

Andrew Rhodes
Gambling Commission
4th Floor
Victoria Square House
Birmingham
B2 4BP

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Dear Mr Rhodes,

Lawfulness of marketing profiling by the online gambling industry – action needed after judgment in *RTM v Bonne Terre* [2025] EWHC 111 (KB)

We write with regard to marketing profiling in the online gambling industry. We urge the Gambling Commission to act on the findings of the judgment recently handed down by the High Court in the case of *RTM v Bonne Terre Limited and Hestview Limited*,¹ brought by someone in recovery from gambling addiction against Sky Betting & Gaming (“**SBG**”) for unlawful processing of his personal data for marketing purposes.

The High Court found that SBG, subsidiary of the UK’s largest online gambling company, carried out extensive algorithmic profiling of the Claimant for marketing purposes without his valid consent under data protection law and hence unlawfully. This finding resulted from three years of proceedings brought by someone who sought transparency and accountability over how his data was used to push him to gamble more, at times of severe vulnerability. He challenged the lawfulness of this processing, and won. While he is now vindicated and is seeking remedies, he should not have had to go through this.

The proceedings in *RTM* revealed that the online gambling sector uses extremely intrusive profiling of its customers to provide aggressive and highly targeted marketing. In the Claimant’s case, SBG’s marketing fuelled his gambling addiction.

But they also revealed that the troves of customer data collected and processed by SBG were not even used to improve “safer gambling” operations and reduce gambling harm. Worse, there were no controls on marketing to potential at-risk gamblers short of a binary suppression threshold.

We urge you to:

- (1) Notify all your licensees of this judgment and enjoin them to review their practices to ensure they provide the highest possible level of protection to their customers against harmful profiling and marketing.**
- (2) Audit your licensees’ practices with regard to marketing profiling and use of data for safer gambling, and take enforcement action where these fall short of their obligations under the LCCP.**
- (3) Collaborate with the Information Commissioner’s Office to properly assess the data processing and algorithmic profiling practices of your licensees, and ensure that your enforcement of the LCCP addresses these practices and their impact on your licensees’ obligations to prevent harm.**

¹ [2025] EWHC 111 (KB), available at <https://www.awo.agency/files/RTM-v-Bonne-Terre-judgment.pdf>.

We provide more detail on these issues below but would welcome a meeting with you or representatives of the Gambling Commission to discuss our concerns and recommendations.

Harmful profiling and marketing

Under s.22 of the Gambling Act 2005, you have a duty to pursue the licensing objectives, which include “ensuring that gambling is conducted in a fair and open way” and “protecting children and other vulnerable persons from being harmed or exploited by gambling” (s.1).

Mrs Justice Collins Rice recognised in her judgment that advertising had increasingly been placed on the “safer gambling” agenda in recent years, acknowledging the work that the Gambling Commission has done so far:

7. Over recent years, the safer gambling agenda has grown substantially in prominence within the industry, and the Gambling Commission has tackled a range of what it has identified as risk factors, including advertising and marketing, with a combination of restrictive regulatory measures, education and explanation requirements, and mandated provision of self-help tools.

Yet this work has been insufficient, and it is unclear what if anything the Gambling Commission has done to audit its licensees’ practices in that regard. The evidence in the *RTM* proceedings showed that SBG was at the relevant time carrying out extensive profiling of all its users to feed aggressive marketing, including to vulnerable users. Mrs Justice Collins Rice was satisfied that the Claimant was at the time a “highly vulnerable” individual in relation to his gambling behaviour. She considered there was no need for “*deference to industry, medical or other expertise*” to be able to recognise “*a disorderly lifestyle in which a subjectively experienced compulsion to gamble consumed a man’s personal and material resources to a degree which significantly diminished him, his personal autonomy, his private life, his moral compass, and the full autonomy and freedom of the choices he was making.*” [§161]

SBG collected and processed granular data about the Claimant’s gambling behaviour. He was assigned around 500 data points that were continuously updated by real-time data and used to build “propensity models” – algorithmic models that predict future behaviour, such as the likelihood that someone will be enticed into trying a new product, or how much a user could be worth to the business if they started gambling again. All this profiling led to intensive marketing that fed his gambling addiction.

Mrs Justice Collins Rice considered that this marketing can be “*frequent and intense, constantly responsive [...] to the evolving profiles of customers’ online behaviour.*” [§85] The Claimant received an average of two emails a day from SBG that prompted him to take up bonuses, offers or free bets. And that’s on top of all the online banner advertisements, push notifications and SMS he received but whose overall number could not be established by SBG’s poor records. In the judge’s words, “*these were frequent, high-impact online experiences in their own right, including offers some of which had to be accepted quickly.*” [§165]

“The more he responded – trying new things, accepting bonuses, going up a level – the more the marketing models responded with more, and more tailored or directed, marketing. That is exactly what they were designed to do. The Claimant was gambling in what might reasonably be called a fast-moving marketing-saturated

environment, one in which rich information provided by his own online behaviour was being played back to him in real time with tailored enticements and inducements to play more and play bigger.” [§165]

The judgment also recognises that online advertising carries particular risks:

98. [...] Online advertising can be frequent, powerful and personalised and is delivered directly at the marketing/consuming interface; it can be engaged with and responded to instantly and frictionlessly. We looked at some examples: these displayed high visual production values and a high emotional register, and some included offers and rewards as well as the promised entertainment – the thrills – of the product itself.

All this time, the Claimant was modelled by SBG’s algorithms as a “high value” customer, and so they marketed to him as such – failing to recognise the utterly disproportionate amounts of money spent by the Claimant and his intensive activity on their platforms:

“It never identified him as at high enough risk for marketing suppression. The financial triggers for suppression were set at levels beyond the realistically possible reach of a man of the Claimant’s modest means, even when he was spending all the money he could get his hands on and more.” [§165]

Over the course of his gambling with SBG, the Claimant lost over £45,000. A lot of these losses may have been prevented should SBG have provided him with more control over the use of his data and the types of marketing he was receiving. The Court found that the Claimant did not provide subjective and autonomous consent to the intensive profiling and its use for marketing, and SBG could not evidence otherwise.

The risk of targeted and personalised marketing to at-risk gamblers was particularly highlighted, and is a key issue which we urge the Gambling Commission to seize:

“192. [...] SBG was in all these circumstances demonstrably carrying a substantial risk of marketing gambling to problem gamblers on a targeted or personalised basis. It does not dispute that. Among those problem gamblers were individuals operating at a level of damaged and deteriorating autonomy in relation to their gambling to a degree indistinguishable from, or potentially worse than, those in the category triggering the suppression of all direct marketing, but to whom marketing was in stark contrast being directed in a personalised manner and to an enhanced degree. They include problem gamblers who could have triggered the suppression mechanism if, for example, their previous self-excluding history had been on SBG’s own platform rather than other providers’ platforms as the Claimant’s was, or who, being more affluent, were spending and losing sums which were bigger than those the Claimant could have contemplated.

193. And that was, in my judgment, not just an ethical or regulatory but a legal risk. It was a risk that the consenting of those problem gamblers was not a proper legal basis on which SBG was entitled to rely for that personalised marketing and the cookies which enabled it. It was a risk that there was no subjective consent of any quality present, because the problem gamblers were subjectively aware of and consenting to nothing about the gambling except the gambling. It was a risk that in shortcutting consenting mechanisms and failing to engage with privacy information these were not the autonomous acts of individuals making free, active and aware choices – however unwise – about their personal information, but were the compromised acts of individuals for whom decision-making about their time, money

and privacy – about their personal integrity and their entire private lives – was already out of control in relation to gambling, and for whom the consenting mechanisms and information provision meant nothing other than barriers to gambling to be overcome in short order. It is hard to recognise in that factual matrix autonomous decision-making of the ‘relatively high’ standard envisaged by data protection law.”

This poignant analysis can only resonate for all people suffering “problem gambling”. And the clear recognition by a Court that the risk is one that’s carried ethically, regulatorily and legally, by all gambling companies, must be acted upon by the Gambling Commission, who is mandated by Parliament to prevent gambling-related harms.

No use of data for safer gambling

Despite all this intrusive and granular data processing, SBG failed to recognise the Claimant’s vulnerability and risky gambling behaviour. SBG’s own data science witness recognised that a data point showing regular play in the early morning hours can be a marker of harm, but that *“short of suppression, the marketing model will interpret it as a cue that that is a particularly productive time to send marketing to that individual.”* [§96]

Only simplistic monetary value thresholds were used to trigger safer gambling controls – only if a customer reached a significant risk level would they end up on marketing suppression lists. It was a binary threshold, short of which *“the marketing team will continue to market”* [judgment §166], which could consist in multiple emails a day, banner ads, SMS, push notifications, etc.

The Court was clearly concerned at the lack of controls on marketing to at-risk gamblers. It recorded a strong indication that a gap exists in the law, which we urge the Gambling Commission to address:

“The advertising of products which are dangerous to everyone is strictly controlled – tobacco advertising is the obvious example. There are no equivalent controls in place for the protection of the minority who are experiencing, or at high risk of experiencing, gambling harms. And whether or not there should be is a question for a legislature, not a court. But online gambling is provided by a regulated industry and the recognition and protection of vulnerable individuals within that regulated context is, as we have seen, central to the regulatory purpose.” [§186]

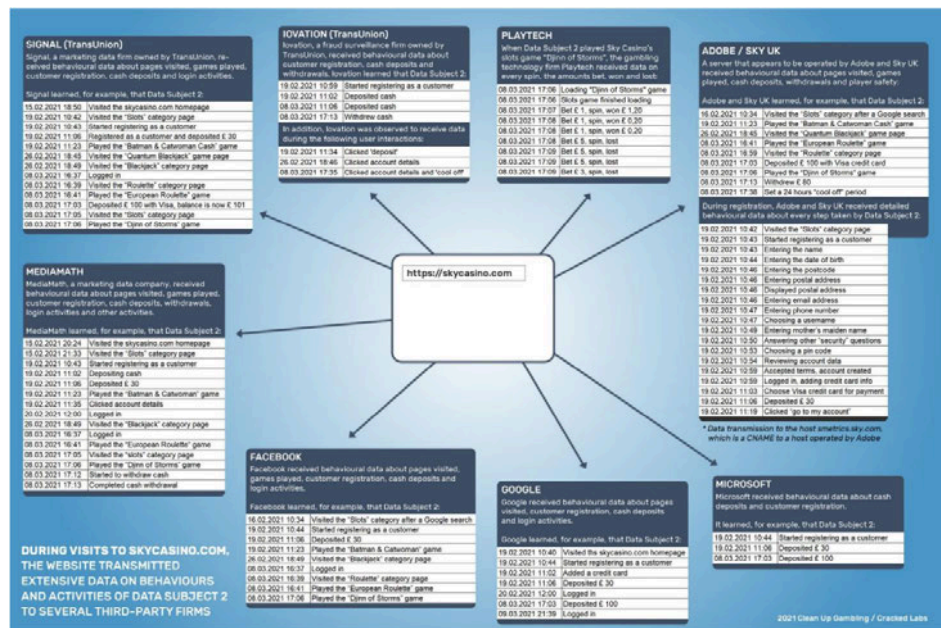
The judgment also records significant concerns as to SBG’s compliance with its regulatory duty to have safer gambling policies which (cited from the Gambling Commission’s guidance in force at the time) “must include specific provision for making use of all relevant sources of information to ensure effective decision-making, and to guide and deliver customer interactions, including in particular provision to identify at-risk customers who may not be displaying obvious signs of, or overt behaviour associated with, “problem gambling” and in doing so to make “specific provision in relation to customers designated by the licensee as ‘high value’”:

“At the relevant time, SBG was not using ‘all relevant sources of information’ about risk of gambling harm to effect any impact at all on direct marketing to high value customers outside its suppression mechanism; it was otherwise keeping marketing and safer gambling completely apart in its modelling, and declining to take account of

available information, for example about affordability, into its marketing models.”
[§190]

Lack of transparency and control over data sharing with third parties

The proceedings in *RTM* confirmed and further revealed the extent of sharing of personal data between online gambling operators and various third parties in the AdTech industry. The Claimant relied on the report by Cracked Labs² that we commissioned and used as a basis for submissions to the Information Commissioner’s Office in 2022.³ That report was accepted in evidence and confirmed as accurate by SBG’s witnesses under cross-examination. This graphic in particular was put to SBG’s marketing witness, who confirmed its accuracy:



But this extensive and opaque data sharing does not stop here. SBG provided in its own evidence a list of 13 third parties who would have received the Claimant’s data at the relevant time. During his cross-examination however, SBG’s witness was shown the Cracked Labs report and had to accept that the list that SBG put in evidence was not complete. He wasn’t able to say, however, how many third parties SBG actually sends data to. SBG therefore provided an incomplete list in evidence because **it doesn’t know exactly who it shares users’ data with**. This is simply shocking and in clear breach of its responsibilities as a controller under data protection law.

But it also raises significant concerns as to its ability to oversee its systems and remain accountable for harm that comes to its customers. Mrs Justice Collins Rice found that in this case the complex processing by SBG and its marketing partners was using the “cumulative

² Wolfie Christl, Digital Profiling in the Online Gambling Industry – Technical Report (Cracked Labs, January 2022),

<https://cdn.sanity.io/files/btrscf0/production/6217f28e8b2360268c0a4d32dc2910897e1d639f.pdf>.

³ Clean Up Gambling, ‘Clean Up Gambling submits evidence to ICO on data abuse’ (16 August 2022) <https://cleanupgambling.com/news/clean-up-gambling-submits-evidence-to-ico-on-data-abuse>.

fine detail” of the Claimant’s harmful gambling behaviour, and used it “*to encourage him to do more*”. [§167]

If SBG itself doesn’t know who it shares data with, how can it provide any transparency to its users?

Quality of oversight

Considering the serious and numerous failings identified in the judgment as to the ability of SBG’s safer gambling systems to protect vulnerable customers and prevent gambling harm, we are concerned that **any oversight by the Gambling Commission in place at the time of the relevant events was ineffective**. The presence of safer gambling policies and algorithmic models did nothing to prevent the considerable losses suffered by the Claimant and the resulting harm on his and his family’s life. We are understandably concerned that the Commission has not appropriately exercised its powers to audit the safer gambling systems, how they operate and the relevant thresholds. It rather appears that the Commission’s audit extended only to whether the systems were in place, rather than a detailed determination of the efficacy and appropriateness of those systems.

In the *RTM* case, Mrs Justice Collins Rice had to grapple with the fine detail of the data processed and the algorithms used by SBG, to come to the conclusion that they were ineffective. The Claimant fought hard in the proceedings to obtain disclosure of the detail of the models used by SBG for both marketing and safer gambling purposes, and the judge went to great lengths to analyse them and understand their relevance to his case.

She read and heard extensive technical information from SBG’s data science witness regarding the data input, design and functioning of their safer gambling models:

89. The indicators were derived from individuals’ raw data, including both single factors such as age, frequency or magnitude of deposits and losses, and the duration and timing of time spent gambling, and also change factors such as a sharp escalation or sudden jump in risky behaviour. These are then aggregated for risk or propensity modelling.

90. As Mr Watkin explained it to me, the ‘safer gambling’ propensity model in place at the period of the present claim mapped an individual’s risky behaviour against that of a gambler who hits the self-exclusion button, giving a probability score of how likely that individual is to be approaching self-exclusion. Mr Watkin accepted that perhaps the gamblers with the very worst problems do not self-exclude at all, and that the self-exclusion propensity model was to that extent limited in design. But he said that self-exclusion was a ‘nice clear data point’, that historical paths leading to it could be described in terms of escalating overall risk, and that those same factors and patterns of risk could then be reverse-engineered into a strong predictive model.

91. There are other aspects of the risk modelling that do not speak for themselves. There are important and accepted descriptors of gambling harm – unaffordability, personal impact – which are not straightforwardly factored in to the modelling for apparent lack of raw data. Past self-exclusion may be an important indicator of future risk, but the model was limited to information drawn from SBG’s own transactional data alone. It did not have access to information about an individual’s behaviour, including self-exclusion, on other firms’ platforms. It did not have access to information about a customer’s finances, health, employment or home life. All of

these are however highly relevant to the identification, and therefore management, of risk of gambling harm.

92. I asked Mr Watkin whether this did not mean that SBG was inevitably operating in an environment in which its modelling depended on a relatively small and partial amount of insight into any customer's absolute risk quotient, and therefore was operating with a large amount of risk that it would not identify customers who were in fact at high risk of harm or sustaining actual harm. He accepted that that was fair. There was in other words a high risk of false negatives. There was a large amount of 'external' or 'contextual' information which was strongly correlated with risk but which SBG did not or could not factor in. But he said the raw transactional data was nevertheless capable of being intelligently analysed for indication of risk.

93. He made an important business model point in this context. Risk modelling is about prioritisation of some customers as more risky than others. The interventions that are triggered are resource-intensive; they lead to human review and interaction – sending awareness messages, or calling customers to check whether all is well. False positives are wasteful, and interfere with customers' entertainment experience. So it is a matter of prioritisation.

Importantly Mrs Justice Collins Rice identified that the only technical control on marketing to problem gamblers was the "binary" suppression threshold:

95. [...] That comes when an individual's risk index is sufficiently high to trigger 'suppression' – the turning off of all direct marketing to them for a period. This is a major intervention, not easily triggered. And it is a cliff-edge or binary mechanism: short of it, the marketing team will continue to market. SBG's witnesses accepted that some of the marketing team's most attractive 'high value' customers might, looked at through the safer gambling lens and with a complete set of information, also be its customers most at risk of harm or actually harming. Without, for example, affordability information it could be difficult to tell the difference between the affluent and happy 'high roller' and the out-of-control problem gambler heading towards bankruptcy. But unless the suppression trigger is activated, the marketing team will market – including in cases where safer gambling interventions short of suppression have been activated. Mr Wilkinson gave one example of data relating to gambling in the morning hours. That can be a marker of harm. But, short of suppression, the marketing model will interpret it as a cue that that is a particularly productive time to send marketing to that individual.

97. It bears repeating, however, that, absent the activation of the suppression mechanism by the safer gambling models, the business did not use risk information it had, or which it could obtain from open sources, or which it could ask its customers about, to moderate its marketing models either. It was all or nothing. An individual scoring for risk just short of the suppression threshold would be treated for marketing purposes without reference to safer gambling risk, including, as a potential 'high value' asset, for enhanced targeting. There were no intermediate stages in which marketing continued but was moderated or safeguarded.

This binary approach to control on marketing to customers at risk of "problem gambling" falls evidently short of what the regulatory framework on gambling-related harms requires. Whatever audits or oversight mechanisms the Gambling Commission has used over the years have obviously (i) not been to the level of scrutiny required, such as that conducted by Mrs Justice Collins Rice and (ii) fallen short of what was required to protect vulnerable

individuals. Had you engaged in the same level of scrutiny as the judge, you would have identified these failings in the same way and prevented harm.

We trust you are now embarking on an audit of all safer gambling systems across the industry. Any such audits you conduct must (i) have access from the platforms to the level of detail required to understand the relevant policies and how they apply (such as the Claimant obtained from SBG to make his case to the judge, and which cause such great concern in her judgment) and (ii) have the relevant technical skill set to understand and scrutinise those systems. You urgently need to put in place sufficient resources, expertise and collaborations (including with the Information Commissioner's Office) to ensure that you have the right tools to monitor the safer gambling mechanisms in your licensees' practices.

We are hopeful that the findings in the *RTM* proceedings will spur much-needed scrutiny over gambling companies' use of their customers' data, both for marketing profiling and for safer gambling purposes. The troves of data they process are overly used to manipulate them into gambling more, and not sufficiently used to prevent them from encountering harm. We urge the Gambling Commission to use its powers to rectify this.

We remain at your disposal should you need further information, and would welcome a meeting with you or representatives of the Gambling Commission to discuss our concerns and recommendations.

Yours sincerely,

[REDACTED]

[REDACTED]