

# The Court of Appeal comments on the scope of the duty of care to self-excluded customers in *Graham Calvert –v- William Hill*

## Introduction

"Self-exclusion" is becoming increasingly familiar as line of attack/defence in claims in the gambling sector. In a judgment just handed down in the case of *Graham Calvert -v- William Hill Credit Limited* [2008] EWCA Civ 1426, the Court of Appeal has given some helpful guidance on the scope of the duty of care which may be owed by an operator to a customer who has sought self-exclusion.

## Facts of the Case

Mr Calvert was already a compulsive gambler by May 2006, when he commenced telephone betting with William Hill Credit Limited ("William Hill"). He was a pathological gambler, whose gambling was at times uncontrolled and potentially destructive.

A frenzy of telephone betting with William Hill lasting just over 4 hours on 9 May 2006 led to Mr Calvert staking a total of £336,600 (albeit ending the day ahead). Mr Calvert, horrified by his own actions, telephoned William Hill later the same day and asked them to close his account and to prevent it from being re-opened. This attempt at self-exclusion failed however, when Mr Calvert telephoned William Hill some weeks later on 27 May 2006, and asked for his account to be re-opened, which it duly was. A further telephone betting frenzy ensued, in which Mr Calvert staked £113,000 with William Hill within an hour. Once again, Mr Calvert ended the day ahead, but once again, he telephoned William Hill to close his account. William Hill duly agreed to take appropriate action, the individual with whom he spoke confirming that William Hill would close the

account and block its reopening. So as far as Mr Calvert was concerned, as at 5 June 2006, his telephone account with William Hill was closed, and he was to be refused further telephone betting with William Hill.

Unfortunately for Mr Calvert however, William Hill failed to close his account at all, with the result that between August and December 2006 there was no procedure in place at all to stop him from staking further sums in telephone bets placed with William Hill. As a result, he lost just under £1.8m.

By mid- December 2006, Mr Calvert had run out both of his money and of all sources of borrowing from friends and was finally forced to stop gambling altogether.

Mr Calvert claimed damages against William Hill, alleging breach of a duty of care owed to him in allowing him to continue to operate accounts with them and to place cash and account bets after 9 May 2006.

## Findings of Trial Judge

At trial the judge found that William Hill had taken on a responsibility towards Mr Calvert on 5 June 2006 to do what they had said they would do, namely to close his account and prevent him from re-opening it, and they were in breach of that duty in failing to implement the agreement.

The judge went on to find that the particular losses Mr Calvert sustained between August and December 2006 by reason of his telephone

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betting with William Hill would not have been sustained but for William Hill's negligence.

Counsel for Mr Calvert argued that the consequence of this finding was an entitlement on the part of Mr Calvert to the net amount of his telephone betting losses for that period. The judge however disagreed, finding that it would fly in the face of commonsense and would be a travesty of justice if a problem gambler were able to attribute liability for the financial ruin, which Mr Calvert soon suffered, to a particular bookmaker with whom he had made the relevant financial losses due to their failure to exclude him at his request, if he would, had he been excluded by that bookmaker, probably have ruined himself anyway by betting with one or more of the bookmaker's competitors.

The court therefore had to form a view on what would have happened to Mr Calvert's gambling career if he had been excluded from telephone betting with William Hill. If he would have ruined himself anyway, the claim must in commonsense fail. The judge was satisfied on the balance of probabilities that, even if he had been deprived of the opportunity to pursue his telephone betting with William Hill in the second half of 2006, he would ultimately have ruined himself financially by the end of 2007. Mr Calvert was already a pathological gambler, gambling gave him a "buzz" and his personal and business lifestyle depended on it. His attempts at self-exclusion from William Hill had not stopped him from gambling elsewhere.

Mr Calvert's claim failed entirely, because the judge found that William Hill's negligence "merely affected the manner in which, and in particular the rate at which, a pre-existing pathological gambling disorder caused the financial and social ruin and the psychological harm which form the basis of his claim, without in any definable way increasing the aggregate amount of either form of harm."

Mr Calvert appealed against this decision.

### Court of Appeal

The main ground of Mr Calvert's appeal was that the trial judge had (claimed Mr Calvert) mischaracterised Mr Calvert's case as to the loss he had suffered. Mr Calvert was not claiming that William Hill had caused his financial loss and social ruin. Mr Calvert was claiming *specific losses* directly caused by William Hill's breach of duty and which, but for the breach of duty, he would not have suffered. Commonsense (it was said) would dictate that William Hill should be held responsible for the direct consequences of their failure to comply

with their undertaking, said to be Mr Calvert's net loss between August and December 2006.

Counsel for William Hill submitted that the trial judge came to the right conclusion for the right reasons. Mr Calvert was the cause of his own losses. William Hill did not assume any responsibility to prevent Mr Calvert from gambling with other bookmakers, nor in other ways than telephone betting with William Hill. He could have gambled with other bookmakers, at betting shops, or on the internet, and he had done so.

The Court of Appeal saw the critical question as being whether the scope of the duty of care in the circumstances of the case was such as to embrace the damage of the kind which the claimant claims to have suffered, namely the specific losses he had incurred as a result of his continued betting with William Hill in the period August to December 2006.

Their lordships found that William Hill did not assume responsibility to prevent Mr Calvert from gambling. William Hill simply assumed a responsibility not to allow him to place telephone bets with them, *not* a responsibility to prevent him from gambling in other ways, and he did gamble in other ways.

The scope of William Hill's duty was to help him to control his gambling. The harm from which their duty was intended to protect him was gambling; to go some way to protect him from his gambling propensity. William Hill did not assume a responsibility to enable Mr Calvert to gamble free from all risk.

Mr Calvert's appeal was unsuccessful and his claim rejected, because the scope of the duty of care did not extend to prevent him from gambling, and because the quantification of his loss could not ignore other gambling losses which he would probably have sustained, but for William Hill's breach of duty.

### Comments

The judge identified significant structural weaknesses in William Hill's internal arrangements for self-exclusion. Good practice would suggest a regular and thorough review of self-exclusion procedures, and written confirmation of the precise nature and extent of the self-exclusion agreement to any customer on every occasion.

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