, especially online advertising, and sanctions and fines.

The Chairman: Who does the blocking?

Professor Julia Hörnle: The blocking is done by about 40% of all European member states.

The Chairman: Who effects the blocking?

Professor Julia Hörnle: The internet service providers. We have blocking in the UK, too. We have blocking for (hardcore) online pornography which is not age verified. This will be introduced under the Digital Economy Act in December. We have blocking of child sex abuse materials by the internet service providers. We have examples in this country of website blocking. One of the surprising results from our research was that website blocking is not ineffective. I am not a particularly tech-savvy person, despite my research interests, but it is very easy to circumvent a website block if your first hit on Google is "site is blocked" and your second hit may be "this is how you circumvent the block". Someone who is determined to circumvent a website block, therefore, can usually do so.

There is an important information aspect, however, in website blocking so that the gambler gets information and warnings on a landing page. From our conversations with the other regulators, it seems that most gamblers do not know or care whether the gambling is legal or illegal. They often do not know and, when they suddenly see that what they are trying to access is illegal, that may cause them to hesitate and ask whether this is the right place they should gamble. Website blocking, although it can be circumvented, has other aspects and other effects which are useful from the point of view of regulation.

Susanna FitzGerald: I was going to say that, from the point of view of real professional gamblers, they probably do not care. What are they interested in? They are interested in the odds. They are interested in whether they get paid and if they are fairly sure that they are dealing with someone they have dealt with before who is going to pay up they do not care. What is very important from their point of view are the odds that they are going to get. That is the only thing I can add, having met some of them and watched what they are doing. It is extraordinary. Also, for the more professional ones, they are, by and large, pretty clued up because they are professionals and that is what they do, and I do not think it would stop them.

As we are talking about this idea of stopping it, it is not only the online gambling industry that can go underground but the terrestrial industry could go underground as well. It is probably a testament to the regulation that we have currently, that there is comparatively little illegal gambling going on in this country, as far as we know. The police may know something different, but I am not aware that organised crime has become involved with the actual gambling industry in this country, which is again a testament to the regulation. It is rigorous, but it is not yet over the top. There is always a permanent danger that, if it does go over the top, the gamblers will find it unappetising and will look elsewhere. That has to be a permanent risk.

As to whether the Gambling Commission has got powers, it has plenty of powers. It has powers to revoke, if nothing else, for any reason that it sees fit. That is a very powerful one. It can also levy unlimited fines.

Lord Watts: On the technology side, and I may be asking the wrong person, but, as I understand, it is quite easy to download an app that you can access betting sites on and that is much harder to block. Is that correct?

Professor Julia Hörnle: That is correct. On mobile phones, iPads and other mobile devices, people usually use apps. An app would not normally be caught by website blocking. The way to block apps, therefore, would be to deal with the provider of the app, such as iTunes or other app stores, where people download those apps. Website blocking does not affect the app; that is correct.

The Chairman: Feel free not to answer this if you do not feel qualified. Do you think that the Gambling Commission, if you look at the technology brainpower that sits behind it, is the equal of the technological brainpower that is creating these algorithms and direct marketing and games that they hope will become addictive? Do you think that they are matched with each other? It is a bit like the tax accountant versus the Treasury solicitors drafting tax legislation: you write something down and people find a way round it. How do you feel about that? Is that an issue?

Professor Julia Hörnle: It is a big issue. We were talking about this outside, that it is not just a gambling issue. Our browsing and the websites that we look at online are all tracked. We are all profiled online and the advertising we see, whether it is banner advertising or Facebook posts or social media posts, are based on this tracking. They will look at our interests, the kinds of websites that we have looked at, and this profile will be the basis for advertising. This is a much bigger picture than just gambling.

There is no confirmed evidence, but there is a fear that some of the gambling advertising which is based on these online profiles is potentially unethical. The profile might indicate that someone is unemployed or that they have debts and they might then be targeted with gambling links because the automated algorithms calculate that it is more likely than not that that person will click on that link. That is deeply unethical, but it is an automated process so it is not as if someone has consciously decided, "Okay, this is what I will advertise" because of that link.

Susanna FitzGerald: I can declare a small interest in this. I have a son who is currently working in Silicon Valley in the tech world. They are so clever. Frankly, he is surrounded by people with Masters degrees and PhDs in computer science. There is no way that the Commission can possibly match that level of expertise and it certainly does not. I do not think it could afford to do it. It cannot be a level playing field, therefore. I cannot profess to know everybody who works in the Commission and if I am doing them down I apologise profusely.

Q45 **Lord Trevethin and Oaksey:** What I want to ask follows from the answers that you have just given. I would like your views on the quality and adequacy of the regulation of gambling in this country. The principal regulator is obviously the Gambling Commission. It is probably too wide a question to ask you whether gambling is or is not well regulated, but it would be helpful to have your views on what the regulator should be investigating but is not investigating or what the regulator should be doing which the regulator might not be doing or might not be doing well enough.

Susanna FitzGerald: Julia knows more about this than me. On online, they are looking at it very closely and they have done a lot. Generally speaking, the regulation is vigorous and firm. I have heard complaints from the industry about regulatory creep and legislation by the backdoor. I have noticed that they have become, forgive the colloquialism, much more "grabby" about things that they want to deal with and are getting much more involved with the nitty-gritty of what is going on. They are being far more vigorous, therefore, about doing all that. Is it always what I would describe as well regulated? I think it is unfortunate that, in recent years, they have become far more adversarial. It is unfortunate that there have been comments along the lines of—and I am probably misquoting them but the gist is—they are going to use the big stick and be much less collaborative. That is unfortunate, and they might end up with better regulation if they were more collaborative with the industry.

There have been complaints about unreasonably short timelines if something is going wrong. They can suddenly refuse to talk to you anymore: "We have spoken to you before, thank you. There is no point in talking". That is very unfortunate. They are now, I understand, starting to spend a bit more time with the industry to learn about it. It is a very complex industry indeed and a lot of the people involved, as we have just been discussing, are extremely clever. It would benefit the regulation if the commission could spend more time with them and get to understand how the industry works rather than the them-and-us way that they are doing it at the moment.

I have also heard complaints about a lack of transparency, particularly around the way that they levy the fines. People do not understand, and particularly the advisers do not understand, why the fine was such-and-such a figure. I do not have knowledge of other regulators, but they may be far more open about what fines they are levying and why or what they would be. The companies would find it helpful if they understood why the figure was a certain level so that they could decide whether it was fair or not.

It would be extremely helpful if they included the advisers far more in their various workshops. They make it a "thing" to the companies that they should get their own advice as advisers, we are happy to give that advice, but it helps, as advisers, if we understand the thinking of the commission and what it is doing. There may have been moves recently to concentrate on talking to the companies rather than talking to the advisers as well. My gripe is that, when they included the solicitors, I was always excluded because I was a barrister. On one occasion, I was invited by mistake and when they discovered I was there I was de-invited. I never understood why barristers were not allowed to go along. The regulation would be much better if we could all be involved. At the end of the day they may well find that the industry is helpful in coming up with ways that the regulation could be better rather than the commission standing back and just telling them how they should do it. We all want there to be good regulation, and there ought to be firm regulation.

Lord Trevethin and Oaksey: Is it realistic to expect the industry to be helpful in relation to the problem that has underlain the recent publicised cases involving heavy fines being imposed by the regulator—namely, the problem of problem gamblers clearly gambling in an irresponsible and self-harmful way but being allowed to continue gambling by an operator who must know what is going on? Is it realistic for the regulator to expect the gambling provider to deal responsibly and co-operatively with that problem, given that the bigger the problem the gambler has, the bigger the profit the gambling provider will make?

Susanna FitzGerald: There may be a difference between online and offline. After the 2014 Act, which came in in 2015, a lot of online operators were licensed in this country for the first time. They were not used to the regulation in Britain and I think particularly for them, although Julia can tell you far more, it is has been a real struggle to understand what it is all about. With terrestrial gambling, a lot of them have been around for a long time and many of them are publicly quoted companies. They do not want this kind of thing to go on. I appreciate that there is tension between very good customers who may also be people with a problem. I also appreciate that with a lot of them, especially the bigger companies, there is a desire to do the right thing and to be seen to be doing the right thing as far as shareholders are concerned. Although the company they are fining may not be helpful, other ones may be helpful.

Professor Julia Hörnle: The *Licence conditions and code of practice*, LCCP, contains a number of social responsibility conditions as conditions of the licence. However, one area which is particularly weak and which goes towards what you are saying is that in terms of interaction with customers who have a very high spend, who are often treated as VIPs by the gambling companies, the obligations are not entirely clear. Clearly, you can see that someone is spending a lot of money, you can measure the time they spend and you can measure the time that they are online, but that only goes so far as an indicator of whether someone has a gambling problem and in particular whether they can afford the sums that they are gambling. Clear guidance and clearer obligations in this field would be helpful because gambling companies there have a problem. On the one hand, they have to comply with data protection laws and they are concerned about privacy and confidentiality obligations and IT security, and on the other hand they are supposed to fight problem gambling. What we need to see happening is that a standard is developed in respect of best practice.

This can be addressed by technology. It is probably not difficult to develop technology which monitors and surveys and provides red flags if someone shows the first signs of problematic behaviour. You have to impose particular obligations about what the gambling company has to do. That is completely lacking. I appreciate that this is all very new. A lot of these products are innovative and it is a fast-evolving market. It rings of surveillance, so there is a privacy aspect. Despite all these problems, it does not mean that you cannot develop a set of best-practice guidelines which balance data protection. There is nothing in the LCCP that says you have to have interaction with your customers, what the interaction should be and at what point you have to trigger a response. That is deliberate because initially there was a feeling that the industry would evolve responsibly and that they would develop their own codes, but that has not happened. That is key.

The Chairman: We need to pick up the pace a bit.

Q46 **Lord Smith of Hindhead:** I declare an interest because I know Susanna FitzGerald QC through our involvement with the Institute of Licensing. The Bishop of St Albans has had to leave to take part in a debate about banking standards and reform, so I will ask his question regarding the new Gambling Act which will come into force in the Netherlands next year, which will require online operators to exercise a duty of care to prevent underage gambling but also to safeguard against the risk of exposure to excessive gambling. Do either of you think that gambling operators licensed in the UK should have a legal duty of care to their customers?

Professor Julia Hörnle: We have opposing views here. A duty of care is a good idea, but a duty of care in terms of civil obligation and potential liability under tort to compensate harm. In the English court, there is case law which has denied that under common law. One of the issues why the courts have denied it is that a duty of care is very badly defined. What exactly is the duty of the operator? If through regulation we had a clearer idea of the obligations of a specific operator in a specific field of gambling, a duty of care could be backed up not only by regulation and fines but also by a civil duty of care, in other words a tort actioning negligence where someone could sue for compensation. It requires a clear idea of what the content of the duty of care is other than a general notion of having to prevent problem gambling. That is why I think it will be important to have a clearer standard of best practice as to what triggers are there and what are the actions following the trigger.

Lord Smith of Hindhead: It seems difficult to enforce. "I am going to lose my money on this bet. I thought I was going to win but I am not going to win and therefore you have to give me my money back because I did not want to lose".

Professor Julia Hörnle: I agree. If the regulator had a best practice code saying that if someone has spent so much in this amount of time you have to find further information and whether they can afford it, and if those best practice standards and regulatory standards have not been complied with, there would be a civil law obligation as well. I agree with you: what does a duty of care mean at the moment?

Lord Smith of Hindhead: With questions like that, most of the Dutch gamblers are going to go online and gamble elsewhere in the EU.

Professor Julia Hörnle: The interesting question is: would they be able to bring a claim in a Dutch civil court seeking compensation? You would then have jurisdictional issues.

The Chairman: Talking about gambling online, the information or the data that the operator has about the individual customer is so complete today. They know the postcode and they can guess how much that person is earning from where they live. You can form a picture very quickly of who you are dealing with. If someone lives in Kensington Palace Gardens and is spending £100,000 a week gambling, it is probably not a problem, but on a sink estate somewhere in the East End, if they are spending thousands of pounds a month it is easier to define where the duty of care starts because you have so much data today online about the punter.

Susanna FitzGerald: Can I come in on that?

The Chairman: Briefly, if you may, as we have quite a bit to get through.

Susanna FitzGerald: I am absolutely opposed to a duty of care. Interestingly, there was a case in 2008, William Hill v Calvert, where poor Mr Calvert ruined himself gambling, but he was a greyhound trainer and he had started off being extraordinarily successful as a greyhound trainer. This was some time ago, in the Court of Appeal in 2008. He was earning £50,000 a year from his gambling and he was just a greyhound trainer. Where someone lives can be slightly deceptive and whether they can afford it.

Apart from that, if there is a duty of care in civil law, then what? John has lost a lot of money and says he wants it back. He is then dumped into the civil proceedings to get that all back. It is long, detailed, and the company opposes it tooth and nail, as we all think it probably will. At the end of the day, he may or may not win, less of course the legal fees. I am not here to promote the lawyers. What happens then? They give him the money back. He goes and gambles it again. Is this what people really want? I would have thought it was not. There are other ways. You can go via the commission. If the company has breached the LCCP, the commission can impose a fine, it can divest the company of the profits that it has made and may well pay off the person's debts rather than handing the money back to him. I equally understand—and this is practice on the ground from talking to the solicitors who are involved — that a lot of the companies, if approached rather than sued, may be far more likely to assist in giving the money back if the company has behaved in a way that perhaps it should not have behaved but by paying off the person's debts rather than giving it back to the gambler.

The other issue is one of causation. In the William Hill v Calvert case, there was found to be a duty of care, but the judge refused to give him any damages because he said poor Mr Calvert would have ruined himself anyway because he would have gone to all the other bookmakers. Gamblers do not usually gamble in just one particular place, or form of gambling; they will have gambled all over the place. So whose fault is it?

My final point is also that there is the issue of personal responsibility. If you are gambling and you think, "It doesn't matter if I lose, because I can just sue the company and get it back again", it goes right to the heart of personal responsibility, which every gambler should be encouraged to have.

The Chairman: Can I be clear? You are not against a duty of care if the duty of care does not get you into the court system but is regulatory.

Susanna FitzGerald: I am against a duty of care because it is not regulatory.

The Chairman: But it could be.

Susanna FitzGerald: I do not think that they need it. They have plenty of powers already, but if they feel that the company has acted against its social responsibility codes or the conditions, which is essentially what you are talking about, they have the powers to review the licence and fine. They do not need it.

Lord Trevethin and Oaksey: On the record, so that I have this straight, as the case law currently stands, as you rightly said a moment ago, in English case law there does exist a duty of care. It was so held in Calvert. The defence that succeeded in Calvert was a causation defence. Is that not correct?

Susanna FitzGerald: No. The issue in Calvert was that there was no duty of care, but William Hill had assumed a duty of care because he went to them and said, "Please can you self-exclude me", and William Hill said, "Yes, we have done that". That was assuming the duty of care, but they breached it because they had not done it.

Lord Trevethin and Oaksey: The duty arose out of the dealings connected with the self-exclusion.

Susanna FitzGerald: It was the specific one where they had assumed the duty of care because they had said he was self-excluded and he was not because their systems failed.

The Chairman: We are agreed. We must move on.

Susanna FitzGerald: Generally speaking. There have been two other cases which made it clear there was not one.

Q47 **Lord Foster of Bath:** I know that there is not sufficient time to ask for a response, but since you have been talking about recourse to justice for individuals who have been affected by companies, I would have loved to have heard what you thought about the need for there to be an ombudsman, whether it be the regulator or not. Perhaps you would be kind enough to write to us on that issue.

You have also talked about the way in which the Gambling Commission has sufficient powers to deal with these issues. You have referred to their getting much more involved with the nitty-gritty of what is going on, and all that sounds very positive, yet it took the Gambling Commission something like eight years to get to a point of giving some advice to the Government in relation to the stakes and prices issues around fixed-odds betting terminals. There are many examples of things such as online in-play betting where evidence suggests that is particularly harmful yet they appear to be taking very little action. My question is: do you believe the Gambling Commission has got the power, the resources and the knowledge to be able to do the sort of job we need them to do?

Professor Julia Hörnle: Power, yes. Resources and knowledge, not so sure about that.

Lord Foster of Bath: Could you give us a bit more detail and tell us what they should do or what should be in our recommendations?

Professor Julia Hörnle: One area which is notoriously difficult is advertising. In the UK, we have a good self-regulatory system for advertising which has been very well established and is highly regarded. I am not convinced that it is perfect, however, in the area of gambling because the advertising code has specific provisions on the advertising message. Gambling, by definition, is all about glamour, all about risk taking, all about excitement, so how much can you really control the content of the message? Sometimes the assessment of whether something is taking over someone's life or whether it is glamorous is a hairline decision which almost seems arbitrary if you look through the decisions of the committee. That is not the fault of the committee, but I think that advertising regulations are particularly difficult.

In the online sector, there are two specific problems which I regard with great concern. One is social media advertising which encourages user-generated content. We have people who are influencers who have a lot of political or commercial influence. They post what is effectively advertising but it looks just like any other user-generated content. How can you regulate advertising if you cannot recognise whether something is advertising or not or if it is content rather than advertising? The social media companies have the technology that could stop it if they really want to. They could mark it out as advertising.

Lord Foster of Bath: They could only stop it if there was suitable regulation and that would come on the basis of advice from the Gambling Commission. Rather than the specifics, whether it is about advertising or whatever, the argument you both appear to be making in different ways is that the Gambling Commission does not appear to have access to the knowledge nor does it have the resource to get access to the knowledge that it needs to make those judgments to get the evidence, to get the research commissioned or do it themselves. That is what we want to hear very clearly.

Susanna FitzGerald: We have already talked about the inequality of arms as far as the internet is concerned. They do not, and I am dubious as to whether they do in other areas as well.

Lord Foster of Bath: If you were writing a recommendation for this Committee to be making in relation to this, what would you be proposing?

Professor Julia Hörnle: I would be proposing that the Gambling Commission should have greater powers in respect of advertising and should not have to delegate this to the self-regulatory system. In the Gambling Act, there is provision that the Secretary of State can make regulations to regulate gambling advertising, but that provision has never been used so it has been delegated to the well accepted self-regulatory or co-regulatory system which in the area of gambling does not work. The Gambling Commission needs greater powers in respect of advertising to make it more mandatory rather than the general advertising regulations.

The Chairman: In view of the time, if either of you want to develop your thoughts on that question and let us have them after, that would be helpful. That is a very important issue.

Q48 **Baroness Armstrong of Hill Top:** Do you think the current sanctions that are in place prevent gambling operators from targeting advertising at vulnerable people? If we had more time, I would go into what I mean by vulnerable people, both vulnerable adults but also children and young people. Are they sufficient to prevent gambling harm and, in particular, are the rules for online advertising keeping up with new technology? I also wondered if you could come back to us later or say quickly whether there are any international examples where you think they do that well that we should have a look at.

Professor Julia Hörnle: Unfortunately, the UK is ahead of the other European countries in this area. In other European countries there is even less regulation of the online sector. What is required is taking the social media companies to task. The Gambling Commission has not got the resources to do this properly. It needs more resources and more powers to do so. The Gambling Commission focuses on the gambling operators. Affiliates act on behalf of the gambling operators, but interlinking with the social media companies is an even bigger task which they have not fully managed to do yet.

Susanna FitzGerald: The deterrents of the unlimited fine and revocation of a licence are the sanctions. You cannot get any higher than that. Those are enormous. We have spoken about the expertise with the Gambling Commission. I would make one comment, which is a question we were sent in the Budd report saying that they should test the effects of new types of gambling and so on. My impression is that they are very risk averse to do that kind of thing and they absolutely do not want to do that.

The Chairman: What is the risk?

Susanna FitzGerald: A new product comes in or a new machine comes along and the person who is making it will go to the Commission and say, "This is what I am proposing. What do you think?" I have had examples of this in my profession, even in my practice, when e.g. the gambling company is following something that is already there—for example, a casino machine "Pink", ingredients ABC. My client comes along, and his machine is called 'Blue', ingredients ABC". "Oh, no", say the commission "we can't have that." "But" says the company "that casino has already got it, and they are both casino machines". "No" say the commission, "because then we might get more of them". There is a very risk-averse attitude, therefore, to anything new that comes along. They call it the precautionary approach. They are not keen on testing anything.

The Chairman: And then pass it and it goes wrong, do you mean?

Susanna FitzGerald: Then it is done on the basis that it has to be withdrawn.

The Chairman: Sorry, I am being obtuse. I do not understand what the risk is. From the regulator's point of view, if a new product is brought to them and they approve it, what is the risk?

Susanna FitzGerald: Because others might do the same and therefore it is a proliferation issue. Even if the machine is safe, they will not pass it.

The Chairman: But that risk exists whether they approve it or not.

Susanna FitzGerald: A manufacturer or gambling company is unlikely to start building the machine if they know the commission is going to be against it, so that kills the idea. Alternatively, somebody comes to the commission with a new way of doing something and the commission is nervous about it in case something goes wrong or it might cause problems. Even though it has been said to them, "This is done on a trial basis. We're quite happy to withdraw it from the market and not do it", the commission still does not want it to happen. You get the impression often that they want to turn the clock back to pre-2005 where everything had pigeonholes. They do not like something because it is new and therefore they are not going to do it. They are not prepared to trial things in case they may go wrong.

The Chairman: They get the blame?

Susanna FitzGerald: They are frightened of that, but they are not prepared to say, "Do it on a trial basis, then you have to withdraw it if it does not work". In other words, the operator is given the risk and if it works that is fine.

Lord Butler of Brockwell: I share your confusion about this, Chairman, because what you are saying is that something is taken to the Commission and they say, "Okay"?

Susanna FitzGerald: No. In the particular instance of the machine, there was already a machine on the market, it was in a casino and had certain ingredients. My client came along and wanted to produce a machine that was essentially exactly the same as the casino machine and was told that he could not, despite the fact that it was already on the market and did not seem to have any problems. The reason given was that there would be proliferation of this machine, even though the first one had not caused any problems.

Lord Butler of Brockwell: How did the first one get into the casino if the Commission had not approved it?

Susanna FitzGerald: It did not approve it; it did not disapprove it. It had caused no problems whatsoever, but the Commission still did not like it and were not prepared to go any further. That was merely an illustration of an attitude of mind where the Commission takes the precautionary approach. If you take the precautionary approach, "It might cause problems; we don't like it, therefore you cannot even trial it", I think this is unfortunate for an industry which is highly innovative and wants to change products or the way gambling is offered for the enjoyment of their customers.

Professor Julia Hörnle: In the online sector, my impression is that the Commission is much more careful with innovation. For example, if you look at the review of loot boxes, it is very balanced. It says you can only regulate what your money is worth. It is the same with penny auctions. I would have thought that penny auctions are an example of gambling, but the Commission says that it does not fall within the definition of gambling so we should not go there. In the online sector, the Commission has been very mindful of innovation, perhaps even a bit too reluctant to step in to protect children.

The Chairman: The Committee will want to follow this up when we meet the Gambling Commission.

Q49 **Lord Watts:** Do we need an update on regulation, for example on limits on stakes and prizes online as we have in land-based casinos? Should licensing conditions include specific references to affordability triggers as described in the Gambling Commission's recent enforcement report?

Susanna FitzGerald: The terrestrial chaps will be delighted if you put limits on stakes and prizes in the online world because a lot of them feel it is grossly unfair, particularly in the machines world. That is a different matter to whether one should actually do it. That is just how they feel about it. The affordability triggers should not be a condition. It can be part of the social responsibility code or things that the commission might expect and that will give them the full powers that they need. If we start insisting on conditions, then you are putting things into concrete which in the future may be found to be inappropriate and that you may not want to do. The whole point about the Act was that it should be an enabling Act so that as much as possible, by secondary legislation or by use of the codes and so on, it would be able to keep up with technology. I do not think you need it as a condition and it would not be a good idea to make it a condition.

Professor Julia Hörnle: On the limits and stakes, there is a fundamental difference, which has already been mentioned several times, between the online world and the offline world. In the online world, you have so much more data and so you should and can control spending in other ways than by having a minimum in terms of the stakes. We are going in the direction of affordability criteria. This is also something that the banks are looking at. They have all the data of their customers and I guess that they use affordability triggers already in terms of loaning decisions but also in relation to gambling. There is a debate whether the banks and the payment sector should not have a greater responsibility in seeing whether their customers gamble and whether they can afford the amount that they gamble and take action accordingly. The affordability triggers, therefore, have two dimensions. There are the gambling operators themselves and the data they have and the profiling they could undertake to spot early problems, and also the financial services, the payment providers and the banks, in particular, who also have data on us.

Lord Watts: Am I correct in thinking that the Gambling Commission very rarely, if at all, enforce debt whereas the credit cards, I suspect, do? Am I correct in that view?

Professor Julia Hörnle: That is correct. My understanding is that we have seen big fines imposed in the last few years by the Gambling Commission and they were always triggered by either anti-money laundering, so gamblers basically having committed fraud or theft, and also social responsibility. That is looking at events too late. The gambling operators see these big fines, but they do not know exactly what their obligations are and at what point in time they should step in. Should they really wait until a customer has spent £150,000 and then ask where the money has come from? At what point should a trigger happen? Perhaps we should have best practice on affordability criteria and the triggers and the actions that should be taken. That would be a good innovation.

Susanna FitzGerald: As far as offline is concerned, it is cash, it is at the casino, and I would be astonished if they did not enforce the debts. They have a long history of doing it. I do not have the knowledge, but I would be astonished if they did not because that is the way they always did it. They would sue on the cheques and so on.

The Chairman: On behalf of the Committee, may I thank you both. Hopefully, much of this will find its way into the report through our further investigations. It has been very helpful. If you feel that anything has been unsaid or if there is anything that you feel strongly about that you did not get to emphasise sufficiently, do let us have further particulars at your leisure. That concludes the public session.