

FAST TRACK TO FAIR PLAY:

A Gambling Ombudsman to protect consumers and raise industry standards.

Independent Betting Adjudication Service

August 2022

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1.0 Executive summary

- In this paper IBAS sets out how it could transition to being an effective Gambling Ombudsman much faster than any entirely new service could be created
- IBAS already deals with over 80% of UK gambling complaints and many from overseas and handles all types of related consumer complaint. IBAS staff have considerable expertise in this area.
- A new Gambling Ombudsman needs to hit the ground running and not be “learning on the job.”
- Establishing a new Ombudsman from ground level would be more costly, take longer to establish and the organisation would lack the necessary expertise.
- Aims and a governance framework for the proposed organisation are outlined.
- We show how we have started on our roadmap for transition.
- We set out the need for funding from the industry, but with independence from the industry (IBAS already operates at arms-length).
- The basis for deciding complaints must be established and include the fairness of terms and conditions and harmful gambling complaints. We set out a new Fair Play Code to show how this can be done.
- We provide grounded assumptions for structural and funding costs.
- Transitional costs of around £1 million will be required.
- We estimate that the new organisation will cost circa £3.5 million per annum to operate.
- We will operate to Ombudsman Association standards and Ombudsman best practice.
- This plan would ensure immediate and enhanced protection for consumers with the avoidance of complaint handling backlogs.
- This plan offers an effective solution to Government, the Regulator, and the industry for the establishment of an Ombudsman in ambitious timescales.

2.0 About us

IBAS was formed in 1998 to resolve individual complaints between the providers of gambling services and their customers, according to the terms of the contract that governed the transaction. IBAS is free to use for consumers and the way we resolve complaints makes no difference to the funding we receive.

IBAS's Board of non-executive directors are appointed by a Nominations Committee formed by existing directors. Whilst the Board has knowledge of the gambling and sports industries, board members come from diverse public, private and third sector/not for profit backgrounds; including having experience in other relevant sectors (e.g., financial services and consumer protection) and complaint handling bodies.

IBAS already handles well over 80% of all UK gambling complaints, and from our experience we have a unique perspective (that could not be readily replicated by a new public body), on the causes of gambling complaints, how they arise and their impact on the lives of consumers. We have created industry fora to advise gambling operators about how to improve practices to avoid gambling complaints and unfairness. We put this knowledge and experience at the disposal of the Gambling Commission and see the partnership between Regulator and Ombudsman as an essential two-way process.

Our approach to the resolution of gambling disputes has evolved according to the requirements of the Gambling Commission and the Alternative Dispute Resolution Directive (ADR) 2015. To resolve complaints, IBAS has asserted its independence from the industry and has widened its

approach from merely interpreting contractual terms, to looking at the fairness and reasonableness of those terms and their effect on consumers (including the issue of consumer vulnerability). This involves IBAS Panellists in the consideration of consumer rights and unfair contract terms legislation.

IBAS has provided a growing complaint handling service to UK consumers of gambling for nearly 25 years, but for the complaints handling model to fully mature in line with government and regulatory objectives, there needs to be a single complaint resolution body and structural changes to funding and powers.

3.0 Defining the issues

i. Funding

Many are calling for an Ombudsman funded by the gambling industry either through a Levy or other structured funding formula. We support the creation of a new, compulsory, funding structure for consumer redress services in the sector, noting that there is no realistic prospect of public sector funding being secured for this purpose.

ii. Regulatory/Redress Balance

The major problem in dealing with consumer complaints (absent a clear regulatory breach), is that the Gambling Commission has never seen itself as a consumer complaint handling body. It leverages consumer complaints for regulatory purposes, but it has never been focussed on complaint resolution or consumer redress at a detailed level.

The split Ombudsman/Regulator model is clearly established in other sectors, e.g., financial services. Gambling complaints are many and varied, and whilst the majority concern the nature and interpretation of the gambling contract, there is continuing debate around the fairness of contractual terms. And in this regard, there are calls for an operator's duty of care to consumers to be applied, perhaps to be defined by statute, or secondary legislation.

Therefore, whilst favouring an Ombudsman, there is much to resolve. With its experience of gambling disputes, unique know how and management expertise IBAS believes it should be at the heart of these reforms and seen as the nucleus of a new Ombudsman around which more effective structures and resources are built.

iii. Protection of Consumers' Funds

There is also widespread concern about lack of protection of consumers' funds when operators such as Football Index collapse. The failure to find a compensation route for these customers (other than through liquidation funds), has raised the suggestion that an Ombudsman might have resolved this issue. We would point out that an Ombudsman might only order restitution by a solvent operator and not an insolvent business.

However, if there is political will to establish the equivalent of the Financial Services Compensation scheme, then management of that scheme might be assigned to an Ombudsman. The question would then arise as to how that scheme would be funded with statutory provision being made for this.

This subject throws up a few questions and is worthy of a consultation in its own right regarding the merits and mechanics of a statutory restitution scheme. Not least the point that such a scheme imposes obligations on well-financed operators to act as a safety net for less robust business models. We question whether issues of prudential soundness are in fact a matter which falls under licensing and ongoing compliance monitoring. The enhanced powers that may be accorded to the Gambling Commission by a new Act may address this issue.

4.0 Establishment

The Gambling Ombudsman may be established by a new Gambling Act. This could make provision for an organisation to deal with complaints arising from gambling transactions and state how it should do this. It will set out the purpose, the relationship to other institutions and the justice system. In short, the Act can deliver a remit and legal powers for the new complaint resolution body to carry out its role. The Act could create a free to use, independent dispute resolution service, funded by businesses not their customers.

Until this point, IBAS and several other gambling complaint handlers that have achieved ADR status, have to deal with a limited permissible range of disputes arising from gambling transactions. We now seek to fulfil the role of the first Gambling Ombudsman.

5.0 Aims

Our service

Our principal aim is to provide a free and easy-to-use service that settles complaints between consumers and businesses that provide gambling services. We will continue to resolve complaints fairly and impartially, with the power to put things right. We will invest in our team and train our employees to provide additional support to vulnerable consumers, including signposting them to external services where appropriate. We will build closer links to other organisations providing support to consumers or the sufferers of gambling harms.

Decisions and case studies

We will share our practical experience in resolving gambling disputes in a range of situations. Everyone will be able to read our Ombudsman decisions and case studies on our website to find examples of cases we resolved.

Helping prevent complaints and unfairness

We will regularly publish data and insight about the cases we see to raise awareness, prevent complaints and unfairness arising.

We will take on and expand the work started by IBAS, providing informal advice and guidance to consumers, helping in navigating sometimes complex complaints processes and signposting where appropriate to other services and organisations.

We will set out detailed performance targets in support of these aims and concerning our cost, efficiency, and timeliness. We will publish our performance against these targets each quarter. We will be committed to making gambling fairer and safer, to the benefit of consumers and gambling businesses.

6.0 Remit

The new Gambling Act may establish the legal basis of the new Gambling Ombudsman. If this follows the precedent of the Financial Services and Markets Act 2000, which created Europe's largest ombudsman, the Financial Ombudsman Service, then the Gambling Ombudsman will be established on the principle that it will decide the outcome of complaints according to what is 'Fair and Reasonable' (s. 228(2)).

It's likely that the industry regulator, the Gambling Commission, will publish the detailed rules that set out how the Ombudsman and the gambling businesses should handle complaints. We anticipate requirements for the new Gambling Ombudsman to reduce harmful gambling and for the prevention of complaints and we will use IBAS's experience in these areas to make significant progress. We expect to work with the Gambling Commission to define the parameters for considering harmful gambling disputes and to offer advice and protection to consumers.

The Ombudsman's remit will set out limits for the amount that can be awarded by means of redress and compensation to complainants and rules concerning complaints that may not be considered as being outside of the remit. It will set out a requirement for businesses to comply with the decisions on complaints.

7.0 Transition

At present we are a 'Complaint Handler' member of the Ombudsman Association having met their acceptance criteria at this level. We will need to enhance our service to meet the requirements of the forthcoming Act to build an organisation with the capabilities it needs for the future and meet the Ombudsman Association criteria for 'Ombudsman Service' membership.

To transition our service successfully to the required level we need to develop a modern, efficient, and accessible Ombudsman service. This will be a diverse and values-based organisation that recognises and responds to the needs and expectations of the people and organisations that will rely on us. We anticipate consulting all relevant stakeholders on our plans for this process.

An independent board has guided IBAS entirely free from external influence and will oversee the transition to the Gambling Ombudsman. We have planned to allow transition to take place quickly and we think this is likely to take around 12 months. We will set out a Transition Timetable once we have seen the White Paper.

8.0 Structure and Roles

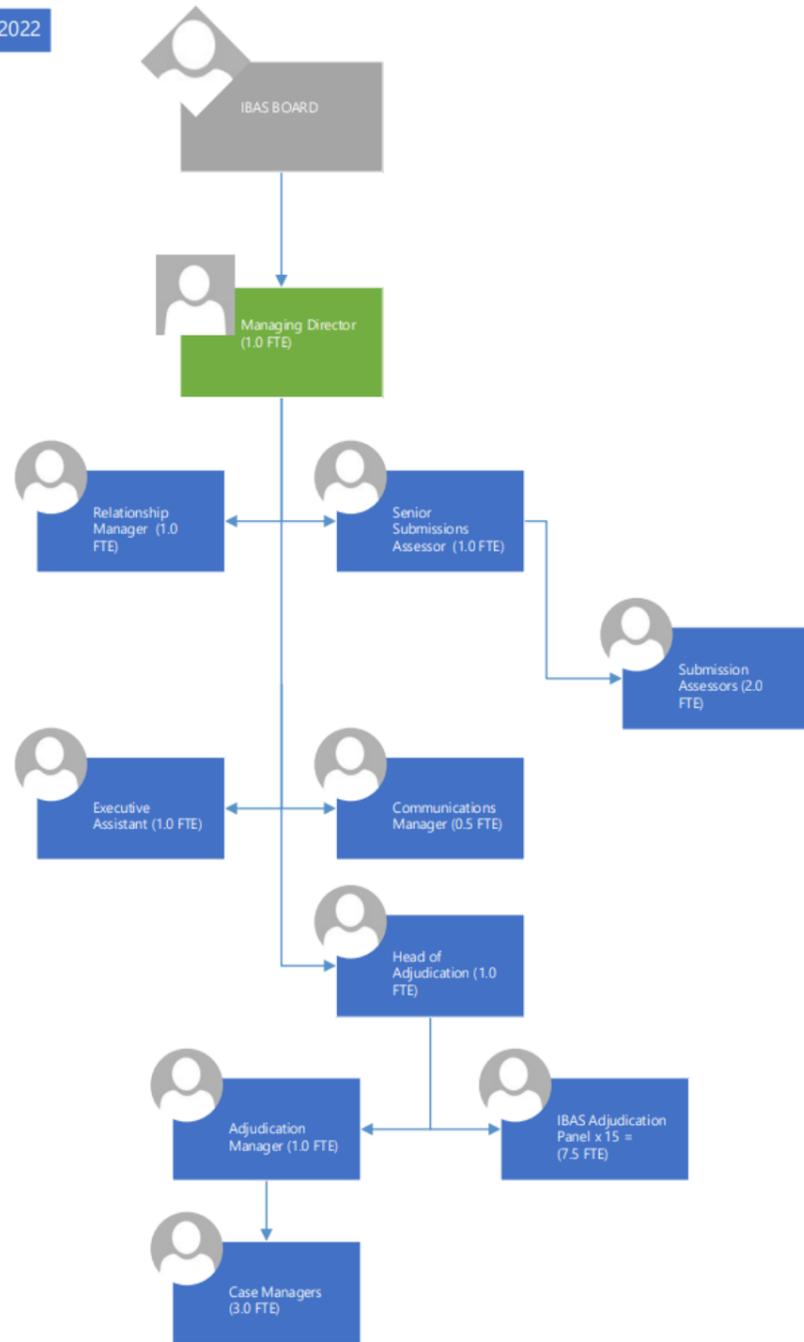
We have reviewed our resourcing needs and considered how they will need to change to take on wider responsibilities and to deliver the services to meet public and political expectations.

IBAS is currently staffed and resourced to meet the Gambling Commission's requirements for a body approved under the ADR Directive. Our staffing also reflects the limitations on our current remit for consideration of harmful gambling disputes and complaints concerning regulatory matters, which are retained by the Gambling Commission. We will plan for a two-tier system for reviewing complaints, leading to a 'Final Decision'.

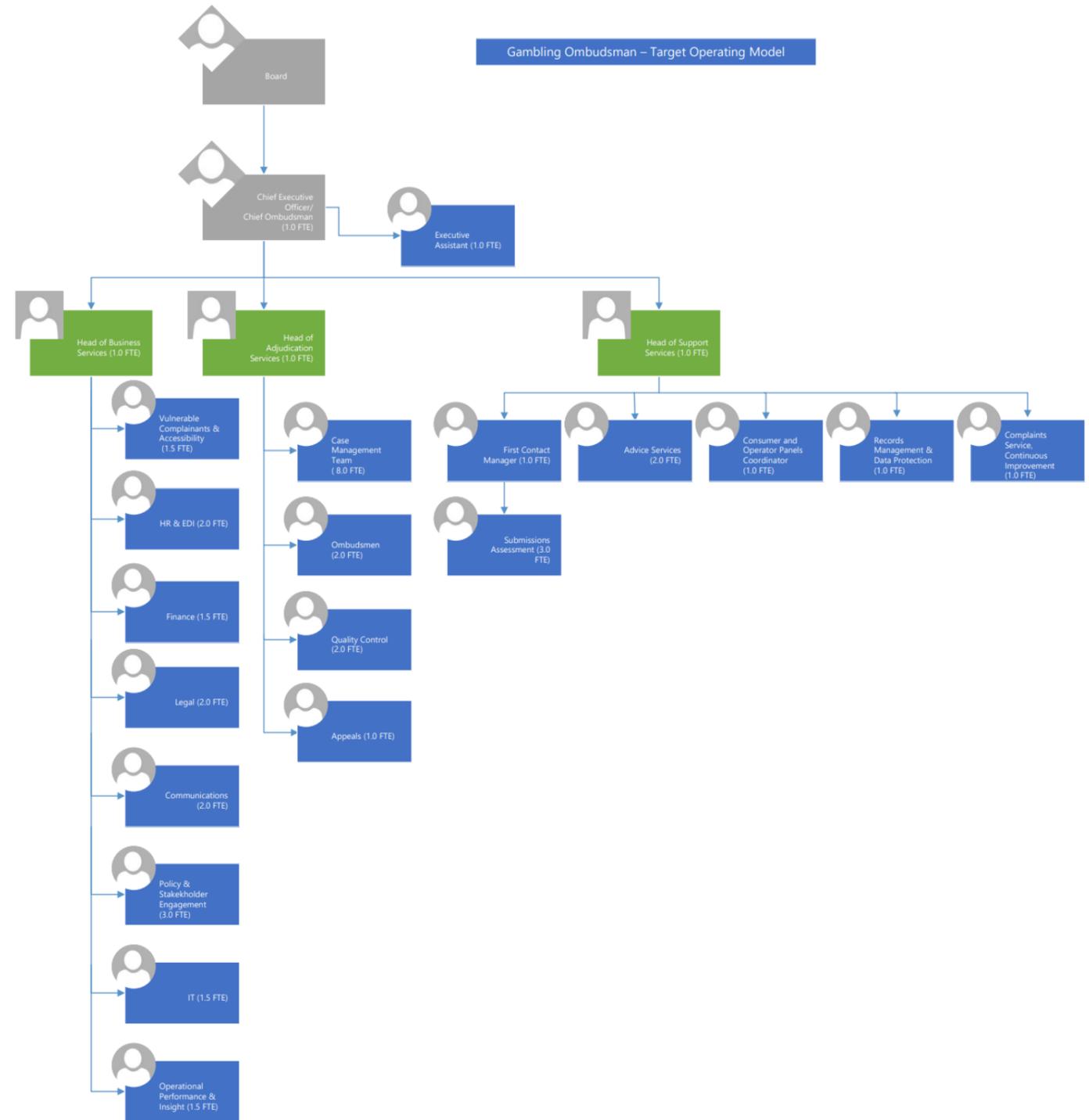
We anticipate that complaints touching on regulatory matters will form a key part of an Ombudsman's role as is the case with complaints about financial matters addressed to the Financial Ombudsman Service. This will involve close liaison with the Gambling Commission, but also other bodies such as the Advertising Standards Authority, the Information Commissioner's Office and organisations working in the field of gambling harms. We plan to be staffed to carry out all necessary public affairs.

We have set out below our current and proposed structure for the resolution of gambling complaints in future.

IBAS – Current Structure June 2022



Gambling Ombudsman – Target Operating Model



Notes: IBAS typically refers between 100-150 people per quarter to the Gambling Commission with complaints that businesses have acted irresponsibly – and we might be expected to take on some or all these complaints in future. The review of our structure only considers the resources needed to be a UK Ombudsman. There is no obvious need to change how services will be provided to our current non-UK business consumers.

We anticipate maintaining a non-executive board that oversees the governance and strategy of the organisation but doesn't consider individual disputes (as is the case today). The board will appoint a panel of Adjudicators and Ombudsmen, approve annual reports and accounts, and prepare an annual budget.

9.0 Resources and Funding

The new Gambling Act is likely to require a new Gambling Ombudsman to be funded by the businesses under its jurisdiction, this would be in common with other ADR services in the UK. We will follow whatever funding arrangements are set out for the Gambling Ombudsman in legislation or if this is silent, we will adopt the best practice recommendations of the Ombudsman Association to guarantee that independence and impartiality are maintained.

From our review of the structures and roles that are likely to be required of a Gambling Ombudsman we estimate the organisation would require an annual budget of around £3.5M. Of this sum, about £3M would be required for staff costs and the remainder to cover all other functions. We estimate that the new organisation would require a 'Year One' business registration income of around £1M to fund the transition process to make the step change in line with our Transition Plan.

10.0 Year One Budget expectations

In its first year the Gambling Ombudsman:

- Can expect to receive approximately 7,500 complaints and resolve 5,000 complaints, anticipating that some 2,000 will need to be referred back to businesses to complete their internal complaints systems and approximately 500 requests will fall outside an expanded redress remit
- Can expect to receive a further 10,000 requests for advice or support from gambling consumers and businesses that do not progress to a dispute
- Will need to deal with claims management companies exploring historic complaints on behalf of consumers
- Will have a cost base of c£3.5M
- Estimates c£1M business registration fixed fees to fund transition with additional ongoing 'per case' payments estimated at a total of c.£2.5M
- Will charge an average resolved case fee of £400 and a lower median fee
- May charge an average handling fee of £25 per enquiry/request for assistance from gambling businesses.

Annex: Adjudication – approach and services

There is an opportunity for government to set out in detail the approach to complaints a new Gambling Ombudsman should take. If government follows the precedent of the Financial Services and Markets Act 2000, this will include the definition of a complaint, how complaint services may be accessed, the procedures and powers of this body and compliance requirements on gambling businesses.

We are already mindful of consumer rights and unfair contract terms legislation in reaching decisions on current complaints. However, we have anticipated an invitation to the prospective Gambling Ombudsmen to develop a new approach to the resolution of gambling disputes. We consider that would be directed by a 'Fair Play Code'.

A1. Definition of a complaint

The Fair Play Code (FPC) will define what a complaint is. It will set out examples of complaints that the Gambling Ombudsman will take on and examples that it will decline to investigate.

The FPC will acknowledge practical limitations of dispute resolution but be clear in the expectations on gambling businesses when dealing with complaints which fall within the Gambling Ombudsman's widened scope.

A2. Accessibility and awareness

This section of the code will explain how the Gambling Ombudsman will make itself accessible to consumers and detail how gambling businesses should do the same. It will consider issues such as:

- Clear consumer signposting of the complaints process and pathway to the Gambling Ombudsman
- How that process changes depending on the medium of communication between business and consumer
- How that process might be varied for consumers identified as vulnerable.

A3. Complaint team, procedure, timeliness, and responsiveness

The FPC will provide recommendations and define certain standards for consumer communication in complaint handling. The purpose is to raise standards and to ensure a broadly consistent complaint process experience for consumers of gambling products.

Much of the focus will be on acceptable timeframes for the processing of complaints and communication about complaints.

It will also address logistical issues such as complaint logging and explore ways that the Gambling Ombudsman can work with businesses to ensure that complaints are not unduly delayed or lost, e.g., because of confusion or misunderstanding about the origin of a complaint or the identity of the complainant.

A4. Fairness in complaint handling

A vital component in effective complaint handling in the gambling industry is ensuring that each complaint is given thorough consideration by the business before it reaches the Gambling Ombudsman.

This section of the FPC will set out what the Gambling Ombudsman's requirements of gambling businesses will be. The Gambling Ombudsman will expect to see evidence that these standards have been met when reviewing complaints that reach its team of investigators. Evidence of standards not being met will be addressed by the Gambling Ombudsman.

A5. Resolving the dispute

The FPC will set out its expectations for businesses and the steps that they will take to try to resolve complaints with consumers without the Gambling Ombudsman's intervention.

The Gambling Ombudsman may require details of a business's internal complaints procedure and terms and conditions as part of the registration process. Many of the complaints received by IBAS were as much about the quality of communication from the business as the resolution of a gambling transaction.

The Gambling Ombudsman will expect businesses to explain to consumers the actions they have taken clearly and within a reasonable timeframe. The Gambling Ombudsman will also expect businesses to look at complaints carefully and to review whether the company could or should have done more to help avoid the complaint.

The Gambling Ombudsman is likely to ask businesses whether a complaint or series of complaints has led to the business reviewing and updating internal processes to help avoid the dispute reoccurring in future.

The FPC will recognise that the appropriate steps to find a remedy to a complaint are likely to vary depending on the circumstances of the consumer; equivalent complaints from an inexperienced or experienced consumer may justify being handled differently.

A6. Continuous learning and improvement

The Gambling Ombudsman will use its FPC experience to provide regular newsletters and explore how the businesses registered with it can use complaint handling experiences to continually review and improve the services that they offer. In particular, to strengthen the protection from gambling harms that can bring misery to consumers.

A7. Compliance

As a condition of its registration with the Gambling Ombudsman a licensed business must:

- agree to be bound by the terms of the Service and this Fair Play Code
- establish and maintain a complaints procedure in accordance with good practice recommended by the Gambling Ombudsman
- as part of that procedure, inform consumers of their right to bring complaints to the Gambling Ombudsman
- publish its complaints procedure and make information about this easily accessible to those entitled to complain on its website and in correspondence with consumers
- manage complaints from consumers in accordance with its published procedure or, where this is not possible, within a reasonable timescale
- respond promptly to information requests made by the Gambling Ombudsman as part of the ongoing investigation into complaints from consumers.

Failure to comply with the conditions of the Gambling Ombudsman may result in the referral of the incident to the Gambling Commission by the Gambling Ombudsman under its liaison arrangements. The relationship between the Regulator (Gambling Commission) and the Ombudsman will be key and clear demarcation of roles and responsibilities of the two bodies are of paramount importance in ensuring an effective and fair system.

Gambling Ombudsman Process

