Neutral Citation Number: [2014] EWHC 2847 (QB)

Claim no: HQ12X04205

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION

ROYAL COURTS OF JUSTICE
Date: 15 August 2014

BEFORE

HIS HONOUR JUDGE SEYS LLEWELLYN QC
Sitting As A Deputy Judge Of The High Court

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BETWEEN:-

THE RITZ HOTEL CASINO LIMITED **Claimant**

and

NOORA AL DAHER **Defendant**

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Judgment

1. In this action the Ritz casino seeks to recover £1m. on unpaid cheques.

2. The parties. The Ritz casino is a high end casino in London Piccadilly. The Defendant is Mrs Noora (or to Western acquaintances "Nora") Abdullah Mahawish Al-Daher. She is a woman of great wealth, derived from family funds in Saudi Arabia from her late father; and her husband is in his own right wealthy from business interests in Oman, and worldwide through a Saudi Arabian conglomerate.

3. Background. Mrs Al-Daher was a member of and has gambled at the Ritz casino since 1999, and at other casino clubs in London over a number of years, in increasing sums of money. The scale of her gambling has been very high. On the evening of 3 April 2012, on one of her visits to London, she gambled and lost £2m. That evening she had signed and given individual cheques in values of £200,000 and £300,000 cheques totalling £2m., in return for which she had received and gambled with chips, but lost and exhausted all of them. The. It had been her habit in the preceding period to sign cheques to the Ritz casino in such sums. The cheques signed by her that evening were promptly presented by the Ritz casino the following day but were dishonoured. In December 2012 she caused £1m. to be paid to the Ritz casino but that left a balance of £1m. outstanding on the face of the cheques dishonoured. It is that £1m. which the Ritz casino seeks to recover.

4. The evidence shows, and it is common ground, that over all this time in order to gamble at the Ritz casino Mrs Al-Daher had signed and given cheques, and if she lost the cheques were always presented promptly by the Ritz casino and paid promptly on presentation. There was a sole exception on one occasion in 2006, when payment was not made on the cheques, the Ritz casino immediately withdrew the cheque cashing facility ("CCF") to which I shall shortly refer, but the sums outstanding on her unsuccessful betting were in fact discharged within 2 days of the betting, whereupon the Ritz casino reinstated her CCF.

5. The present legislation governing gaming in this country is the Gaming Act 2005. Under that legislation in order to have a gaming licence the casino is subject to certain requirements and there are Codes of Practice pursuant to the Act which lay down principles of social responsibility, gaming at a licensed casino is not as such illegal, but the provision of "credit" for gaming by the casino is prohibited. I refer to the statutory provisions below.

6. The principal issues in the present case are: (i) was the system or arrangement between the Ritz casino and Mrs Al-Daher one by which the Ritz casino granted credit, and if so is recovery of the sums claimed required to be barred for illegality? (ii) was the Ritz casino under a duty of care towards her, on the basis that they knew or should have known that she was a gambling addict or problem gambler, either prior to that evening or by reason of what happened on that evening, and if so were they in breach of that duty?

7. Particularly in the case of high value players, the Ritz casino, like other London casinos, may accord the player a cheque cashing facility, "CCF". This permits a player to pay by cheque, as opposed to cash, bank transfer or debit card. Provided a member has a CCF with the Ritz casino, the casino will accept cheques from that member up to the limit of the facility, in exchange for chips enabling the member to play. Mr Marris, Chief Executive of the Ritz casino, deposes that the cheques accepted cannot be post-dated and must be for full value. A "traffic card" is kept for each member who buys chips using a gaming cheque or debt card, ie for any non-cash transaction, recording information such as the number, amount, date and fate of a cheque. The history of gaming and payment of gaming debts by the member is considered by the casino, in order to set the individual limit for the CCF in respect of that member.

8. Over time the CCF limit for Mrs Al-Daher at the Ritz casino had been raised, and since 28 May 2011 had been £1.7m. She was a member of and played at other London casinos. It is clear that when raising her limit to £1.7m the Ritz casino took references from other casinos, which showed that at that time she had CCFs respectively of £1.7m (Aspinalls), £1.7m (Les Ambassadeurs), and £1.5m (Crockfords) (Bundle B/8/336).

9. It is convenient to note here that the dishonoured cheques of 3 April 2012 were scrip cheques, namely cheques bearing the member's banking details, which on request by the member will be sourced by a member of staff from the cashier's desk and presented to the member for signature. Scrip cheques are utilised by gaming institutions worldwide and enable members to play when not in possession of their own cheque book.

10. Credit. The Gambling Act 2005 provides that

> "Section 81 (2)(a) A non-remote casino operating licence or a non-remote bingo operating licence shall by virtue of this subsection be subject to the condition that the licensee may not -
>
> (a) give credit in connection with gambling.
>
> Section 81 (4)
> In this section, "credit" includes
>
> (a) any form of financial accommodation, and
> (b) in particular, the acceptance by way of payment of a fee, charge or stake other than
> (ii) a cheque which is not post-dated and for which full value is given"

11. The Act therefore permits gambling to be carried out lawfully so long as the player has given "a cheque which is not post-dated and for which full value is given".

12. It is common ground that in the case of Mrs Al-Daher, with the tiny blip in 2006 when nonetheless the cheques were paid within 2 days, her cheques were without exception up to 3 April 2012 both presented the next day and immediately honoured when she had made losses.

13. If the result of an evening's play was that the player lost, the cheques signed would be presented the next day by the casino for payment. If at the end of the session the player had won, the cheques signed by her would be torn up or would not be presented.

14. It is contended by Mr Deacon counsel for Mrs Al-Daher that thereby the casino extended "credit" to her.

15. Mr Deacon contends that (i) this shows that the cheque is taken as a conditional cheque only, and/or as security for later payment of any losses under gaming which takes place immediately; and/or (ii) there is thereby an "accommodation" to her, in that it was intended that the cheque be cashed only if she lost; and/or (iii) the cheque was not "for full value" in that they acted merely as security pending settlement at the end of play when the obligation to pay for the chips might not arise.

16. He further sought support in two authorities.

17. In *Aspinall's Club Limited v Fouad al-Zayat* [2008] EWHC 2101 (Comm) Teare J said at paragraph 42, (in relation to section 16 of the Gaming Act 1968),

> "The ordinary and natural meaning of credit in the context of section 16 of the Act is "time to pay", in the sense of deferring or postponing the punter's obligation to pay for the chips he is about to use.. or has used .. Credit may be provided or allowed unilaterally in the sense that the bank will defer or postpone the obligation to pay..".

18. In *R v Knightsbridge London Crown Court ex p. Marcrest Properties Ltd* [1983] 1 WLR 300 at 308G ,

> "*The course of dealing between Marcrest and their customers over a long period and involving numerous cheques, demonstrated that it was the intention of the parties that there was to be no legal right to have a cheque honoured when presented*. The only lawful cheque contemplated by s16 (2) and (3) of the Act of 1968 is one in which there is a common expectation of payment on presentation within two days. **What was provided was a sham; it was not better than, if as good as, a post-dated cheque. As the Lord Justice rightly commented, its function was merely to record a loan of money or tokens to that value**" (emphasis in bold supplied by Mr Deacon, emphasis in italics supplied by the court).

19. In my judgment the 2005 Act as a matter of purpose and policy balances two interests. In contrast to historical legislation, it expressly recognises gaming as a proper and lawful activity, where it is for the individual to choose to engage in or refrain from participating in it. (See section 335 of the Act, which provides that "The fact that a contract relates to gambling shall not prevent its enforcement"). Equally its prohibition of credit is intended to ensure that an individual should not be permitted to gamble unless he has the means immediately to pay for the wager if he loses; since otherwise he may, or may be encouraged to, wager what he cannot afford to pay; hence the provision that "credit" does not include the giving of a cheque which is not post dated and is for full value.

20. The authorities cited by Mr Deacon seem to me to be far removed from the present case. In *Aspinall's*, the court found that the Defendant requested the Claimant to allow him one year to pay off his debt out of his winnings at the club and a Mr Osborne on behalf of the Claimant assented to that request (para 25). It was an obvious case of accommodation and the court was resolving whether the accommodation must at least be communicated to the punter, and whether it had been. In *Knightsbridge*, the case proceeded on the basis that the casino repeatedly accepted cheques from persons whose previous cheques had been dishonoured in circumstances in which the casino knew that those cheques would not be honoured on first presentation, so the giving of cheques was a sham (at page 308F-G).

21. I accept that if it is found on the facts in a case that the player signs and the casino accepts a cheque as a charade or pretence, (for example if both know that the player could not ever pay upon presentation of the cheque), the proper finding of fact, as much as in law, is that credit is in truth being extended or accommodation made. That is not this case.

22. Suppose that when Mrs Al-Daher won, rather than simply tearing up her cheques, the Ritz casino were still to present the cheques for payment the next day, but paid out at the end of the session a cheque for a sum in the total amount of the signed cheques plus her winnings. I asked Mr Deacon whether he accepted that this would be lawful, where in the case of Mrs Al-Daher, uniformly (i) cheques were promptly presented (on the occasion of every loss) (ii) the expectation was complete, on the part of both Ritz casino and Mrs Al-Daher, that if cheques were presented they would be honoured and (iii) there was no doubt as to her ability immediately to pay for the wager if she lost. I understood him to accept that it would be lawful and there would be no unlawful extension of credit or accommodation. That seems to me irresistible, in that the Act expressly permits the giving of a cheque by the player not post-dated and for full value.

23. In my judgment it is artificial in the extreme if, when she has won at the end of the session, if her signed cheques are torn up it must be found that the acceptance of them is thereby an unlawful extension of credit, whereas if she is given a cheque (or cash) to the sum of her cheques plus her winnings, and her own cheques are presented the next day, the acceptance of her cheques is not an unlawful extension of credit.

24. Nonetheless Mr Deacon's analysis must be examined on its merits in law.

25. First, in my judgment construction of the 2005 Act itself must be made mindful of its policy and purpose; and in the light, if relevant, of changes from or the content of any prior legislation.

26. As I have set out above, I consider that its provisions against the giving of credit are founded in policy that an individual should not be permitted to gamble unless he has the means immediately to pay for the wager if he loses. In a case where the giving of the signed cheques is not a sham, the construction advanced by Mr Deacon furthers that purpose in no way.

27. In addition, the 2005 Act was a liberalising Act, as is illustrated by the provision in section 335 (that the fact that a contract relates to gambling shall not prevent its enforcement). Under the Gaming Act 1968, section 16(1) provided that a licence holder shall not make a loan or otherwise provide credit for enabling any person to take part in the gaming. Section 16 (2) provided,

> "Neither the holder of the licence nor any person acting on his behalf or under any arrangement shall accept a cheque and give in exchange for it cash or tokens for enabling any person to take part in the gaming unless the following conditions are fulfilled, that is to say, -
>
> (a) the cheque is not a post-dated cheque, and
> (b) it is exchanged for cash to an amount equal to the amount for which it is drawn, or is exchanged for tokens at the same rate as would apply if cash, to the amount for which the cheque is drawn, were given in exchange for them;
>
> But, where those conditions are fulfilled, the giving of cash or tokens in exchange for a cheque *shall not be taken to contravene subsection (1) of this section*." (emphasis supplied).

Thus, under the previous Act, the casino would have been indisputably entitled to enforce recovery under the dishonoured cheques in question. (As Lloyd, LJ observed in *Crockfords Club v Mehta* [1992] 1 WLR 355 at 365E-G, section 16(2) validates the whole transaction). If Mr Deacon is correct, then despite the 2005 Act being a liberalising Act, it has restricted the rights of recovery of the casino.

28. Second, if it is said that there has been an extension of credit, the court is entitled, in my judgment, to look at the reality of the transaction, process, and actual recovery of payment. In the present case, the signed cheque is given, and gaming occurs and is concluded, at a time outside banking hours when it is not possible to present the cheque for payment. No greater period of credit is given by waiting for the end of the session and then reckoning whether the player has lost or won.

29. Third, I take as a starting point that 'the ordinary and natural meaning of credit in the context of section 16 of the Act is "time to pay" ' Teare J). However the correct analysis is, in my judgment, that for which Mr Freedman QC leading counsel for the Claimant contends. Provision of a cheque in respect of a concurrent liability to pay a price suspends that liability until the cheque has been dishonoured, in which case the suspension ceases to have effect and the debt becomes immediately payable. But if the cheque is then redeemed before banking business hours, the initial giving of the cheque did not thereby become the provision of credit. At the time when it was given, the cheque was one within the description, and purposive construction, of section 16(2) of the 2005 Act.

30. In the particular circumstances of the present case, there was no possibility of the cheque or cheques being presented to the bank for payment during casino playing hours in any event, and so it is difficult to see in practical terms what "credit" was being given, when it was the understanding and intention of both parties at the time the cheque was given that it would be paid on presentation. However one would not wish the lawfulness of a cheque to depend on whether a cheque was given to the casino during playing hours which are within, or outside, business hours. The analysis offered by Mr Freedman avoids the possibility that lawfulness depends on any such adventitious matter.

31. Fourth, in my view this conclusion is supported by a further and independent argument. Mr Freedman QC leading counsel for the casino submits that the correct analysis of the nature of a gambling chip is as set out in *Lipkin Gorman v Carpnale Ltd* [1991] 2 AC 548.

Lord Goff stated, at 575G,

> "In common sense terms, those who gambled at the club were not gambling for chips: they were gambling for money. As Davies LJ said in *CHT Ltd v Ward* [1965] 2 QB 63 at 79,
>
> > "People do not game in order to win chips; they game in order to win money. The chips are not money or money's worth; they are mere counters or symbols used for the convenience of all concerned in the gaming." "

Lord Goff made the analogy, if a large department store were for reasons of security to decide that all transactions in the store are to be effected by customers using chips instead of money, and the customer obtains chips to the amount he needs in exchange for cash:

> "For in substance and reality, there is simply a gratuitous deposit of money with the store, with liberty to the customer to draw upon that deposit to pay for any goods he buys at the store. The chips are no more than the mechanism by which that result is achieved without any cash being handed over at the sales counter" (at 576B –G).

32. Leading counsel contends that the chips are a convenient mechanism for facilitating gambling with money. If money is deposited, and the same would apply to a cheque, it is a gratuitous deposit with liberty to the casino to draw upon when and if a debt arises. In turn, the debt does not arise until the end of the session when it is ascertained who is the winner and who is the loser as between casino and player, whereupon a debt arises from the loser to the winner.

33. In my view that analysis is correct. Mr Deacon submits that the House of Lords *in Lipkin Gorman* was considering a different problem, whether the casino holder of a stolen cheque had given value for the cheque. That is true, but (i) I consider that the analysis of the exchange of cheque for chips remains relevant and (ii) I respectfully consider that it corresponds to the realities of gaming in the present case.

34. In argument in reply, he suggested that if this were so the casino might not take a cheque until the end of the session. If so, that would be a different factual situation: if no cheque were taken until then, there would be credit for the time between the debt arising at the end of the session and the cheque being provided, and whether that was a substantial or a very short time would be within the mischief of credit within the meaning of the Act.

35. Fifth, the distinction which Mr Deacon is forced to draw between the case where the cheques are torn up when the player has won, and that where they are not torn up but the casino gives the player a cross payment of their amount and his winnings, is so artificial as to demand that the court reject his analysis and construction of the Act unless it is unavoidable to do so. For the reasons set out above, I do not accept such a construction and I prefer the arguments of Mr Freedman QC.

36. Mr Deacon argues that the witness statement of Ms Rees, solicitor for the Claimant, acknowledges that cheques are held by the Ritz casino as security only, in that at paragraph 48 she stated, “The cheque is a security for a future liability. There will not be a debt unless and until the gaming takes place and is concluded in favour of the casino”. Mr Deacon laid stress on the first of these sentences. I consider that they have to be read together, and so the context is the argument encapsulated at paragraph 29 above and following; but in any event it is the legal analysis which must prevail not the words by which Ms Rees expressed it.

37. Mr Deacon also drew my attention to the policy adopted by the Ritz casino, (in common with other casinos), for overseas players, whereby “In respect of customers who are visiting the UK from overseas, to avoid the unnecessary return of cheques, the normal banking procedures is(sic) that the casino will *normally* hold *all* cheques for *all* overseas customers until the end of their trip, subject to the maximum period of [10 days] ..” (Bundle D at p163). He says that this is a plain “accommodation” or giving of credit, in breach of the provisions of the 2005 Act, and shows the readiness of the Ritz casino to give credit. The short answer to this is that this was not ever applied or expected in the case of Mrs Al-Daher.

38. I hold that there was no unlawful giving of credit to Mrs Al-Daher.

39. I think it proper to set out what conclusion I would reach in the present case, and my reasons, if I were wrong in my analysis that there was no unlawful provision of credit.

40. The case for the Defendant was that since there was unlawful giving of credit, there was illegality; and since there was illegality, the claim must fail. I am told that there is no decided case on the point. Chitty takes the view that the provision of credit contrary to the Act would render the gambling contract unenforceable (see 40-018-20). Mr Freedman was willing to acknowledge that the considered opinion of the authors of Chitty carried force. For my part, since the policy and purpose of the Act is to protect a player from wagering beyond the extent of his immediate ability to repay, and to protect him from being encouraged to gamble more than otherwise he would, I consider that the courts would and should be willing to decline to enforce the gaming contract, and the cheque there given, if to do so would satisfy that policy and purpose.

41. However the law of England and Wales has evolved in relation to illegality, from a blunt refusal to enforce any contracts where some element of illegality is found. In particular, Mr Freedman QC drew my attention to *ParkingEye Ltd v Somerfield Stores Ltd* [2012] . In that case Sir Robin Jacob recognised the role of proportionality in deciding whether to allow or refuse enforcement for illegality, not by a discretion based on public conscience, but rather "It involves the assessment of how far refusal of the remedy furthers one or more of the specific policies underlying the defence of illegality" (paragraph 39). Likewise, Toulson LJ (as he then was) stated, "Rather than having over-complex rules which are indiscriminate in theory but less so in practice, it is better and more honest that the court should look openly at the underlying policy factors and reach a balanced judgment in each case for reasons articulated by it" (para 52). He continued, "In some parts of the law of contract it is necessary in the interests of commercial certainty to have fixed rules, sometimes with exceptions. But in the area of illegality, experience has shown that it is better to recognise that there may be conflicting considerations and that the rules need to be developed and applied in away which enables the court to balance them fairly (para 54). He further referred to long established authority illustrating that "One can see the justice of treating a party who deliberately sets out to break the law in a serious respect, such as overloading a vessel, differently from a party who breaks the law without meaning to do so or in a way which may be minor".

42. A consideration in favour of barring recovery, under an Act which has a central purpose of prohibiting credit in order to provide as a balance and check to the proper respect which the legislation enshrines for the autonomy of a player to choose to gamble if he so wishes, would be the general regulatory effect of doing so.

43. In the contrary sense,

(i) in my view it would be lawful for the gaming to be carried out if the casino adopted the somewhat cumbersome procedure of presenting every signed cheque for payment come what may, even if the player had won at the session, but at the end of the session rendering to her a cheque or cash which balanced those cheques and winnings. The distinction between that case and the present is, in my respectful judgment, artificial in the extreme.

(ii) Mrs Al-Daher had an irreproachable history of paying on presentation over 15 years and was a woman of great wealth. If the circumstances give rise to a duty of care to her, and breach of it, then there is a remedy in law for any loss caused by it. That is an independent matter. As to the process of cheque signing and presentation itself, this is an experienced player giving cheques exactly as the Act expresses is lawful; it is only the process of reckoning which impacts on it.

(iii) In her case there is, as a matter of fact, no extension of the period before cheques are presented and there has not ever been such an extension.

(iv) I am satisfied that there was no sham and no deliberate setting out to break the law as to the giving of credit by the Ritz casino.

44. In these circumstances, applying the principles identified in ParkingEye, and balancing the policy and purposes of the Act and the elements of this individual case, I would not have refused enforcement upon the cheques.

45. I add that I have considerable doubt whether it was the intention of Parliament to withdraw the right to enforce which would have applied under section 16(2) Gaming Act 1968, but I have thought it proper to exclude that from the balancing exercise.

46. Duty of care and/or breach. The case for Mrs Al-Daher is that the Ritz casino did owe her a duty of care "to stop her gambling or to encourage her to stop gambling on the evening of 3 April 2012". Mr Deacon expressly disclaimed any claim based on duty of care to recover sums paid by her in respect of losses prior to that date.

47. He contends that the building blocks of the duty of care are assembled in particular from the following : (i) the Codes of Practice issued by the Gambling Commission under the 2005 Act; (ii) the special relationship where one party assumes or undertakes a responsibility to another; combined with (iii) the policy or policies of the Ritz casino itself; (iv) the evident and substantial rise in the limit of the CCF permitted to her by the Ritz casino; and (v) what was or should have been noted by the managers and staff of the Ritz casino on the evening of 3 April itself.

48. The pleaded case of Mrs Al-Daher is further that she was a gambling addict, that signs of that were apparent that evening both by how much she gambled in the period leading up to, and on the evening of, 3 April 2012 itself; by how she gambled; and by what she said.

49. I recite these not in order to exclude any other relevant features of fact which may be derived from the evidence, but to identify those elements on which it seems to me that the submissions focus.

50. Further or alternatively Mr Deacon relies on the familiar three stage test to identify whether and what duty of care exists namely proximity, foreseeability of harm and whether it is fair just and reasonable to find a duty of care, drawing attention to the inherent vulnerability of a problem gambler. Neither Mr Deacon for the Defendant nor Mr Freedman QC for the Claimant made elaborate citation of authority as to the three stage test.

51. As to breach of that duty of care, Mr Deacon argued that breach is incontestable, in that no-one sensibly should have gambled that evening, following heavy losses immediately before and over time before, and the Ritz casino should and could not sensibly in her interest have allowed her to gamble. In particular, on arrival she expressly stated "I am not here", which was and should have been understood as a wish not to gamble; she was positively encouraged or reassured by staff at the Ritz casino that evening to continue to gamble when she expressed the wish to stop; members of staff stood behind her with scrip cheques ready to be signed; and/or when she asked for gaming chips to play on placing bets in excess of her CCF of £1.7m., a figure staggering in itself, she was wrongly allowed to do so by a further £300,000.

52. I turn first to the elements relied upon to found a duty of care.

53. <u>The Codes of Practice</u>. By s24 of the 2005 Act,

> "(1) The Commission shall issue one or more codes of practice about the manner in which facilities for gambling are provided ..
>
> (2) In particular, a code shall describe arrangements that should be made by a person providing facilities for gambling for the purposes of ..
>
> … (c) making assistance available to persons who are or may be affected by problems relating to gambling.
>
> (8) A failure to comply with a provision fo a code shall not of itself make a person liable to criminal or civil proceedings but this subsection is subject to any provision of or by virtue of this Act making an exception to an offence dependent on compliance with a code ..
>
> (9) ..a code
>
> (a) shall be admissible in evidence in criminal or civil proceedings;
>
> (b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant".

54. In turn, section 82(1) of the 2005 Act provides that

> (1) An operating licence shall by virtue of this subsection be subject to the condition that the licensee shall ensure compliance with any relevant social responsibility provision of a code of practice issued under section 24".

55. Elements (ii) and/or (iii). Assumption of responsibility and the policy of the Ritz casino itself. Mr Deacon cites from the "Policies and Procedures" of the Ritz casino the following.

> "Principal Commitments.
>
> The Ritz Hotel Casino Limited is committed to upholding the Gambling Act 2005 objectives of:
>
> …. (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.
>
> The Ritz club recognises that, while the vast majority of people gain amusement from gambling, there are those who are unable to control their gambling and for whom the activity causes serious problems.
>
> [Bundle B/247] The Ritz club recognises that, while the responsibility for an individual's gambling is his or her own, *there is an obligation on casino operators to act in a socially responsible way and exercise a duty of care towards customers and staff*" (emphasis supplied).

56. Mr Deacon also relies on the "Policy on Social Responsibility and Responsible Gambling" of the Ritz casino.

57. First, this allows for self-exclusion for a fixed period by customers who wish to do so because they have difficulty in controlling their gambling. Second, Mr Deacon draws attention to the particular policy for customer interaction, citing in his submissions that part of it which states ,

> "All staff who interact with customers will be trained
>
> To recognise general behaviour that could be indicative of problem gambling ..
>
> All managers must be prepared to :
>
> respond positively and sensitively to immediate signs of distress or indications that a customer has lost control of their gambling;
>
> give detailed advice about the Club's self-exclusion facility, the availability of organisations that provide advice and assistance and have information on helpline numbers immediately to hand;
>
> give consideration to refusing service and/or barring the customer from the premises".

58. As to what the general behaviour is, which could be indicative of problem gambling, and which staff will be trained to recognise, it is appropriate to record the full words of the policy, in order to more fully understand the context contemplated by the policy for the Ritz casino.

59. The policy reads in full,

"All staff who interact with customers will be trained

- to recognise general behaviour that could be indicative of problem gambling;
- that indicative behaviour may include intense mood swings, paranoia, agitation, anxiety, remorse, aggression, obvious money difficulties, lack of personal hygiene and violence towards staff, property or the player himself;
- to report any concerns about a customer or any approach by a customer about him or herself or about someone else to a manager immediately;
- that only a manager may initiate customer interaction."

60. The increases in limit of the CCF . Over the years the Ritz casino increased the CCF accorded to Mrs Al-Daher very substantially. It increased from £100,000 to £1,700,000 as follows :

14.07.2003	£ 100,000
19.07.2003	£ 200,000
05.08.2005	£ 300,000
21.08.2005	£ 500,000
17.06.2010	£1,000,000
11.06.2011	£1,700,000.

61. Further her total "drop" on the tables at the Ritz casino since 1999 was £20,339,000 and her total loss there was £7,047,000 (Mr Marris, first witness statement paragraph 8 and exhibits). Mr Deacon stresses that the gambling increased in intensity as time went on and in particular in the period leading up to 3 April 2012. Between 1.01.2011 and 3.04.2012 she gambled £10,700,000 and lost £6,470,000.

62. The events of 3 April 2012 itself. The essence of what Mrs Al-Daher says in her witness statement(s) and oral evidence is set out at paragraph 51 above, to which must be added her evidence as to gambling addiction.

63. The essence of the evidence for the Claimant is that Mrs Al-Daher did not on entering the club, or during her playing, express or convey unease, distress, or a wish to "stop", that there was no positive encouragement by staff for her to continue, and that when she requested an increase in her CCF to £2m. Lyndsey Barrett came and spoke to her, asked her whether she was comfortable with doing so, noted nothing untoward, and accordingly granted properly the excess facility.

64. The evidence. I received evidence by witness statement and orally on the part of the Claimant from Mr Marris (Chief Executive of the Claimant); Lyndsey Barrett, (Director of Operations with responsibility for day to day management of the club and for making decisions with regard to requests to have or to increase a CCF); Russell Nubley a casino manager on duty during the earlier shift on 3 April 2012, Neil Whetton a "pit boss" on duty that evening, whose job was to supervise observe and manage the gaming area, also Cameron Marvin a "Director of Customer Relations" whose job was to make or help to make bookings and other practical arrangements for valued customers which smooth their experience while in London.

65. I received evidence by witness statement and orally on the part of the Defendant from herself and Mr Makhari himself a gambler and known both to the Defendant and to the Ritz casino who, in his own words, "looked after him" because he was associated with the Defendant.

66. I also heard evidence from Mr Andrew Love Chairman of the Claimant and from the Defendant herself in respect of a single incident alleged by her to have taken place in February 2012 which is of no importance to the principal issues in the case. The Defendant had served witness statements to it from a Maurice Batson but he was not called, having asserted illness.

67. Addiction to gambling. The Defendant's case is that she suffered from an addiction as to gambling.

68. I turn first to evidence on the Defendant's side. There is no medical or psychiatric evidence in support of her claim to have been addicted. The correspondence between the parties shows that in these proceedings the Claimant has pressed for disclosure of any medical evidence. That which was disclosed was a medical report from Dr Ahmed Said Bait Amer a Consultant in Psychiatry whose report dated 9 February 2014 says, in total, "Miss Noora was suffering from prolonged history of insomnia for the last previous 9 years. According to her history there was no obvious psychiatric disorder but insomnia can be interlinked to her stiff shoulder which increased at the evening time. Recommendation: She can benefit from acupuncture and continuous sessions of relaxation therapy" (Bundle E2-642). The Defendant explained to me that it was difficult for her, as a Muslim, and as a Muslim woman, to express her problems to a Muslim doctor practising in a Muslim country(even to Dr Amer, who is a Consultant in behavioural medicine). This might be an inhibition in the country of her residence, but she is a woman who regularly stays in London and I do not see what inhibition or difficulty there would have been in giving her account to and securing a report from a doctor with the relevant expertise in this country.

69. The Defendant's case is that she had been the victim of an addiction to gambling since 1999. In her oral evidence she said that it was in 1999 that she herself became aware that she had an addiction to gambling. In answer to a question from myself, she told me that from 1999 onwards she was not in control.

However in her witness statement (second, 28 February 2014 paragraph 16) she said this "throughout the years, I could not admit to myself who I was becoming in respect of my gambling habits. I refused to deal with the thought that I was a "gambler" and for that matter a "high roller". I always felt that I was in control and could stop whenever I wanted to. I therefore continued to move from casino to casino gambling and losing and winning and then starting all over again".

70. In the period between the dishonour of the cheques immediately after 3 April 2012, and the payment of one million pounds in December 2012, there were a number of conversations between representatives of the Claimant and either the Defendant herself, or somebody who was deputed to answer on her behalf. Illustratively, Mr Roger Marris Chief Executive of the Claimant had discussions with a Mr Al Geabry, Mr Makhari, Mr Walrond and the Defendant herself. In none of these conversations was there any suggestion that the Defendant had, or believed she had, an addiction to gambling. As will be seen below, on the contrary, assurances were being given by others that she would pay and by herself that she was an honourable woman and would pay.

71. Before 2013, there was no report or suggestion to the Claimant of such an addiction and it was not suggested to witnesses that there had been. When in cross examination it was put to the Defendant that it was only in 2013 that she said for the first time that she was an addict, she replied "No I did say it in the night of my gambling. I was going crazy about it. I did say it". She said that she had said this to Lyndsey Barrett earlier on the night of 3 April 2012 itself.

> "I was talking to her and she said "why you come so early to the club?" I says for her "Come on Lyndsey, leave me alone. I've lost about a 12 millions around and really involved with the game and addicted, leave me alone".

Her account was clear that she had said this to Lyndsey Barrett before going to the table or gambling at all that evening. If so it would be of profound and obvious importance in this case, yet this appears nowhere in her witness statements and nowhere in the handwritten letter/card to which I refer below of June 2012.

72. On the Claimant's side, the evidence of those who had dealings with the Defendant was that whenever she visited the Claimant's casino, she was relaxed, easy, generous to staff, and betrayed no signs of stress or difficulty in measuring what she did.

73. Increases in CCF. At the time of request by the Defendant to increase her CCF to £1,000,000, Lyndsey Barrett wrote in an e-mail to Tim Cullimore, (then Chief Executive Officer of the Claimant, and copied to the Chairman Andrew Love), "The above member was in tonight and requested a higher CCF, at the moment she has £500k and she asked for one million. We rang The Rendevous for a trade ref and all was confirmed, with excellent

paying history for many years, she also has an unblemished history with us since 2005 and Crockfords. Unless I hear from you I will mark her up for one million from 2.00 pm today as she said she will be in". The reply from Mr Cullimore was, "she has indeed been a steady player over the years. If you are sure that making such a big leap will not make her overreach herself. Do you know what facilities she has at The Rendevous or elsewhere?"

74. It was in May 2011 that the Defendant requested a higher CCF facility of £1.7 million. An email from Lyndsey Barrett dated 28 May 2011 to Mr Love states "we called Crockfords, Aspinalls and Les A. Crockfords: CCF £1.5 million high action of £2 million paid high action 4 times, no problems at all with £1.5 million. Will mark her up next time to £2 million. Aspinalls: CCF £1.7 million, never any problems. Les A: CCF £1.7 million, used on many occasions, never a problem. The trade references were exceptional as expected from this player, I matched the trade reference of £1.7 million".

75. In cross examination it was put to Lyndsey Barrett that the Claimant was only interested in establishing that the Defendant was good for the money. First, the evidence of Lyndsey Barrett, which was at all times internally consistent, was that this was not so. Second, there was in evidence the Claimant's social responsibility policy, and I am satisfied on the evidence that this was a policy of which account is taken. Lyndsey Barrett was the Relationship Manager for the Defendant. In answer to my own question, she told me of an occasion when she had observed a change in a particular customer in him coming more frequently than ever he had, playing with more money than usual, she asked him if everything was OK because she was concerned about his playing and the way that he was quite erratic on the table, and on him divulging many concerns, she barred him from playing, and he thanked her for it.

76. <u>The means of the Defendant</u>. The scale of her wealth, or access to wealth, is an inescapable feature of this case, as is the fact that for those with the means to do so it may be acceptable or even enjoyable to ride the roller coaster of losses. It appears that the Defendant did so. As to wins and losses, on 29 April 2011 and 28 May 2011 she had very large losses respectively of £1,197,500 and £1,562,000; on the occasion immediately preceding, on 19 March 2011, she had won £471,300. In the year following, and prior to 3 April 2012, she had winnings of £410,500 [19.08.2011]; £69,500 [25.08.2011]; £962,500 [01.11.2011]; £432,000 [08.11.2011]; and £707,700 [03.01.2012] (see Bundle D109). As to the scale of her wealth, the Defendant agreed in cross examination that she had access to tens of millions of pounds, and illustratively that in the course of 10 days in December 2012 she received a total of £6,000,000, transferred "because I needed the money to pay for the kids, you know. This is the main reason", and with regular access to millions of pounds or their equivalent which accumulated in family funds derived from her father and on which from time to time she could and would draw.

77. In closing submissions Mr Deacon counsel for the Defendant emphasised that whilst there was claim by her that the Claimant was in breach of a duty of care to her, she was not seeking recovery of any losses made prior to 3 April 2012.

78. The evening of 3 April 2012: the evidence of the Defendant . I have touched above on her account of that evening. She says,

> "I believe that The Ritz ought to have known that on the evening of 3 April 2012 I was in no state to gamble and should not have allowed me to do so. I believe that the casino owed me a duty of care to ensure that I was in a fit state to play and that having heard of my losses in the other casinos previously ought not to have encouraged me in the manner in which they did or to the extent of increasing my facility".

She says that she was in a distressed and distraught state, in particular when she attended that evening she informed them all that no-one should know that she was there.

> "The actions of the employees of encouraging me to gamble by having prepared cheques for me to sign, did not allow me any opportunity whatsoever to reflect on what I was doing. Although I kept saying I had had enough and wished to stop the game, they continued to encourage me to play".

She further says,

> "I needed someone that night to tell me to stop playing and bring me to my senses. If I had been told to stop of course I would stop immediately. No-one ever told me to stop or to think about my gambling. They kept on encouraging me. They always say "you'll win" or "you'll make it tonight" or "you'll have good luck". No-one mentioned exclusion" (witness statement 28 February 2014 paragraphs 34-36).

79. Her oral evidence, as I note above, is that she expressly informed Lyndsey Barrett that she had had heavy losses in the casinos in London immediately preceding. Her evidence is also, by witness statement and in oral evidence, that the request which she made to increase her facility beyond the CCF of 1.7 million to £2 million was granted cursorily, and without enquiry.

80. She also asserted that after playing she met Lyndsey Barrett, who "told me that she was aware that I had visited other casinos and had lost heavily. She then whispered to me that she was leaving The Ritz and asked me if I wanted her to present the cheques. I told her yes that they could do so. Lyndsey told me that if I did not pay the casino they wouldn't be able to do anything".

81. This is an account of a vulnerable woman who was not merely permitted, but encouraged by the staff of the casino to gamble that evening, and to carry on gambling, when she was losing heavily.

82. If these were her feelings and her belief on the evening, they find no expression in her own communications to the Claimant or what was relayed on her behalf by Mr Al Geabry, Mr Makhari or Mr Walrond.

83. As to her own communications, direct to Lyndsey Barrett on or about 17 May 2012, she stated,

> "Hi Lyndsey… You shouldn't be worried at all and it's so strange for me! You've been told from my bank everything will be settled soon when I arrive to London. No-one from the club call or ask for me, coz they know me vary well. What happened last trip… Why u bothering yourself, stop stress yourself about this matter, u should be proud to have a client like me in your club coz I'm the best punter in London and u know that, to be honest I came to your club coz of u, not coz the club is good if the club is good they won't bother about it and wait for their payment. That's why I don't came to your clubs often coz the way u r act now makes me think that you think I'm not honest. I can assure I'm a woman of my mean and no-one can avoid that. Please relax and if u don't this is your problem, u know I'm going to Las Vegas soon and I'll pass by London. So do u think even if I'm late I'll not pay!!? And if u can't wait I can't helped, sorry I don't mean to be rude but this is too much to bother me for things I know about it and fully" (Bundle B416).

I interpose that on going to Las Vegas shortly after this she her husband and family gambled and lost some $5 million.

84. A card, handwritten for the Defendant by her daughter, but which she confirmed did express her feelings commences, "To The Ritz Club my exclusive favourite club!", thanks them for some flowers that had been sent, and then says

> "I will give you a visit as soon as I arrive so we can have dinner and discuss the matters unresolved. Don't worry, I assure you that everything will go to plan and be OK. I am a woman of my word so see you soon".

I need not set out in detail the assurances that were given on her behalf that the sum outstanding on cheques would be honoured in due course, and that the Defendant was an honourable woman, since she agreed in evidence that she had herself expressed this view to those at the Ritz casino.

85. When, in December 2012, a payment of £1 million was made by the Defendant to the Claimant, no reservation complaint or qualification was expressed as to the events of 3 April 2012.

86. In her witness statement of 28 February 2014 the Defendant stated that while she was at the table gaming "at one point I held my hands up and I said "stop" I didn't wish to go on but I was told try again this time you will win" (paragraph 30). In her first witness statement dated 18 June 2013, she had stated "I started playing and soon started losing. I decided several times to stop playing and would put my hands up saying "enough, enough". However the staff kept telling me a little bit more you will win." In cross examination the Defendant was not willing to accept that there was a difference between the two. In my judgment the distinction is stark between protesting once and doing so on several occasions, when it goes to a critical and central part of her account.

87. As to the evening of 3 April 2012 itself, the Defendant told me that she had herself at the outset of the same evening told Lyndsey Barrett that she had lost millions. If so it may be slightly odd that, after the Defendant had finished playing, Lyndsey Barrett should then have 'told [the Defendant] she was aware that I had visited other casinos and had lost heavily' (witness statement 28 February 2014 paragraph 32).

88. As to a subsidiary matter, in support of her case that she had been encouraged to gamble the Defendant relied on a visit which she says she was encouraged by Lyndsey Barrett to make to a fortune teller. This was a Jayne Wallace at Selfridges. "Lyndsey told Jayne I had lost money and Jayne said it would be my lucky year and I would recover my money and I would be successful" (witness statement 28 February 2014 paragraph 26). On the Defendant's side, Lyndsey Barrett accepted that there had been such a visit but said that she had not herself participated in the private discussion between the fortune teller and the Defendant. In the Defendant's witness statement, this was stated to have been in 2011; in her oral evidence, the Defendant told me variously that it was on an occasion after 3 April 2012, and that it was on an occasion before 3 April 2012, but on a single occasion (and one which was plainly in context not 2011). If she regarded this as part of the encouragement to gamble of which she complains, and the more so on the part of a person whose conduct she criticises on the evening of 3 April 2012 itself, the variation in recollection is surprising.

89. The Defendant also agreed in cross examination that in the course of that evening she gave £14,000 by way of tips to staff, including to the dealer. It is conceivable that a woman of great wealth, described by witnesses for the Claimant as friendly and generous to the staff, would make generous tips to the staff on this evening, notwithstanding that she was very upset and had been encouraged by the staff somewhat against her will to continue to gamble. It is however not what one would most readily expect.

90. <u>The evening of 3 April 2012: the Claimant's evidence</u>. On the Claimant's side, I have noted in outline that each of the witnesses present that evening who were called by the Claimant spoke of the Defendant as being her usual self and not showing signs of distress.

91. One of those witnesses does give support to some mention by the Defendant of a prior loss. Mr Whetton pit boss with responsibilities to supervise the gaming area stated "Mrs Al Daher was quite friendly with Mrs Lyndsey Barrett (former Director of Gaming) and I think, at some point before play started Mrs Barrett came to speak to her. I cannot recall the exact details, but there may have been a brief mention that she (Mrs Al Daher) had lost money in the Playboy Club but the conversation was friendly and she did not seem unduly upset" (witness statement 15 May 2013 paragraph 6).

92. It was Mr Whetton who believed he may have handled the first few cheque transactions that evening for sums of £200,000 or sometimes £300,000. He said "this was quite usual for this player and there was no indication that Mrs Al Daher was unhappy, even when losing up to £1 million. Each time she asked for more money I went to the cash desk and asked the cashier to prepare a cheque as per our normal procedure. It was (and still is) usual for the cashier to fill out some of the bank details in advance for VIP players to avoid them having to wait for a cheque to be prepared, but I did not, or ever have, stood behind a player with a pre prepared cheque for a player to sign. These transactions always require a trip to the Cash Desk and a certain amount of waiting". It is said by Mr Deacon for the Defendant that thus Mr Whetton was not present at all times. That is true, but it was common ground in evidence that each such trip took only about a minute.

93. As to the conversation between Lyndsey Barrett and the Defendant, when the CCF facility was extended, Mr Whetton stated "this conversation was conducted quietly and was not entirely audible but, from what I could make out, Mrs Barrett was asking if she was sure that she wanted to continue playing and maybe she should stop and take a break. When Mrs Al Daher insisted, Mrs Barrett went to get a further cheque. As I recall, when Mrs Barrett left the table, Mrs Al Daher stated that she liked The Ritz Club because the staff looked after her and were concerned when she was losing. She said that, at the Playboy, they would just keep bringing cheques without any discussion like this" (witness statement paragraphs 9-10). In oral evidence, he was less sure about a conversation about stopping, "I can't recall, possibly".

94. His further answers merit full citation.

> "Q… Was there some concern about her continuing, about Mrs Al Daher continuing? A. No not to my knowledge. It is just the kind of question you would ask when someone wishes to increase their CCF.
> Q. Was there any question of her being asked whether she wants to take a break or stop gambling? A. I believe Lyndsey might have asked this but most of the conversation was inaudible so I can't be sure….

Q. What I am putting to you is there was concern about Mrs Al Daher continuing to gamble that evening there was concern. Would you accept that? A. Not really, no. There were no signs of agitation, of annoyance or aggression.
Q. But there was sufficient for Mrs Barrett to ask her whether she should stop and take a break? A. Well yes, because she was losing a considerable sum of money.
Q. The reality is that she should have been stopped, should she not? A. In my opinion, no.
Q. Why not? A. She showed no real signs of agitation. She seemed fairly calm and rational and she asked for some more money. Lyndsey asked her if she wanted to continue and she clearly did.
Q. I'm going to put that, she would say that, that she wanted more money, because she was losing, but it is not a good idea, is it, to give people who are losing money beyond their facility? Do you accept that? From their point of view? A. On some occasions, yes.
Q. On this occasion? A. On this occasion my answer would still be "No".
Q. Did you think that Lyndsey Barrett was trying to control Mrs Al Daher's gambling? A. I got that impression, yes.
Q. Because something was not quite right? A. Not for that reason. Just purely because she was being responsible. Q. In what sense responsible? A. She was talking to Mrs Al Daher and making sure she was calm and not upset and really wanted to continue gambling.
Q. But the point had been reached where it was necessary to exercise control over Mrs Al Daher's gambling. Correct? A. It is a matter of opinion really.
Q. What is your opinion? A. I think Lyndsey did the right thing by talking to her and finding out that she was OK and wanted to continue. As there were no signs of agitation, and Mrs Al Daher is a good customer and a wealthy woman, Lyndsey thought it was OK for her to continue".

95. In his witness statement Mr Russell Nubley says that he always keeps an eye on players and if he had any concerns that the player exhibited the traits of a problem gambler, "- for example was unusually upset or distressed in a way that was not normal for that player" he would speak to them to ensure that they wanted to continue playing. He greeted the Defendant as she was going to the gaming floor that evening, saying there was no mention by her of substantial losses at other casinos earlier that day, or that she was "not there". This is supportive of the Claimant's case but I note that his contact with the Defendant was only brief.

96. I have already summarised the evidence of Lyndsey Barrett that there was nothing untoward in the Defendant's demeanour that evening. This witness said that she had asked the Defendant before authorising the excess over the CCF facility of £300,000.00 to take her to £2 million. She asked whether she was comfortable with this amount and, "there was no, for me speaking to her and that was on a closed one to one basis on the table. I didn't notice any differences in her from all the other visits to this casino"

97. Cross-examined, she gave the following answers.

> "Q. Did it occur to you that it was not a good thing to increase her limit by £300,000.00 in terms of social responsibility? A. I took into consideration how she was and her demeanour on the table, whether she was still happy. Mrs Al Daher is a very generous lady and a very nice lady and she's always the same every time I've met her, she's always the same, nothing ever had changed with her.
> Q. Would a word of discouragement not have been in order to say "well, come off the table"? A. I said "are you sure?" I would have said "are you sure you want to take the facility up to £2 million that you're requesting?".
> Q. And? A. And her answer would have been "yes" because I took it further….
> Q. Well, what I'm putting to you is that the only reasonable response is to stop her from playing and say "no you cannot increase your limit". A. Not at all, because it doesn't always happen that way. A few customers do request excesses over and above their actual CCF while they are playing. It is not uncommon to actually have the request in and for it to be granted."

This witness was insistent that she knew the Defendant from other trips to the casino, and when she went to talk to her there was no difference in her behaviour, "she was very calm. She was laughing. She was happy".

98. I record that I found the evidence of the witnesses called for the Claimant calm considered and measured, in particular that of Mr Whetton and Lyndsey Barrett. However I remind myself throughout that it can be unsafe to rely on the demeanour of witnesses. The evidence on either side must be weighed in order to consider whether the evidence of a witness is consistent internally, or consistent with the evidence of other witnesses, or the factual background. In addition I have borne in mind that on the part of witnesses for the Claimant there may be a wish, conscious or subconscious, to minimise any observable distress of the Defendant, or any encouragement by those at the club for her to continue gambling.

99. There were contested issues of fact, strictly side issues, but which I consider revealing as to the accuracy of the evidence on either side.

100. Was there a discount agreement for losses? The first such issue was whether there was a facility or agreement whereby from about October 2010 the Claimant agreed to pay to Mrs Al Daher a 5% discount on loss, assuming that her cheques were cleared on presentation. Lyndsey Barrett said that there was such an agreement, and that money was paid, and or gifts made, to the Defendant accordingly. The Defendant was adamant in her oral examination that there had been no such agreement and that she had been troubled during the course of these proceedings to learn that what she had taken to be gifts from the casino appreciatively made to her in recognition of her qualities as a player and an individual, had been made according to some scheme of discount.

101. This is radically inconsistent with the first pleading of the case on behalf of the Defendant, where the Defence asserts that "at the material times the arrangement between the Claimant and the Defendant was … if the Defendant lost she would be asked … to settle her losses less a 10% discount".

102. The written agreements as to discount produced by the Claimant were not signed by Mrs Al Daher and their dates and manuscript annotations are not consistent. There is however abundant evidence that from October 2010 there was such a discount arrangement, and there were contemporaneous emails from Lyndsey Barrett internally indicating that the Defendant initially had asked, and was aware of the arrangement: see in particular emails 6 October 2010 and 12 October 2010. Mr Makhari, a friend and fellow player of the Defendant to whom I will shortly turn, was straightforward that he knew that there was a 5% discount arrangement between the casino and the Defendant.

103. Was Mr Makhari a "gopher" for the Defendant? The evidence of Lyndsey Barrett (and others for the Claimant) was that Mr Makhari was a "gopher" for the Defendant, namely not an officially appointed agent but someone who knew her well and could be relied upon to make practical arrangements for her, do things on her behalf, and indeed on occasion to alert the casino to the fact that she intended to visit. The Defendant resisted any such suggestion. Mr Makhari was someone whom she regarded as a fellow gambler, and a friendly acquaintance. Their visits to the Claimant casino, as with other casinos, were independent. It had been a shock to her to discover that the Claimant made payments to Mr Makhari by way of a percentage commission upon her own losses.

104. Mr Makhari himself, a man of evident charm, was unembarrassed to acknowledge that the Claimant "looked after him" because of his acquaintance with the Defendant. As to his informal role, he engagingly and straightforwardly answered, "If she asks anything of me, she asks; if she asks anything of me, I do it for her". A schedule of the dates when respectively the Defendant, and Mr Makhari, visited the Claimant casino, with the times of entering and leaving, shows that on a great many occasions the two arrived within a minute or two of one another. The suggestion is not that Mr Makhari was an appointed agent for the Defendant but that he was a gopher for her. I am fully satisfied that he was.

105. In the event, resolution of that issue matters not, because the Claimant was seeking to establish this in order to show that assurance during 2012 given by Mr Makhari that the Claimant intended to honour the cheques, was made on her authority. This fell away as a relevant issue, because the Defendant readily accepted that on occasions in 2012 assurances given by others to the Claimant that she would pay and was an honourable woman were correct and accurate as a statement of her position.

106. Nonetheless I have no hesitation in accepting the evidence of the Claimant on these two issues that there was a 5% discount arrangement on the Defendant's losses, at her own request, and that Mr Makhari was a gopher for her. In her evidence the Defendant was adamant on these issues.

107. Her recollection was demonstrated to be inaccurate in other individual respects. Illustratively I prefer the evidence of the witnesses for the Claimant on whether it was before or after receiving a necklace that she requested of the Claimant and had made for her earrings purchased for almost £40,000, amply supported as the Claimant's evidence is by contemporaneous documents. Illustratively she viewed with disdain the suggestion that she would like to have and was pleased to receive expensive handbags, telling me that she already had jewellery worth millions, but for like reasons I prefer the evidence of the witnesses for the Claimant. On these small issues I do not consider that the Defendant was being dishonest in giving me her recollection. These were matters utterly trivial to someone of her enormous wealth.

108. However I am satisfied that her account, in relation to the discount agreement, the relationship with Mr Makhari, the fortune teller, and on receipt of gifts or money under the discount agreement is simply wrong and on these issues I prefer the evidence of the witnesses for the Claimant wherever it conflicts with the evidence of the Defendant.

109. Mr Deacon, for the Defendant, pointed to the absence of any evidence from the croupiers themselves at the table where the Defendant was playing on the evening of 3 April 2012. I take account of that, but I have noted above the significance of evidence that the Defendant was generous to staff on that evening.

110. More generally, I take account of (i) the above inconsistencies in the Defendant's own account of that evening, (ii) the unreliability of the Defendant's evidence on a wide number of matters as set out above (iii) the consistency of the evidence of the witnesses called by the Claimant as to that night between each other and within the evidence of each, and (iv) the general pattern of the Claimant's history of gambling prior to that evening and on that evening. Each of these matters is consistent with my assessment of the demeanour of witnesses. I thereby conclude on the strongest balance of probabilities that the evidence of Lyndsey Barrett and Mr Whetton is to be preferred to that of the Defendant. I therefore find that there was no statement by her that she was addicted to gambling or that she reluctant that evening to play, there was no positive encouragement to the Defendant to gamble on that evening, that it was at her own request that an excess over the facility of £1.7 million was made, that the excess was permitted only after enquiry by Mrs Barrett whether the Defendant was comfortable to go on and after she said she was; and further that she exhibited no signs of distress, irritation, anger, or loss of control that evening.

111. Duty of care. I turn to whether there was a duty of care on the part of the Claimant towards the Defendant, either generally, or by reason of the events of 3 April 2012.

112. In *Calvert –v- William Hill Credit Limited* [EWHC 454] (Ch), Briggs J considered whether and what duty of care there might be in a gambling case.

113. In that case, the gambler advanced a broader argument in favour of a general duty of care, namely a voluntary assumption of responsibility by reason of the William Hill social responsibility policy and associated self exclusion procedure, and a narrower submission relying on the 3 stage test of considering foreseeability, proximity and fairness.

114. The judge in that case was not persuaded that by developing its own social responsibility, or an exclusion policy, William Hill could be said voluntarily to have assumed responsibility to all its problem gambler customers, noting (i) that problem gamblers did not uniformly suffer from such an impairment in their ability to control their own gambling that it would be proper for the law to treat them without more as being so vulnerable as to require special treatment, and (ii) that while there may be a sub class of problem gamblers, namely pathological gamblers, for whom it can properly be said the control of their gambling has become impossible, it was unrealistic to suppose that a bookmaker can be expected to be able to identify that sub class by way of what amounted to a process of medical diagnosis. (A remaining third point was peculiar to that case, and is not relevant here).

115. He went on,

> "Turning to the 3 stage test, it seems to me again that the broad spectrum of differing levels of impairment of control of gambling falling within the general 'problem gambler' label impacts adversely at least at the second and third of those stages (i.e. proximity and fairness). Generally, it seems to me reasonably foreseeable that if a known problem gambler is permitted to continue gambling unrestrained, without an offer of self exclusion or an invitation to seek counselling, he will be likely to suffer an aggravation of his condition due to the unrestrained feeding of his habit, and an ever growing risk of serious financial loss. But in my judgment the law should be very slow to recognise a sufficient proximity to justify a requirement to take protective steps to restrain a gambler from exercising his liberty to gamble on his own responsibility, where his status as a problem gambler may mean no more than that he is experiencing mild and occasional difficulties of control. Again, I emphasise that the broad submission advanced by Miss Day assumes a duty of care to all problem gambler customers, regardless of whether they seek the bookmaker's help. Such a duty would, in relation to a problem gambler who did not seek the bookmaker's help, be an

> invasion of his autonomy, in relation to an activity for which he is primarily responsible for the consequences"….. nor does it seem to me that it would be fair to impose the broad duty of care for which Miss Day contends. As Mr Fenwick submitted, it would place a burden on the bookmaker pursuant to which the problem gambler could freely take home his profits, but look to the bookmaker for the return of his losses, without even seeking the bookmaker's assistance to help him control his gambling" (paragraphs 169-171 and in particular paragraphs 172 and 173).

116. I respectfully agree. Further, gambling is an activity which has been legalised by Parliament. For those who find no particular allure or interest in gambling in any event it may seem irrational to engage in the activity at all, and particularly to gamble in a game which is purely one of chance such as the Defendant played. To many of moderate or even substantial wealth, it may seem utterly irrational to bet the sums which the Defendant was wont to do, and which she did on the evening of 3 April 2012. The financial capacity to engage in gaming on the scale of the Defendant is one of almost unimaginable wealth. It may be a natural first inclination to feel that, in the gambler's own interest, no casino should offer the scale of facility which the Claimant and three other casinos did to this Defendant, and that she should not be permitted in the course of the same evening of gambling both to reach and to be permitted an excess over her standing facility. However the choice of Parliament has been to permit casinos to be licensed, and gamblers to gamble in them, as a matter of their own autonomy. The scale of risk and reward, or reward and risk, may be a source of thrill and enjoyment to gamblers willing to hazard sums which those of lesser wealth would not regard as conscionable.

117. The Defendant is a person of wealth unimaginable to the ordinary person, and, I suspect, to many of moderate or substantial wealth. It is demonstrable that over the years since 1999 and up to April 2012 the enormous sums she gambled, and the enormous losses she sustained, were within her means.

118. She was a VIP gambler to the Claimant, and other casinos. She had before been accorded excess over her facility by this the Claimant casino, and other casinos. The internal assessment had been that she was of an excellent history and substantial means to pay, as I set out above. On 20 July 2010 she had issued (with permission) a cheque for £100,000 above her CCF limit. The reason for approval was recorded as "highly respected customer of substantial means with excellent cheque payment history". On 29 April 2011 she had issued a cheque for £300,000 which was £200,000 above her CCF limit. The reason internally recorded for this approval was "customer spoken to, excellent CCF history, no reason to doubt the excess". On 28 May 2011 she had issued cheques to a total amount of £600.00 in excess of her capital CCF limit, approved as being "within trade references". The reason internally recorded for approval on th evening of 3 April 2012 itself was "well known and highly respected customer of substantial means" (Bundle B pages 110-113).]

119. Accordingly, although these are stupefying figures to those of ordinary or indeed substantial means, I am not satisfied either that there was addiction or that there was any material from which the Claimant knew, should have known, or should have inferred that the Defendant was out of control with her gambling either generally or on 3 April 2012.

120. Counsel for Mrs Al Daher advanced that there must be some duty of care by reason of the special relationship between the casino and a gambler, and the existence of a social responsibility code. He contended that even if the conflict of evidence as to what happened on the evening of 3 April 2012 were disregarded, there was a clear social responsibility which the Claimant accepted, and that it was a derogation from that social responsibility to allow a player to lose £1.7 million in an evening, alternatively to allow a player to exceed that. He further argued that it must be wholly exceptional for a facility to be increased by a sum of money as much as £300,000, not least in that this occurred on an occasion when the player is losing, and is under an internal pressure to relieve that loss by continuing to gamble in the hope of recovering it. Mr Deacon invites the view that the Act itself places a brake on autonomy, in its provision providing for codes of practice such as those referred to above.

121. He says that this is particularly so where there have been a number of past increases in the CCF facility. In her interest, it must be a minimum obligation for the casino to say to her, "at least come away from the table" and or to do more than what he described as a cursory conversation.

122. It seems to me that given the findings of fact which I have made above, including those as to the wealth of the Defendant, a duty of care of such extent or scope as would place the Claimant in breach of duty of care on the evening of 3 April 2012 either is, or comes close to, a duty to refuse request for excess above any facility in any circumstances on any evening of gaming, and/or a positive duty to place pressure on the gambler to desist even though the gambler has the means to gamble and in the face of assertion by the gambler that she is comfortable and wishes to gamble.

123. I am satisfied that the conversation may not have been a long one, but that before authorising the excess, Mrs Barrett asked the Defendant whether she was comfortable with going on, and wished to do so, and that she was alert to whether there were any of the signs of Mrs Al Daher being vulnerable or showing behaviour indicative of problem gambling such as I have indicated above at paragraph 59. I have referred above to evidence from Mrs Barrett, which I accept, that she intervened in the case of another gambler to exclude him from gambling, and did so alert to the requirements of the policy.

124. In my judgment, unless authority clearly supports such a duty the court should not hold that there was a duty of care upon the Claimant to restrain the Defendant from gambling either to the extent of her facility on 3 April 2012 or beyond it by the excess of £300,000 which she herself requested.

125. In my judgment authority does not support such a duty either clearly or at all. In particular, I am not satisfied that in the light of the findings of fact in this case it is fair just and reasonable that the law should impose a duty in these circumstances to restrain the Defendant from using her facility, and requesting and accepting an excess of £300,000 on the evening in question, either in itself or incrementally from other cases.

126. It follows that in my judgment the Defendant has not established any claim in negligence.

127. A counterclaim was pleaded for recovery of the £1 million which the Defendant paid in December 2012. This was framed as a claim in restitution, on the basis that the payment had been made by reason of a mistake of fact or law: if the Defendant was not under a legal obligation to pay the debt claimed on the dishonoured cheque she paid under a mistake and would not otherwise have made the payment.

128. First, I have found that recovery upon the dishonoured cheques was not barred by the provisions of the 2005 Act. Second, I have found that there was no claim in negligence.

129. Quite independently of these two grounds however, in my judgment a counterclaim founded on payment in reliance on a mistake must fail. As Mr Deacon conceded, in answer to my question in closing submissions, there is no evidence from the Defendant that had she known of these matters she would not have made the payment of £1 million. In addition, her whole stance throughout 2012 was that she was an honourable woman and would pay accordingly. I have no hesitation in finding that this was her belief intention and motivation and that she is a woman with a strong sense of honour. In the light of this evidence, if it were necessary to do so, I would have found that she made the payment of £1 million in pursuance of a sense of honour, perhaps reinforced by a wish to be seen as honourable and a wish to be accepted as a player at The Ritz casino once more, but not under or by reason of any mistake of fact.

130. In the light of my conclusions above, it is not necessary to deal with the submissions of Mr Freedman QC that a claim in negligence would fail in causation. The principle is simple, and is expressed and applied in the case of *Calvert*, that if it can be shown that on the balance of probabilities a gambler would have gambled elsewhere and lost the same sum, it is shown that he has suffered no loss by the breach of duty of care to him by the particular casino or bookmaker. As to the first limb of the argument, I have no doubt that in this case the Defendant if refused at the Claimants club, would have been eager and inclined to gamble at other casinos thereafter, and very probably during her stay in London during the days or weeks after 3 April 2012. It is striking that she and her family gambled away $5 million in Las Vegas in June some 2 to 3 months later.

131. If it were shown that she were in truth, a gambling addict, with no control over her gambling, the argument in causation might be made out. Such a condition has not been shown in this case. There are occasions when a gambler wins, as the Defendant herself had done in the year preceding 3 April 2012. She might have made losses, or winnings, at other casinos in the days immediately following at other casinos, if refused on 3 April 2012 at The Ritz casino. It seems to me problematic whether in those circumstances a causation defence could be made out, save in the more extreme cases of gambling which was reckless and out of control of which this case is not one. That, however, is academic in the light of the findings which I make above.

132. It follows that there shall be judgment for the Claimant in the sum of £1m. as claimed, to which there will be added a sum of interest. The parties may be able to agree calculation of the appropriate sum. In order to minimise costs I hand down judgment in writing in the absence of the parties, reserving judgment as to any consequential matters for oral hearing which shall be an adjourned hearing of the handing down of judgment. I further invite the parties within 14 days to agree and file with the court a form of order reflecting this judgment.

15 August 2014
His Honour Judge Seys Llewellyn, QC sitting as a deputy judge of the High Court