Neutral Citation Number: [2015] EWHC 2294 (QB)

Case No: HQ14X01235

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 July 2015

Before :

MRS JUSTICE SIMLER DBE

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Between :

THE RITZ HOTEL CASINO LTD	**Claimant**
- and -	
MR SAFA ABDULLA AL GEABURY	**Defendant**

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- -

Mr Clive Freedman QC and Mr Marc Delehanty (instructed by **PCB Litigation LLP**) for the **Claimant**
Mr Kevin Pettican (instructed by **Harding Mitchell Solicitors**) for the **Defendant**

Hearing dates: 29 & 30 June & 1,2, 3 & 8 July 2015

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MRS JUSTICE SIMLER DBE :

INTRODUCTION

1. Mr Al Geabury gambled away £2 million on the roulette tables at The Ritz Hotel Casino ("the Casino") on the evening of 19 February 2014. The question raised by this claim is whether The Ritz Hotel Casino Ltd, the Claimant, is entitled to recover from him the sum of £2 million (plus interest) in respect of the cheque in that sum which he signed in return for gambling chips that evening, but which was subsequently dishonoured by him. At the heart of Mr Al Geabury's defence to this claim is his case that he suffers from "a very severe and serious gambling addiction which he is unable to control" and for which he claimed he was receiving treatment as at 8 April 2014 from Dr George Resek, a Consultant Psychiatrist (paragraph 1 of the Defence).

2. The case for the Defendant, Mr Al Geabury, by way of defence and on his counterclaim, is in outline that:
   i) The consideration provided by the Claimant for the cheque was an unlawful consideration because the gambling facilities were provided in breach of the mandatory conditions of section 2.5 of the Social Responsibility Code of the Gambling Commission's Licence Conditions and Codes of Practice (May 2012) (referred to as "the Code") and therefore in breach of its gaming licence. Consequently, the provision of gambling facilities was unlicensed and unlawful by virtue of s.33 of the Gambling Act 2005 ("the Act"). It is the Defendant's case that this defence does not depend on any findings relating to his serious gambling addiction;

   ii) Three further defences pleaded are no longer pursued. They are based on the Defendant's account of a conversation between him and Mr Roger Marris, CEO of the Claimant, at the Emirates Stadium on 19 February 2014 before he attended the Casino. First, that the transaction reflected by the drawing of the cheque was the product of actual undue influence exerted by Mr Roger Marris on 19 February 2014. Secondly, that it was induced by a misrepresentation made by Mr Marris, namely that credit facilities of £5 million would be provided to him. Thirdly, that there was a collateral contract entered into by the Defendant and Mr Marris on behalf of the Claimant pursuant to which the Defendant would be permitted to repay any gambling losses whenever it suited him to do so, and it was implicit in this agreement that the Claimant would not present the cheque for payment until instructed to do so by the Defendant. These defences are no longer pursued on the footing that the Claimant has accepted that if the Defendant's account of what was agreed by him and Mr Marris is accepted, the resulting transaction would have involved the provision of credit and would have been unlawful pursuant to s. 81 of the Act. Nevertheless the factual allegations are maintained.

   iii) By way of counterclaim, it is said that the Claimant owed a statutory or common law duty of care to take reasonable steps to ensure that the Defendant was not harmed or exploited by the Claimant's provision of gambling facilities. The duty extended (among other things) to taking reasonable steps to prevent the Defendant from gambling at the Casino following the execution of a voluntary self-exclusion agreement on 22 November 2009 ("the 2009

VSE"). The Claimant breached its duty of care by re-admitting the Defendant to the Casino on and after 7 August 2012.

iv) Alternatively, the 2009 VSE was a binding contract requiring the Claimant to exclude the Defendant from the Casino for life and continued in full force notwithstanding the conduct of the parties in October 2010. His re-admission was accordingly a breach of contract.

v) In consequence of the breach of contract or duty, the Defendant has suffered loss which comprises (i) the sum of at least £4 million which the Defendant gambled at the Casino and lost since his re-admission in August 2012; and (ii) the sum of £2 million gambled and lost on 19 February 2014 (if the illegality defence fails). In addition, an already serious gambling addiction has been made even worse causing him to sustain financial losses at other casinos which might otherwise have been avoided.

vi) In addition, the Defendant complains that late bets were placed by him in the course of his gambling on 19 February 2014 and should have been returned; and finally, if he is found to be liable on the cheque he relies on an entitlement to an agreed discount of 10% on all gambling losses.

3. The Claimant's principal response in outline is:

i) The Defendant has failed to establish that he has or had prior to 2013 a gambling disorder, whether mild, moderate or severe. Neither the contemporaneous medical evidence nor the expert psychiatric evidence establishes such a disorder. The VSE forms signed by the Defendant do not prove a gambling disorder but are reactions to disputes with dealers as the Defendant has repeatedly acknowledged to be the case.

ii) Since he has failed to prove a gambling disorder, the 2009 VSE was signed for a reason other than a gambling disorder and/or given the circumstances in which the 2009 VSE was signed and/or because the Claimant had no knowledge of any gambling problem and acted reasonably in all the circumstances, either: (i) the 2009 VSE should not be treated as a real or genuine, or (ii) an agreed revocation of a VSE can be effective immediately or after six months.

iii) It follows that the defence of illegality must fail at least because the 2009 VSE was not in existence following its agreed revocation in October 2010 or at the time of the gambling on 19 February 2014. Other reasons also relied on as to why the alleged illegality defence fails include that there was no commission of a criminal offence because the Claimant did not have the *mens rea*, guilty knowledge or intent, required or alternatively, if strict liability sufficed the illegality did not carry with it the turpitude required to bar an action for illegality.

iv) As regards the counterclaim, the allegation of breach of contract fails because (among other things) there was a lawful revocation of the 2009 VSE.

v) As for negligence and breach of statutory duty, no statutory duty giving rise to private law rights of action is owed. There was no assumption of responsibility in relation to the Defendant by reason of an ineffective VSE and/or in any event any such assumption came to an end with the lawful revocation of the 2009 VSE. Furthermore, there is no general duty of care owed by the Claimant to the Defendant, even if he was a problem gambler. The question whether there is a duty of care to a pathological gambler does not arise on the facts of this case, in that even Dr Taylor did not regard the Defendant as presenting with a severe problem. Even if there was a duty of care, the Claimant was not negligent: it could not reasonably have been expected to have known of the Defendant's alleged gambling problem and it acted reasonably in all the circumstances.

vi) In any event, even if the Claimant acted in breach of a duty of care and/or in breach of contract, the Claimant's actions did not cause the Defendant to lose the sums counterclaimed. If the Defendant's gambling problem is as serious as he alleges, he would have reacted to exclusions from the Casino by gambling elsewhere and would have suffered these losses in any event. Further, there was contributory negligence by the Defendant in failing to make known to the Claimant his alleged condition (contrary to his pleaded case) to the extent of 100% thereby extinguishing all loss.

vii) Finally, the case on late bets and an agreed 10% discount is entirely unsubstantiated.

4. I am very grateful for the detailed oral and written submissions from Mr Clive Freedman QC and Mr Marc Delehanty, counsel for the Claimant, and Mr Kevin Pettican, counsel for the Defendant. I have considered all of the submissions with care but have necessarily not dealt with every point that they have raised.

5. Given that the burden of proof essentially falls on the Defendant in relation to the principal issues in dispute, at a case management conference before trial I directed that the Defendant should present his evidence first. Subsequently I directed that the Defendant should have the assistance of an Arabic language interpreter since English is not his mother tongue, albeit that conversations that lie at the heart of this dispute were in English and fall to be understood and interpreted in English.

6. In addition to the Defendant himself, three further witnesses of fact were called on his behalf, two business associates and friends, and his brother who was present at the Emirates Stadium and the Casino on 19 February 2014. I was also provided with CCTV recordings from the Casino on 19 February 2014 (showing the whole of the two hour period of gambling and conversations before and afterwards between the Defendant and Casino staff), which I was asked by Mr Pettican to (and did) watch from start to finish, albeit that only extracts were played in court by agreement of the parties. I heard from 12 witnesses on behalf of the Claimant, all employees. There was disputed psychiatric evidence: Dr Taylor on behalf of the Defendant; and Dr Needham-Bennett for the Claimant. They met before trial and prepared a joint report setting out areas of agreement and disagreement. Both attended at trial and were cross-examined.

THE FACTS

7. There is a substantial dispute of fact about matters that are central to the Defendant's defence and counterclaim; in particular, whether and if so to what extent, the Defendant had or has a gambling disorder. I first set out my views on the witnesses and then my findings of fact as to the material dealings between the Claimant and the Defendant in the relevant period, and the reasons for them.

The witnesses

8. A difficulty for some witnesses in this case is that some of the issues to be resolved relate to events which occurred some years ago. At the time of certain significant events there were documents prepared, largely by the Claimant's employees (but by others too, including the Defendant) in circumstances where there would have been no reason to anticipate questioning and, subject to some exceptions, no reason to record anything other than the truth as then understood. One important exception is documents prepared for regulatory or compliance purposes, where it is necessary to be more circumspect as to the motivation of those involved (both in relation to the Claimant and the Defendant) and to consider carefully whether the document should be taken at face value. Another exception are the notes of Dr Resek, as I shall explain below. Subject to those exceptions, in relation to older events, I consider that the contemporaneous documentary evidence is the most reliable evidence available to the court, and it has unsurprisingly been used by most witnesses to reconstruct what occurred or to trigger such recollection of particular matters and events as is now possible. Where possible I have based my factual findings on the contemporary documents, together with inferences drawn from those documents and by reference to the inherent probabilities that flow from them.

9. The Defendant is (on his own account) a Swiss citizen and a substantial international businessman involved in the financial world. He is obviously highly intelligent, highly successful and the evidence suggests fully familiar with technology such as smartphones and the use of email (he used a gmail account for emails in the material period). He gave evidence and was cross-examined over the course of two days. Although he had an interpreter (and I make no criticism of him whatever in this regard) I formed the view that he has a good understanding of English, and frequently answered questions without translation assistance, particularly when exercised and angry about the question being asked.

10. He was an intemperate witness, becoming irritated or heated when asked simple straightforward questions, and refusing or avoiding answering them. An early example suffices: he was asked to agree that he is a very wealthy man. He asked what was meant by "very wealthy", then said that he did not know, then asked a series of questions, effectively berating Mr Freedman QC who tried to assist him. The question had a simple answer that had been given by him in writing in a document dated 25 November 2014: his "capital assets, (inclusive of his art collection) are in excess of US$1 billion". On occasions he lost his temper altogether, shouting and gesticulating, for no apparent reason, and like Dr Needham-Bennett who formed the view that he had attended to tell his side of the story rather than be interviewed by a psychiatrist, it seemed to me that the Defendant came to court to argue his case and

give only the evidence he wished to give, rather than to assist the court by answering factual questions asked of him.

11. His evidence was frequently contradicted by his own witness statement or by the contemporaneous gambling records or other documents and his response was to say that he meant something else by it, or that it *"could have been humour*", giving me the impression that he was prepared to say whatever he thought most likely to advance his case regardless of whether his answers were correct. At other times, he accepted that evidence given by Casino staff about what he told them was correct, but that he had not been telling the truth when he said it. For example, he accepted that Baum's evidence, that he told him in August 2013 that he only ever played with 10% of the money his company makes and once he loses that stops, was correct; he agreed he said that to Martin Baum (and there is evidence he made similar statements to Cameron Marvin and others, including a member of staff at a different casino - Mike Jones at the Clermont - albeit not accepted by him). However, he said that it was in fact untrue (though when pressed, he failed to give a coherent explanation as to why it was untrue). At these and other times the answers he gave were also internally inconsistent even when making allowance for any language difficulty he might have had.

12. Significantly, the Defendant was shown to have been untruthful in a number of important respects: (i) in his pleading, Voluntary Further Particulars, Responses to the Further Information Request, and in his witness statement he repeatedly states that he informed the Claimant's employees (identifying specifically Terry Beardall, Cameron Marvin, Martin Baum and several women duty managers) on numerous occasions about his gambling problem. Critically, at paragraph 72 of his witness statement he said that on 28 December 2013 "*I told Mr Baum that I had signed the Aspinalls VSE form because I was addicted to gambling…* " but, in cross-examination, he agreed that he did not mention gambling problems to Martin Baum, and he confirmed in re-examination that he never told anyone in the Ritz that he had a gambling problem; (ii) Dr Resek recorded the Defendant saying he gambled away "all money, no budget, ruination" but he did no such thing; (iii) Dr Resek recorded the Defendant saying his treatment was keeping him out of casinos but this was shown to be false by attendance records at the Casino on 25, 26 and 27 January 2014, and an attendance on 13 February 2014 at the Hippodrome casino.

13. Given the centrality of the Defendant's asserted gambling disorder which he claims he first recognised as long ago as 2000, and for which he then started to receive psychiatric treatment from doctors in England, Kuwait, Italy, Hungary and Switzerland, and which became serious and uncontrollable towards the end of 2009 with regular psychiatric help being sought, there have been considerable efforts on behalf of the Claimant to obtain disclosure of information and documents about this condition, and the nature and extent of the medical treatment. All that has been produced in response is a report by Dr Gupta dated 3 October 2014 and the letter and notes of consultations with Dr Resek between 8 January and 14 February 2014. I shall return to these below. Otherwise, requests and successive court orders have produced no identification of any other treating doctor (not even a name or address) and no documents whatever. During cross-examination the Defendant repeatedly indicated that he would be producing further documents by the end of the first week of trial, from treating doctors but again, without identifying them. He singularly

failed to do so. This failure was highlighted in the Defendant's presence in court on the morning of Day 6 during closing submissions by Mr Freedman. At 3.32pm on Day 6, evidence having closed on the previous Friday, when Mr Pettican was bringing his closing submissions to an end, a document was produced to the court by the Defendant, said by Mr Pettican (on instructions) to be from a doctor, written in French. As Mr Pettican readily accepted, this was too little, too late and I refused to admit it.

14. Efforts have also been made in the circumstances, to obtain disclosure of the Defendant's emails from 2009 onwards by reference to a keyword search (in English and any other language used by the Defendant) including the words: addict, addicted, addiction, consultation, doctor (and dr), excluded, gambler, gambling, medication, prescription, psychiatric, psychiatrist, treatment, Gupta and Resek. The Defendant confirmed that a gmail account identified was the only one used during the time material to these proceedings and that he had carried out a reasonable search. However, the only emails disclosed as a consequence are promotional emails sent to the Defendant by the Claimant between 17 May 2013 and 18 November 2013; and promotional materials sent to him by other casinos and his responses where applicable between 2 September 2013 and 3 May 2015. The Defendant gave no explanation for the complete absence of any email from 2009 onwards about his asserted disorder or the medical treatment he says he was receiving: no email regarding medical appointments, treatment, drugs, or with any reference whatever to addiction or being addicted. This, in circumstances where his case is that he realised by late 2009 that he was seriously addicted, that his brother was regularly trying to persuade him to stop gambling but his gambling was so out of control that he was screaming, shouting, hurting his hands and breaking his rings, that he told everyone (even his mother) that he was an addict, that he was having regular psychiatric help, is nothing short of extraordinary. The result is that apart from the 2009 (and other) VSE forms, the letter from Dr Gupta dated 3 October 2014 and Dr Resek's notes from 8 January 2014 onwards, there is a complete absence of any contemporaneous document supporting the Defendant's account of his serious and uncontrolled gambling disorder and the regular psychiatric treatment he received.

15. Whether considered individually or cumulatively, these matters (and others identified below) lead me to conclude that the Defendant is a witness whose evidence I should approach with the highest caution, and unless independently and reliably corroborated, I have concluded that I cannot rely on it.

16. I have been provided with complete records of the Defendant's attendance at his regular casinos (including the Casino (at the Ritz)). They show whether he gambled at all on any particular visit, and if so what his stake was and whether he won or lost. From these records it is clear that the Defendant's level of gambling increased overall over the material period. However, that by itself does not entail that he had a gambling problem or disorder. I am satisfied that the careful analysis of the records (painstakingly analysed by Mr Delehanty) demonstrates the following:

    i) There are many occasions when the Defendant attended the Casino (at the Ritz) and other casinos and did not gamble at all – demonstrating that he could control whether or not he wanted to gamble even when in a casino;

(See for example from Mr Delehanty's analysis,
(i) attendances at the Casino on dates throughout 2013: 24/01/13, 26/01/13, 05/02/13, 06/03/13, 05/04/13, 03/05/13, 31/05/15, 11/06/13, 12/06/13, 16/06/13, 18/07/13, 03/08/13, 13/09/13, 19/10/13, 25/11/13, 25/12/13;

(ii) attendances at Crown Aspinalls on dates throughout 2012: 27/09/12, 10/11/12, 11/11/12, 13/11/12, 18/11/12, 20/11/12, 01/12/12, 13/12/12, 14/02/12, 28/12/12;

(iii) attendances at Les Ambassadeurs on dates preceding the withdrawal of the Defendant's membership of the Ritz on 11 February 2011: 10/12/11, 18/01/11, 25/01/11, 28/01/11;

(iv) attendances at Genting casinos on dates either side of the revocation of the 2009 VSE (in October 2010): 19/09/10, 21/09/10, 23/09/10, 25/09/10, 27/09/10, 10/10/10, 16/10/10, 22/10/10, 27/10/10, 31/10/10, 01/11/10, 03/11/10;

(v) attendances at the Clermont on dates in the period preceding the revocation of the 2009 VSE (in October 2010): 12/06/10, 19/06/10, 05/07/10, 19/07/10, 13/08/10, 17/08/10, 06/09/10;

(vi) and finally, in relation to attendances on dates in the period preceding the 2009 VSE, at the Ritz Casino: 23/09/09, 26/09/09, 13/11/09, 18/11/09; at the Clermont: 6/09/09, 9/09/09, 05/11/09; and at the Genting casinos: 14/10/09, 19/10/09, 20/10/09, 04/11/09, 06/11/09, 07/11/09, 09/11/09, 10/11/09, 14/11/09, 15/11/09, 16/11/09, 17/11/09).

ii) When he did gamble, there were many times when the money he staked was three or four figures – demonstrating that he could control how much he wanted to gamble;

(The gambling records of the Defendant at the various casinos are replete with instances too numerous to list of this happening throughout the years from 2009 to 2014, but an instructive example comes from the records at Genting casinos on dates in the period preceding the 2009 VSE (when the Defendant's case is that his gambling was completely out of control): £1,000 on 13/11/09; £100 on 20/11/09; £2,500 on 21/11/09; and on dates either side of the revocation of the 2009 VSE (in October 2010): £2,300 on 22/09/13; £500 on 26/09/10; £2,400 on 11/10/10; £2,200 on 28/10/10; £2,500 on 29/10/10; £8,500 on 02/11/10)

iii) There were many occasions when the Defendant left the Casino with winnings – demonstrating that he could control when to stop gambling.

(Again, the casino records are replete with instances too numerous to list of the Defendant leaving with winnings throughout the years from 2009 to 2014. This is particularly demonstrated in the Ritz Casino records for 2013 and those for Crown Aspinalls in 2013 as well. Further, there are three examples in

particular that undermine the Defendant's assertion that he had a masochistic compulsion to lose: throughout all his years of gambling at Les Ambassadeurs (ending in February 2011) he was a net winner of £295,077 (on a drop of £1,786,450); throughout all his years of gambling at the Clermont (ending in November 2010) he was a net winner of £58,110 (on a total drop of £499,010); and, he was a net winner of £46,588 (on a drop of £259,700) for 2012 at Crown Aspinalls. These results could not have occurred if the Defendant had a compulsion to keep playing until he lost.)

17. In light of other evidence, and in particular, the records just referred to, the evidence of the Defendant's brother, Firas Abdullah, Innocenzo Di Palma and Tarik Hani did not, in my judgment, support the existence of a gambling disorder. Their broad, general statements about the Defendant and his gambling were directly contradicted by the attendance records at casinos. In Mr Abdullah's case, the assertion that he repeatedly sought to dissuade the Defendant from gambling is totally inconsistent with the CCTV evidence that showed him sitting mute and passive throughout the Defendant's gambling on the night of 19/20 February 2014. The attendance records demonstrate that when the Defendant attended with his two associates, his level of gambling was relatively small and controlled or he did not gamble at all, a far cry from their evidence that the Defendant was out of control. The records afford no support for Mr Di Palma's evidence that he tried in vain to dissuade the Defendant from gambling given the number of times they attended together and no or little gambling occurred; or Mr Hani's assertion that the Defendant could not stop gambling till he had lost all his money, and even when he won, he would continue until he had lost everything. Moreover, Mr Di Palma could not explain why he went so regularly to eat with the Defendant at the Ritz if he had such concerns about the Defendant's gambling. Their evidence, together with the Casino attendance records of the Defendant's visits with others, suggests that the Defendant frequently gambled in the presence of business partners and friends.

18. I agree with Mr Freedman that the presence of these associates and friends at the Casino when the Defendant was gambling paints a picture of a successful man engaged in a highly effective business with many clients, using the Casino as a place to engage in effective networking and a leisure activity which relative to his wealth meant that his losses were of little or no consequence. It is the opposite of a man who lies to conceal his gambling. It is the opposite of a man who cannot concentrate on his business owing to a gambling disorder (as he suggested). It is the opposite of losing all his money and ruination (as he claimed to Dr Resek on 8 January 2014).

19. So far as the Casino witnesses of fact are concerned, I deal with specific findings below. In general I found them all to be careful and reliable. Their evidence was broadly consistent with the contemporaneous records where these are available. Each of them was prepared to state when they did not have personal knowledge of particular matters or any direct or specific recollection, and it seemed to me that they were all seeking to assist the court. In relation to problem gambling, there is no dispute that they had all received training in social responsibility issues and the signs of problem gambling. In this regard I was particularly impressed by the following:

a) evidence of Michele Leese, who with 40 years' experience, spoke about the profile of a "problem gambler" in her experience as follows:

" Well, we're trained to recognise symptoms of a problem gambler. There's quite a few, but the main ones are that a customer will come in and he will ask for help, he will say he has a problem. His friends and family will say: this man's got a problem and you should be stopping him. He will show remorse for the amount of money and time he's spent in the casino. He will -- you will see that his mood swings a lot, and he will -- sometimes when he's having a really bad problem, he will look depressed and he won't speak to anybody, he will look down, he will come in. They get a bit -- their personal hygiene goes out the window and they become very scruffy when they're on a low. They get a bit anxious when they can't get money. They will start to pester the other customers for more funds, become a nuisance. Also another indicator is a person who comes in and thinks gambling is a way to make money. … One or more [of these indicators], but generally speaking you can spot them straight away.

Q You observed Mr Al Geabury over many occasions. Did you see him indicating any of those features that you've just described? No.

Q Not even on the night of 19 February? No."

b) The evidence of Mr Roger Marris, CEO, who said that in forming the view that the Defendant was not a problem gambler he took account of Casino staff interactions with him:

"He had never said anything about problem gambling to us, he didn't show any – for our own social responsibility, didn't show any signs that he was a problem gambler, and there had been a number of conversations by the staff with him and he had never indicated that he was. …In fact he had indicated that he was in control of his gambling, that he would only risk a percentage of his wealth and sometimes what he made on that day or that period of time."

c) The evidence of Clive Pett, a Pit Boss on duty on 19 February 2014, with responsibility for overseeing the gaming operations on the floor of the Casino, and overseeing games attended by "big players" (playing for £500,000 or more). He knew the Defendant as a big player, and had watched him play regularly over many years (30, 40 or more times) and based on that play, his evidence was that he had no reasonable cause for concern that the Defendant had a gambling problem. His evidence was that he would have expected a change in the Defendant's behaviour if he had started to have a problem – shouting at or abusing staff, but that the Defendant carried on being "*a very well-mannered gentleman*" and there was no sign to him that he was other than his normal self. He said that the Defendant always played in the same way, starting betting once the ball was spun and then not looking at the wheel until the ball had dropped, and that his play on 19 February 2014 was no different from other occasions. He said that the Defendant had gambled away £1

million before in a shorter space of time, and that gambling for two hours in a stretch (without stopping) was not unusual, or indeed, very long in the context of regular players. He said moving between two or more tables was also quite normal, both for the Defendant and other players, and that the Defendant did not play according to set patterns, but rather, his play was random and his style was to place chips all over the table, just as he did on 19 February 2014 (as the CCTV shows).

d) Similar points were made by other employees: Amanda Hinton and Philippa Halpern both said that they had no reason to suspect any gambling problem. In their view, the Defendant was always very polite and nice, and was exactly the same on 19 February 2014 - even if he lost, he would still be very pleasant and polite.

The material events

20. There is evidence that the Defendant was a regular gambler at London casinos from at least 1996 onwards. He applied for membership of the Casino by a written application form dated 1 June 1999, identifying his nationality as Swiss. That application was accepted by letter dated 3 June 1999.

The 2009 VSE

21. On 22 November 2009 the Defendant signed a form excluding himself for life from gambling at the Casino. This is an important aspect of his case. He contends that this was an attempt to control his addiction. The very act of entering into a self-exclusion agreement at a time when no litigation was even contemplated, is relied on to support the existence of a gambling problem, and as putting the Casino on notice of the fact that he believes he is unable to control his gambling without assistance. As it was explained by Briggs J in Calvert v William Hill Credit Limited [2008] EWHC 454 (at [178]):

> "… the very essence of self-exclusion is that a problem gambler, recognising in a moment of clarity that he is likely to succumb to his addiction in the future, seeks his bookmaker's assistance in helping him to control what he fears will be otherwise uncontrollable when temptation returns. He is, in effect, putting the bookmaker on notice of his fear that, at precisely the time when he wishes exclusion to be imposed upon him, he will himself be unable to control his gambling. Absent that fear, there would be no point in self-exclusion at all".

22. The Defendant says at paragraphs 13 to 15 of his witness statement:

> "Returning to the end of 2009, I was aware of the fact that the casinos are required to operate a system under which a customer can voluntarily self-exclude himself for a period of time and must not be permitted to gamble.

> My understanding of the above system is that the purpose of the voluntary self-exclusion regime is to allow a customer who has decided he no longer wishes to gamble to put it outside his control to gamble at a given casino in the future. I knew that if I wrote that I wanted to be self-excluded for life then the Casino would not allow me to come in.
>
> In 2009, I decided to make use of the above voluntary self exclusion regime in an effort to address my casino gambling addiction which, by this time, was out of control".

23. It is also his case that before signing the 2009 VSE, he had already signed a self-exclusion form excluding himself from gambling at Grosvenor Casinos (on 12 October 2009), citing as his reason "Problem Gambling" which was written onto the form by him and a self-exclusion form excluding himself from gambling at Aspinalls Club (on 19 November 2009). Further, on the same day as he signed the 2009 VSE, the Defendant also signed a self-exclusion form seeking "permanent" exclusion from all casinos operated by London Clubs International.

24. The Claimant's case in relation to the evening of 22 November 2009 is that in the course of that evening the Defendant considered that one of the dealers had treated him in a manner which was rude and disrespectful. His reaction to that perceived mistreatment was to complete the 2009 VSE form. He did that only after a discussion with the Gaming Manager on duty that night (Terry Beardall) during which he made clear that he wished to sign the form because of his anger at his perceived mistreatment.

25. At paragraph 20 of his statement, the Defendant accepts that a dispute did arise between him and the Casino on 22 November 2009 relating to the placing of a bet, but asserts that this is not the reason why he insisted on signing the 2009 VSE. He states he had by then realised that he:

> "was suffering from a serious casino gambling addiction and wished to ... put it beyond my power to gamble at those casinos in future. I considered that the dispute between me and the Ritz Club on 22 November 2009 over the placing of the bet (and my resulting agitation) was itself a manifestation of my addiction, …".

26. Despite that evidence, in cross-examination the Defendant repeatedly refused to accept that there was a dispute, suggesting at one point that he could not remember what happened in 2009, but it might be correct. Later, in answer to questions about a VSE he said he signed in February 2011, he said this:

> "Ask your manager. Normally whenever something makes me upset I make a self-exclusion form immediately. I make it 20 times or 30 times."

27. Mr Terry Beardall's evidence (at paragraph 8 of his witness statement) is as follows:

> "On 22 November 2009, I was working at the Casino and was present when the Defendant signed a self-exclusion form and I specifically recall the details of the incident on that night. Prior to the Defendant signing the self-exclusion form, I recall that there had been an incident between the Defendant and one of the dealers. The Defendant was playing in a private room at the Casino, the Carmen Room, which is off the main Casino floor. One of the roles of the dealer is to say 'no more bests', but the Defendant was becoming irate when the dealer was making that call. I approached the Defendant to calm him down and explained that the dealer did need to say 'no more bets."

He continues at paragraph 9:

> "On that same night, a little later, I was called to reception, and I believed that the Defendant wanted to resign his membership. The Defendant said 'I have had enough', and I understood that he was referring to the dealers calling 'no more bets' and he stated to me that he wanted to exclude himself from the Casino. I asked the Defendant if he understood about self-exclusion and that he would not be allowed back to the Casino. I explained to the Defendant that if he signed he would not be able to return to the Casino and that it would be better to cancel his membership but he insisted on signing the form as he was upset by the dealer. The Defendant responded by saying words to the effect of 'just give me the paperwork'."

28. Although no customer interaction log or form was completed as it should have been, Mr Beardall was barely challenged on this account in cross-examination. I accept his evidence as to what happened on 22 November 2009 and the circumstances in which the Defendant came to sign the 2009 VSE.

29. I do not accept Mr Pettican's argument that what Mr Beardall says at paragraph 9 is a separate transaction from paragraph 8. To the contrary, the Defendant understood the reference to "I've had enough" to be a reference back to the dealer's call of "no more bets" referred to in paragraph 8 and Mr Beardall was well placed to connect the two events, particularly given his statement that the Defendant "insisted on signing the form as he was upset by the dealer". In light of all the evidence, I find it plausible that this defendant would wish to self-exclude solely as a result of a dealer calling "no more bets". (Indeed, there is evidence that a later dispute for exactly this reason with

the Clermont led to him self-excluding in November 2010.) The fact that all roulette dealers are required to make this call simply as part of the game is neither here nor there. Moreover, Mr Beardall's account is supported by documented references to a dispute that night in later letters and documents produced around the time of the revocation of the 2009 VSE: the letter signed by the Defendant dated 20 July 2010, the email of Mr Cullimore, sent on 21 July 2010 at 14:22, and the form signed by both the Defendant and Mr Beardall on 8 October 2010, all of which I return to below.

30. The 2009 VSE signed by the Defendant makes no reference whatever to problem gambling. Although he used words indicating that he wished to self -exclude "for life" the printed form itself made clear that the maximum term of self-exclusion available to customers of the Casino was five years. The Claimant accordingly treated the self-exclusion as for a period of five years in the circumstances, and in my judgment was entitled to do so. That is reflected in the letter dated 23 November 2009 written to the Defendant at the address in Switzerland given by him on his membership application form and to which he was written previously. I have no reason to doubt that the Defendant received that letter, despite his denial of receiving it for the first time in cross-examination.

31. At paragraph 27 of his witness statement, the Defendant said:

> "Despite my efforts to put Casino gambling beyond my reach by signing VSE form is excluding myself for life from the casinos at which I gambled; the urge to gamble remained and in July 2010 (only a matter of months after having voluntarily self-excluded myself for life) I sought to be readmitted to gamble at the Ritz club."

32. He referred then to the letter of 20 July 2010 (seeking readmission to the Casino), saying that he did not write it, but that it was prepared and shown to him "as a letter I signed" but "did not reflect anything which I had said". At paragraph 30 he continued: "*I was told by Mr Roger Marris and Andrew Loves that if I wanted to gamble again they would prepare a letter and if I signed the letter I would be permitted to gamble. I do not recognise my signature on the letter*." At paragraph 13 of his Voluntary Further Particulars, the Defendant did not admit signing the letter.

33. In fact, Roger Marris did not join the Claimant until November 2011, so it is accepted that the Defendant is wrong in that regard. It is also now conceded that the Defendant did in fact sign the letter of 20 July 2010. However, he maintains that he did not write it and that what is set out in the letter was not, as a matter of fact, true. His case is that it was written by somebody at the Casino (despite his gambling problem) solely in order to secure his re-admission, as he had been led to believe that this is what he had to do to gamble again.

34. The letter of 20 July 2010 is typed in perfectly grammatical English, and is self-evidently not written by the Defendant. There is no evidence about who wrote or typed the letter of 20 July 2010. The Claimant's case is that it was written by somebody outside the Claimant on the Defendant's behalf and handed to Mrs Barrett

on 20 July 2010, but I did not hear from Mrs Barrett. Whoever wrote the letter, the Claimant's case is that it must have been written on the Defendant's instructions.

35. So far as material, the letter states that the Defendant wished to retract his previous instruction to self-exclude for life, continuing:

> "At the time I was very upset at how the dealer treated me at the table; he was rude and disrespectful towards me. I have self-excluded at other Mayfair casinos for similar reasons and wish to point out that this has nothing to do with gambling. I would like to stress that I am happy to visit casinos and play as long as I am treated respectfully. Would you please remove this instruction at your earliest convenience?"

36. I have already found that there was a dispute with a dealer on the night of 22 November 2009 and that the Defendant perceived that the dealer had behaved disrespectfully towards him. The contents of this part of the letter accordingly reflects what happened that evening as independently recounted by Mr Beardall, who I accept had no input into writing that letter. It is also the case that the Defendant had self-excluded at other Mayfair casinos at the time. For example, on 10 December 2009 at the Clermont casino, the Defendant signed a VSE form for life but on 11 June 2010, an internal email from Mike Jones at the Clermont club records that the Defendant had:

> "explained that his previous resignation was not the result of problem gambling but solely related to the negative attitude of one member of the table staff…the Defendant also explained that he is a person of considerable wealth and only gambles for fun; he said he takes a small percentage of its profit from his various business interests and only gambles that amount…; "

37. On 12 February 2010 the Defendant signed a VSE for life for Genting casinos, also retracted subsequently as having been based on a dispute and not a problem gambling (see letter of 8 September 2010).

38. The contents of the 20 July letter are further supported by casino attendance records showing the Defendant attending casinos regularly, even on a daily basis, in the period preceding the 2009 VSE (for example every day from 13 to 18 November 2009 when no gambling occurred) and either not gambling at all or gambling with relatively small stakes, consistent with him being in control and not out of control of his gambling. Of real significance also is the attendance record for Grosvenor Park Tower, which shows very controlled gambling by the Defendant on 23 November 2009 with a buy-in of £100 and on 24 November 2009 with a buy-in of £2,000.

39. In the circumstances (whoever physically typed the letter) I am satisfied that it was written on the Defendant's instructions and at his request; and moreover that its

contents reflect the true state of affairs in November 2009, rather than a construct written only to secure re-admission and on instructions from Casino staff. In other words, whereas if taken at face value, the 2009 VSE might be regarded as strong evidence of a gambling problem and of self-excluding as a consequence, in light of all the evidence, and in the absence of any medical or other independent evidence supporting the existence of a gambling disorder, I do not accept that the 2009 VSE supports that conclusion here. Nor do I consider that it put (or should have put) the Claimant on notice of problem gambling in the circumstances.

40. The letter of 20 July 2010 was passed to Mr Timothy Cullimore, the Claimant's then CEO, who sent an email on 21 July 2010 timed 14:22 stating in reference to the Defendant that:

> *"*... despite ticking the "for life" box has lifted his ban from other casinos. He has been spoken to by senior management and has confirmed both in writing and verbally that he didn't exclude because of a social responsibility related problem.*"*

Mr Cullimore was prepared to lift the exclusion unless anyone had information to the contrary.

41. The Claimant's Compliance Director, Alexa Brummer, received this email and replied on 21 July 2010 stating that:

> "… we are prevented from acceding to the request he made in his letter, despite his protestation now that it was because he was unhappy with the dealer and his self-exclusion must stay in place for at least 5 years. "

Mr Cullimore agreed unequivocally by email on the same day at 16:08 and at 17:46 that afternoon, Lyndsey Barrett, Director of Operations, emailed asking Mr Cullimore or Ms Brummer to write a letter, deliver it to the Casino so that it could then be given by hand to the Defendant.

42. Ms Brummer agreed to prepare the letter (20:18 email) and did so the following day. The letter is addressed to the defendant at 35 – 37 Grosvenor Square, W1, and is in the following terms:

> "Unfortunately we are unable to accede to your request for the following reasons. When you requested self exclusion from the casino you were spoken to by Terry Beardall, Gaming Manager, who explained the procedure and consequences of undertaking such a step, including the fact that once entered into self exclusion cannot be rescinded. Nonetheless you then signed the form on which you requested a lifetime self exclusion. The form, a copy of which is attached, explains that the maximum period of exclusion is five years and we therefore take any lifetime self exclusion as meaning a five year exclusion. "
> Despite your further explanation now that you were upset at a dealer, because you have given us a written

> request for self exclusion we are legally unable to reinstate your membership until the expiry of the five-year maximum period as this would be a breach of our licence conditions.
> Once again, we are sorry that we are currently unable to comply with your request."

43. Ms Brummer asked Lyndsey Barrett whether the letter would be collected by the Casino or should be posted (email 22 July at 11:55). Lyndsey Barrett asked for it to be sent to the Casino as "*I may go with Cameron and meeting early next week to explain further, as his English is not very good, spoken or written and I want to try and make him understand as best as possible.…*".

44. On 12 August 2010 the Defendant sought entry at the Casino with a guest (Mr Charles Riachi). An email from the Duty Manager, Fizzy White, to Alexa Brummer and others that evening, states that when the person on reception realised who he was, he was asked to leave:

> "as he has self excluded himself and cannot be allowed entry, Riachi asked me why and explained the situation to him, apparently (the D) thought that Charles would be able to have him reinstated and that's why he asked Charles to bring him in. They left the building immediately without any problem and Charles apologised before he left and said he did not know otherwise would not have brought him in."

Alexa Brummer responded stating that she was relieved that "*this self excluded man did not get as far as the gaming floor… I will need to investigate what exactly happened."*

45. On 19 August 2010 Alexa Brummer sought confirmation from Cameron Marvin, Director of Customer Relations, by email at 12:45 that the refusal letter had been successfully delivered. There is a slightly odd email exchange between Cameron Marvin and Lyndsey Barrett that followed with Mr Marvin asking whether Mrs Barrett had had any news about the Defendant, stating: "*Alexa is asking me if the letter has been delivered she said it should have been delivered three weeks ago*." Ms Barrett responded: "*no haven't spoken to Alexa will do it when I get back. Let her know that we delivered the letter to his office a few days after she sent it over*."

46. It is common ground that Mr Marvin visited the Defendant at his office in this period, although the purpose of that visit is in dispute. The Defendant asserts that the visit was for the purpose of seeking to encourage the Defendant to return to the Casino and the letter was never delivered or received by him. Instead he states that Mr Marvin sought to persuade him back telling him that there was a new chef, beautiful girls, and that he could play the way he liked. I accept Claimant's evidence that there was no new chef and that escort services have never been provided by the Casino, as suggested by the Defendant. In any event, the Defendant's account is improbable in the circumstances described above and I reject it: the Compliance Director had written a refusal letter and issued instructions to refuse re-admission, so it would have been

futile (as Mr Marvin said) to seek to persuade the Defendant back; and it is inconsistent with Defendant's attendance with a friend in order to achieve reinstatement and the absence of any protest from him when he was refused entry.

47. Mr Marvin gave firm evidence which I accept, that he was asked by Mrs Barrett to deliver the letter with her, and that they did this together, attending on two occasions at the Defendant's office because on the first occasion he was not there. I also reject the Defendant's evidence that Mr Marvin was making unsolicited visits and calls to him. Although there is an email from Mrs Barrett which refers to Mr Marvin "popping out keeping the relationship alive", she has since left the Claimant and did not give evidence, and I accept Mr Marvin's evidence that he made no unsolicited calls or visits, but that the Defendant called him more than once to ask about re-admission and they used to bump into each other in Shepherd Market. It was clear from his evidence that Mr Marvin found the Defendant charismatic, and chatted to him on those occasions, as Mrs Barrett no doubt knew.

48. On 10 September 2010 the Compliance Manager at the Gambling Commission, Henry Kirkup, visited the Casino and met with Mrs Barrett. It is clear from an email he sent later that day, that Mrs Barrett raised with him the case of the Defendant who had completed a problem gambling self-exclusion form for life in October 2009 (after an incident with a dealer) but the incident had nothing to do with "problem gambling". Although I heard no evidence from Mrs Barrett, in light of Mr Marvin's evidence and this email, it seems to me most likely that the matter was raised by Mrs Barrett on that occasion, in part because the Defendant had continued since 20 July 2010 on various occasions to request re-admission, including on the occasion of the delivery of the letter dated 22 July 2010, on 12 August 2010 and in those informal conversations with Mr Marvin I have referred to; and in part because it was in the commercial interests of the Casino to readmit an attractive player who signed a VSE in circumstances where this had nothing to do with problem gambling. Mr Kirkup gave advice on the express understanding that the Defendant had contacted the Claimant (not the other way round) and confirmed that he did not have and never had had a problem with gambling, and wished to return. I have already found that this is precisely what had occurred. His advice was as follows:

> "It is unfortunate that the customer signed a self exclusion form if that was not his true intention. Clearly there is a responsibility on both parties to ensure that they understand the commitment being made. We should also bear in mind that those who do have problem gambling can be very devious and you will need to be confident as to all the circumstances before coming to a decision."
>
> The period of self exclusion is in the ordinary code provision of Licence Conditions and Codes of Practice. This meant that the period is suggested practice but not an absolute. However any operator choosing not to comply with an ordinary code provision should have clear and well argued reasons for this
> The status of ordinary code provisions is explained on page 22 of the LCCP. These codes generally set out good practice.

> May I suggest that if a similar situation arises in the future and a member wishes to cancel his membership because of a complaint or grievance (not problem gambling) you consider some type of written request to cancel club membership as opposed to using a problem gambling exclusion form."

49. Lyndsey Barrett forwarded the email to Alexa Brummer on 17 September 2010. It appears that she received no response to that email because by a further email dated 1 October 2010 she repeated her request, indicating that she would like to:

> "sort out the above self excluded gentleman".

Her email continues:

> "he sent in the letter a number of weeks ago stating that he hadn't self excluded because of a gambling problem but that he was upset with a dealer. Cameron and I had a meeting with him and Mr Al Geabury confirmed that he did not have a gambling problem. The night he excluded Terry Beardall spoke with him and explained what he was doing and it would be better for him to cancel his membership as he also told Terry that it was not a gambling problem but one of our dealers had upset him but he still insisted on signing the form. I would like to reinstate him and I await your comments and hopefully instructions."

50. Although she had no clear recollection of it, it appears from her email reply at 11:54 on the same day, that Ms Brummer must have spoken to somebody at the Gambling Commission, and in particular to the Head of the Casino section, Bob Good, because her email refers to his and Henry Kirkup's comments in this regard. Ms Brummer explained in evidence that their comments were to the effect that it was up to the customer to decide how long he wanted his self-exclusion to last and that it was possible for the customer to change his mind provided that six months had elapsed. Accordingly, having received that advice from her regulator, the Gambling Commission, and six months having elapsed and the customer having expressed a desire to come back to the Casino, she was happy to authorise this. However she stressed that she wanted the Defendant to acknowledge again that he did not have a gambling problem, either then or at any other time.

51. Ms Brummer was away for the first two weeks of October 2010 but by email of 4 October 2010 Mrs Barrett asked Gary Rolfe whether he was happy to have the Defendant back playing, and suggested that Mr Rolfe should interview him if so, or alternatively she suggested another manager could sit down with Cameron Marvin and the Defendant. She stressed that a form should be filled out after the suggested meeting.

52. A form entitled "end of self-exclusion waiver" was produced by the duty manager, Michelle Leese, at some point before 2am on 8 October 2010, but was never used. As she accepted, the form incorrectly refers to a self-exclusion for eight months from 22

November 2009 which did not occur. Instead, I find that Mr Beardall met with the Defendant on 8 October 2010 when the Defendant attended the Casino prior to the revocation of the 2009 VSE, and the Defendant confirmed to him (both verbally and in writing) that the only reason he signed the 2009 VSE was because of a problem with the dealer. Mr Beardall's evidence to this effect is supported by an email sent to Ms Brummer dated 9 October 2010 stating: "*he confirmed in writing and verbally that he did not have a problem with gambling but had a problem with a dealer"* and by an email sent in the early hours of 9 October 2010 by Cameron Marvin to similar effect.

53. Neither Mr Marvin nor Mr Beardall could explain precisely how the written confirmation document signed both by Mr Beardall and the Defendant came to be produced. However, Mr Beardall was certain that both he and the Defendant signed the document on the evening of 8 October 2010 when they were together. In that form the Defendant confirms that he self-excluded on 22 November 2009:

> "purely because of an incident with a dealer that evening. I would like to state for the record that I do not have and never had a problem with Gambling".

Beneath his signature, Mr Beardall confirms:

> "that Mr Al-Geabury was upset by one of our dealers and left the premises as a result of this incident and for this reason alone".

When asked about this form in cross-examination, Mr Beardall stated:

> "… I confirmed that there was a problem with a dealer. I explained the situation on the night, which I think actually concurred with Mr Al-Geabury's statement that he actually said exactly the same as I was saying, and then the letter would have been composed. I agreed with the letter when I read it. I agreed with what happened on that night and I signed it".

54. In light of all the evidence (including the absence of evidence to which I have already referred, and the expert evidence referred to below) I accept the truth of the statement attributed to the Defendant in the 8 October 2010 form, to the effect that he did not have and never did have a problem with gambling. My conclusion is not affected by the fact that the document was produced by a member of Casino staff and contained their words rather than the Defendant's own words. I am satisfied that the form was completed on his instructions and reflected his true position. He was not simply signing a document in order to gain re-admission. The 2009 VSE was not lightly retracted. The Claimant re-admitted the Defendant to the Casino following persistent requests from the Defendant to allow him back, and only upon the advice of the Gambling Commission that it was possible to do so.

55. Some criticism was made of the failure by either Mr Marvin or Mr Beardall to identify a 24 hour cooling-off period that evening, but it is clear from the attendance

records that the Defendant did not in fact return to gamble until at least that period had expired.

56. The Defendant relies on the fact that within weeks of being re-admitted to gamble by the Claimant, the Defendant self-excluded from the Clermont casino, with reliance placed particularly on an internal email dated 4 November 2010 from Mike Jones at the Clermont stating "*the above has self-excluded as a problem gambler and should not be allowed entry to the club*". The Clermont's surveillance report dated for November 2010 indicates that this occurred following a dispute about a late bet, which the defendant continued to dispute even after he was shown footage of the disputed spin. I have no reason to doubt that the dispute (and not problem gambling) led the Defendant to sign the VSE on that occasion.

57. Earlier, as identified above, the Defendant signed a VSE form 'for life' at Genting Crockfords' casino. On 8 September 2010, the Defendant applied in writing to lift the VSE as being "*an overreaction to particular circumstances*" and said that he did not have a problem with gambling. Information about this VSE was shared by Genting and the Claimant, but it is clear from an internal email sent by Gary Rolfe, the Claimant's Gaming Director, on 6 November 2010 at 22:39 to Casino staff, that what was shared was the circumstances of the Genting VSE as being other than for genuine or social responsibility reasons. Cameron Marvin thought this was a tactic used by the Defendant, just as he used other "tactics". He said:

> "He would say -- as he used at the Colony -- he would say he wasn't allowed to use his debit card at Crockfords, then he'd go to the Colony, draw off his debit card and if he had won, it wouldn't be a problem, but if he lost, he would say he wasn't allowed to draw the money and so get his money back".

Mr Marvin described this as the Defendant getting "an each way bet".

58. Mr Pettican suggested that the Defendant's conduct in seeking to place external controls on his gambling by having a casino "ban" him from playing for short periods of time (something he also tried to do at the Casino), was only explicable on the basis that the Defendant was not, himself, able to control his gambling. I disagree. I am satisfied that for the Defendant, this was a means of getting an each way bet, as he had come to realise, and entirely explicable on this basis. As Michele Leese explained in cross-examination:

> "I was never under the impression that the gentleman had a gambling addiction or was a problem gambler. I believe he was a gentleman who likes to win and when he asked me not to return his TT funds or let him play, I believe it was because he wanted to go away winning…I know the Defendant well. He was a very difficult customer and he was always looking to cause a dispute with various ways, the way he played, asking us to do things, and then if you didn't do them, then he would use

> that as a cause to complain. It was always about – because he was a bad loser."

59. On 10 February 2011, an incident occurred whilst the Defendant was gambling at the Casino, described in a later internal email dated 6 August 2012 as follows:

> "[I]n February of 2011 we had a huge dispute with him, a dealer incorrectly placed his chips on the layout and he basically threw his toys out of his pram. He shouted and screamed and again mentioned self-excluding himself from the club, at this point Lyndsey decided to withdraw his membership as he was becoming too much of a problem".

60. The Defendant accepts that he was agitated to the point of shouting and screaming as a result of this incident. He asserts that he knew this was a symptom of his gambling addiction, and signed a further VSE with the Casino.

61. The incident was dealt with by a Duty Manager, Fizzy White. She gave evidence (which I accept) that the Defendant was angry about the way the pit boss dealt with a bet and complained to her about this mistake, asking to self-exclude. Given the experience of his previous self-exclusion for non-social responsibility reasons, she suggested that he calm down and think about it. He accepted that advice, leaving the Casino for the evening. That account is supported by a contemporaneous handwritten record which confirms the Defendant's wish to self-exclude, the fact that he was told to calm down and think about it and left; and the fact that later that evening his membership was withdrawn by Michelle Leese. In an email dated 10 February 2011 at 21:53, Ms Leese recorded that she had reviewed the incident and "*found no fault with the table staff in regard to their behaviour and how they handle the dispute. They remained passive and professional throughout his tirade.* …" By letter dated 11 February 2011 the Claimant informed the Defendant that his membership of the Casino had been withdrawn with immediate effect. There is also a form stamped 'withdrawn' in relation to the defendant, and in an email dated 11 February 2011, at 17:31, Ms Leese confirmed that the Defendant's membership had been withdrawn and that he was aware of this.

62. In light of the contemporaneous documents, together with the evidence of these witnesses and Ms Brummer who had an impressive command of the Claimant's VSE records, I reject the Defendant's assertion that he signed a VSE on the evening of 10 February 2011. I am quite sure having seen them give evidence, that no member of the Claimant's staff would conceal or destroy any document, still less a document of regulatory importance such as a VSE form. I am quite satisfied that the Defendant responded angrily yet again to perceived mistreatment, and again threatened to sign a VSE form but did not do so. That threat had nothing whatever to do with gambling addiction or problems, but was attributable to his anger in that moment.

63. That conclusion is not altered by the 'VSE for life' forms signed by the Defendant at other clubs in the same period. Within days of the incident on 10 February at the Casino, the Defendant signed such a VSE at Les Ambassadeurs on 16 February 2011,

and wrote a letter to Les Ambassadeurs stating that he wished to cancel his membership for life due to problem gambling, stating "I AM ADDICT". That statement cannot be taken at face value given the record of a conversation the Defendant had subsequently with a manager, conducted on 12 February 2014 at Les Ambassadeurs, in which he stated that "*he did not have a gambling problem at all and that he had written that on the form because he was angry over a bet that was not paid.*" Similar reliance is placed by the Defendant on the VSE form signed 'for life' at Crown Aspinalls on January 2011. But again, by a letter dated 27 September 2012, which he signed, the Defendant sought to revoke the Crown Aspinalls' VSE stating that he had "*never had a gambling problem and that [his] request for a life time VSE made on 6th January 2011, was the result of a dispute [he] had with a gaming manager at Aspinalls.*". There is also a record of a conversation with him completed by Crown Aspinalls' manager Howard Aldridge in which the Defendant is recorded as saying that the VSE was a result of a dispute with the manager, that he had done this at other clubs as well, and that he is a measured and controlled player.

64. In his witness statement the Defendant says that as far as he can recall he made no attempt to gain re-admission as a member of the Casino following that termination of his membership. He does however, recall contacting Andrew Love and Roger Marris in about July 2012 at a time when he was trying to assist a friend called 'Nora' who was in dispute with the Claimant. He states that both responded by encouraging him to rejoin the Claimant and gamble, drawing attention (at paragraph 61) to internal emails showing that the Claimant was "*extremely keen to readmit me as a member, .. even providing me with gifts*." He notes in particular an internal email from Mr Rolfe to Andrew Love and copied to Roger Marris of 31 July 2012 in which he states "*we struggled to deliver the flowers again*" in support of this assertion.

65. This evidence and the suggestion that the Claimant was showering the Defendant with gifts and in particular with flowers in order to entice him back was undermined by the debtors logs concerning the case of Ms Noora Al Daher, produced during the course of the trial. The first entry actioned by Gary Rolfe, dated 22 July 2012, refers to the Defendant contacting the Claimant on behalf of Ms Al Daher, and seeking to intervene in a dispute over a debt on her behalf. The second entry dated 24 July 2012 is actioned by Andrew Love who have spoken to the Defendant and was told that there was little or no point in pursuing the debt during Ramadan but that it would be paid immediately afterwards. In that context, in a further entry dated 25 July 2012, again by Mr Love records that it was suggested, in context by the Defendant, that "*we send some flowers and chocs to her in UK as she is unwell*" and that the Defendant "*mentioned something then about his own membership and AL suggested he speak with Gary directly*". This demonstrated that Mr Rolfe's email of 31 July 2012 referring to flowers was in the context of flowers for Ms Al Daher and not for the Defendant. The Defendant's attempt to suggest otherwise was untrue. Moreover, the debtor logs also demonstrate that it was the Defendant who raised re-admission, and not the other way round.

66. A further debtors log entry of 7 August 2012 shows that a meeting to discuss Ms Al Daher took place on 6 August between Mr Love and Mr Marris and the Defendant, and I infer that the question of readmission was also discussed. This conclusion is supported by an email at 23:50 on 6 August in which Mr Rolfe set out his understanding of the problems and disputes the Claimant had had with the Defendant,

concluding that he was happy to allow him to rejoin provided there was an interview that could be logged "*to cover us should any problems arise in the future*"; and a response on 7 August 2012 at 9:28 from Mr Marris referring to 'yesterday's' discussions about re- admission and the Defendant being "aware of the level of behaviour that is permitted and not permitted". Mr Rolfe responded in what I regard as a telling email, as follows:

> "My main point of concern that I think needs to be addressed is his consistent mentioning of 'Self-excluding', Self-exclusion is a term used when defining someone who has a problem gambling not to use when you are angry or upset with the manner in which you have been dealt with in the club. I think this needs to be mentioned as from what I remember of dealing with him in the past he does not like losing."

67. In context I am satisfied that Mr Rolfe's reference to "covering us should any problems arise in the future" was not to the possibility of problem gambling being a feature, but rather to the Defendant's habit of using mini-exclusions, or the threat of VSEs to get 'each way bets' and thereby avoid losing.

68. The Defendant was interviewed over the phone on 7 August 2012 by Roger Marris. Mr Marris made clear the level of behaviour expected from the Defendant and decided to reinstate his membership. Later that evening at 22:30, the Defendant attended the Casino and was interviewed by Cameron Marvin, to make sure that problem gambling was not the reason for his 2009 VSE and his threat to sign a further VSE in 2011. There is a contemporaneous Customer Interaction Log recording the interview between Mr Marvin and Defendant at the time of his re-admission. This confirms that the reason for the interaction was a wish to ensure that previous self-exclusions were not a result of problem gambling. In the "concerns note" box Mr Marvin recorded: "*after being excluded for a period of 18 months, I have no concerns about allowing the Defendant back in the club to game. His level of gambling is far outweighed by his financial wherewithal*." The Defendant's suggestion as a consequence of this entry, that the only concern Mr Marvin had related to his financial position, was firmly rejected by Mr Marvin in his witness statement and in cross-examination. I accept Mr Marvin's evidence that he asked about the Defendant's gambling and his previous self-exclusions and that the Defendant confirmed that he had no problem with gambling and had not previously self excluded because of a problem with gambling.

69. In June 2013 the Claimant agreed to increase the amount that the Defendant was permitted to gamble to £1 million in each 24 hour period, as is confirmed in an email from Martin Baum dated 28 August 2013. The email makes clear that the request was only granted after a discussion between Mr Baum and the Defendant where "*he explained that his business was going very well and he would like to play more on the table he said that if he makes £30 million on the markets he wants to play if he loses £30 million he stops playing, as he had a DCF only it was deemed a reasonable request*." I have no reason to doubt that this was said as recorded by Mr Baum.

70. It appears from the email that there was no immediate change in the level of the Defendant's play and that this did not in fact change until 21 August 2013. The email records that on 21 August the Defendant:

> 'bought in for a win account from Aspinalls for £350,000 and then started to draw heavily on his debit card. Midway through his playing session he left .. and returned to Aspinalls to try his luck there but returned to us after an hour or so'.

71. The email records that the Defendant spoke to his bank on two occasions, transferring money between accounts. It is apparent that this raised concerns in the mind of Mr Baum who spoke to him towards the end of the playing session. The email records that the Defendant assured Mr Baum that:

> 'all was fine and his business was going well and the money was not a factor and he was okay.'

72. Mr Baum left him alone and records that when the Defendant finished playing he was fine and left the club quietly. He also records that Ms Brummer raised a concern about this spike in the Defendant's level of play, but Mr Baum explained the background to her, no doubt based on his discussion with the Defendant. Given the Defendant's attendances at the Casino thereafter on 13 September, 19 October, 25 November and 25 December 2013 where he did not gamble at all and his numerous attendances throughout that year where he gambled with relatively low stakes, it seems to me that both Mr Baum and Ms Brummer were entitled to be satisfied that this incident was not such as to cause social responsibility concerns or be indicative of problem gambling.

73. There was an important conversation between the Defendant and Mr Baum at the Casino on 28 December 2013. Mr Baum made a contemporaneous email record of it (dated 29 December 2013 at 20:20) which I regard as accurate. The Defendant asked to speak with him and explained the details of an incident that happened at Crown Aspinalls relating to an unplaced bet. The Defendant told Martin Baum that he was not paid out for the bet, left the Casino and on the way out he signed a VSE, adding that it was for life. Mr Baum then records that:

> "he explained to me that he did not have a gambling problem financially as he had just made $70 million in his business but that he did not like Aspinalls casino being dishonest with him and cheating him".

74. The Defendant explained that he had been contacted by Crown Aspinalls subsequently and told that there had been a mistake, the VSE was retracted and he had been paid out for his claim in dead chips which he lost, thereafter losing almost £650,000. He wanted this money back, or was threatening to sue. At the Defendant's request, Mr Baum called Crown Aspinalls to relay a message that the Defendant would sue if he were not repaid and Howard Aldridge of Crown Aspinalls emailed Roger Marris subsequently, referring to the:

> "issues we are currently having with Al-Geabury. We do not expect this to be resolved quickly, as Al-Geabury is now claiming 'problem gambling' as a means to retrieve his recent losses."

75. Given the earlier conversation between the Defendant and Mr Baum, I do not regard the Crown Aspinalls' e-mail of 29 December 2013 as putting the Claimant on notice of the fact that the Defendant considered himself to be a problem gambler. To the contrary, it confirmed the Claimant's existing understanding that he was a person who had a pattern of signing VSEs in response to arguments with other clubs and dealers, in order to achieve his way, and not as recognition of a gambling problem.

76. On 10 February 2014, Mr Marris sent the following email to various members of the Claimant's staff regarding the Defendant:

> "I have just come off a long call with Howard Aldridge who has told me that Al Geabury is involved in a full blown legal dispute with Crown Aspinalls. Not only is he looking for the money he lost surrounding his recent self-exclusion dispute but is also claiming his lifetime losses as he is suggesting that they should have known he is a problem gambler. We have to be very careful with him and Howard was giving me a friendly warning on the type of tactics Al Geabury is now using. They also don't believe he is a problem gambler and that this is a diversionary tactic. Please can you reassure me about our own position with him and that we will not fall into the same trap as Aspinalls find themselves in".

77. On the same day (10 February 2014), Mr Marris received a response to his email from Mr Marvin stating this regarding the Defendant:

> "I have mentioned to you in the past that he is an accident waiting to happen, we have heard the story with Terry's partner at the Colony and now Aspinalls. We have stopped him asking us to stop him playing for certain periods of time and from asking us not to return any funds he has asked us to send to his bank. As long as he does not ask us to self-exclude him we should be ok, but gaming staff will have to be on their guard, I am sure Martin will concur."

78. The Defendant relies on these and other requests either to prevent him from playing for short periods or not to return money to him, as demonstrating that he was seeking to place external controls on his gambling and therefore as indicative of problem gambling. I have already dealt with the view taken by Mr Marvin and Ms Leese that the Defendant was a 'difficult' customer and one which the Casino had to be on its guard about in relation to such behaviour. In his evidence, Martin Baum, who has known the Defendant for 20 years, was asked about mini exclusions and explained the nature of the 'trap' referred to by Mr Marris in the email above. He responded:

> "It can be very difficult to follow a customer's instructions if they purposely go against their own instructions. If a customer says, you know, 'I don't want to play until 6 o'clock in the morning', and then at 5.45 he plays because maybe the staff have changed, they wasn't aware of the instruction or the instruction had changed from the day previously, basically the customer then has what's a free bet, for example. They can play very heavily for 15 minutes. If they win, they don't say anything. If they lose, they can say, 'oh I told you not to let me play before 6 o'clock, I need my money back'."

Mr Marris gave similar evidence about the trap created by such deliberate 'tactics'.

79. In her evidence Fizzy White explained the steps she took when asked to stop the Defendant from gambling for a period, to ascertain whether or not he had any problem with gambling. I accept the evidence she gave, as follows:

> A. On the second time when he asked me to actually not to play, I asked him -- I took him away, we sat by the slot machines and I asked him if he had a problem, is that the reason why he's asking us to stop him from playing? 1 And he said no. He said he was tired and he just needed to sleep.
> ……..
> Q. It didn't even occur to you that this was a possibility? I mean, it was a possibility --
> A. It was a possibility. That's why I had a chat with Mr Al Geabury asking him why he wanted to be stopped and I asked him and he said he hasn't got a problem because all he wanted to do is go to sleep, he's tired. That's what he told me.
>
> Q. But isn't his answer concerning?
> A. It didn't concern me after I had a chat with him, no.

80. The expert evidence of Dr Needham-Bennett was to the effect that asking to be stopped from gambling for temporary periods was not necessarily indicative of someone with problem gambling. He said:

> "I think it could be interpreted in two different ways, really quite polar opposite ways, namely that he is externalising the responsibility for his gambling and he has a problem with it, or he is exerting control by himself by saying, "I don't want to gamble and I'd like you to stop me doing so"."

81. In my judgment, in light of the pattern of the Defendant's behaviour, the Claimant was entitled to take the view it did: that the requests made by the Defendant were indicative of him controlling and limiting his own gambling, the antithesis of someone who is out of control. They were not indicative of problem gambling.

The Events of 19 February 2014

82. It is common ground that the Defendant attended a football match at the Emirates Stadium on 19 February 2014 and that he watched the match from the Claimant's box, having obtained tickets from the Claimant. The Defendant was accompanied at this match by his brother, Mr Firas Abdullah. It is also common ground that, in the course of the match, a conversation took place between the Defendant and Mr Marris, who was also there, with one of the Claimant's suppliers. There is a dispute however, in relation to that conversation as to whether (a) it was the Defendant who sought an increase in Defendant's facility or the Claimant who spoke about the Defendant's skill as a gambler and encouraged him to get back substantial losses; (b) the increase was to £2 million, £5 million or between £5 and £10 million; and, (c) the Claimant promised not to present any cheque until such time as suited the Defendant. Notwithstanding the corroboration on paper of the Defendant's account by his brother at paragraph 12 of his statement, I unhesitatingly prefer the evidence of Mr Marris, which was measured and cogent, that he was approached by the Defendant. The approach was not anticipated by him. The Defendant said that he felt he was a £10-20 million player and sought an increase in his facility, but Mr Marris only had a £2 million facility which is what he agreed.

83. In reaching those conclusions I have relied on the contemporaneous email evidence from Mr Baum to the cash desk timed at 22:28 on the evening of 19 February 2014 saying that a facility of £2 million had been provided: "*I have been informed by Roger that Mr S Al Geabury facility has been increased to £2,000,000 with immediate effect. This can be drawn on debit card or cheques drawn on his uk bank*". Further, when the Defendant arrived at the Casino, he asked for a cheque in the sum of £2 million. I am satisfied that Mr Marris in fact had limited authority to a facility level of £2 million, and that Mr Marris would not go above that level. There is also a customer interaction log dated 20 February 2014 at 1:05am and completed by Mr Baum confirming that the limit had been arranged at £2 million; and that he later requested *"another £5 million".*

84. Moreover, the account given by the Defendant lacked credibility and was riddled with inconsistency. His witness statement referred in four paragraphs to a limit of £5 million (confirming earlier references to the same amount in the Defence and Counterclaim) but in oral evidence for the first time, he asserted that the limit was agreed at £5 million to £10 million. When challenged about his change of case, the Defendant had no answer and Firas Abdullah could only offer that it was due to a mistake by the solicitor. I reject the Defendant's assertion that Mr Marris agreed to the provision of credit of an unlimited nature *i.e.*, that his cheque would be held for so long as Defendant wished. It is highly improbable that Mr Marris would enter into such an arrangement because it would be illegal as contrary to the Gambling Act 2005, and unenforceable. This was known to Mr Marris generally, known to both Mr Marris and the Defendant through their respective involvement in the Al Daher case which turned on a question about unlawful credit, and I am satisfied, must have been known to the Defendant because of his reference on the VSE form later that night to the credit being criminal.

85. I do not accept the evidence of Firas Abdullah in relation to this conversation with Mr Marris as offering any genuine corroboration. First, he demonstrated at the end of the cross-examination how limited his English was, and I am sure that he could not have

understood the conversation between Mr Marris and the Defendant which was conducted in English. Secondly, the change in the Defendant's account was simply adopted by him, and I have concluded that Mr Abdullah was giving evidence simply to support the Defendant without concern about its truth.

86. After the football match, the Defendant went to the Casino and requested £2 million in chips at the cash desk. He signed a scrip cheque for £2 million. He says that he then went on "*a frantic gambling spree*" and his gambling was "*frenzied and uncontrolled*" and "*frenzied and erratic*": see Defence and Counterclaim at paragraph 4.17 and his witness statement at paragraphs 95-100. Having viewed the whole of the CCTV material, which shows the Defendant making the initial request, signing the cheque and then playing roulette at two alternating tables over a period of almost two hours during which he lost the money, while his brother sat watching impassively throughout; and having heard evidence from Clive Pett, Fizzy White, Kelly Steeden, a dealer and Philippa Halpern, an inspector, all of whom observed him that night, and none of whom had or were given cause for concern, I reject the Defendant's evidence about his gambling that night as untrue. He looked calm, controlled and measured throughout, and there was nothing whatever in his demeanour while gambling that gave or should have given any member of staff any cause for concern.

87. Finally, having lost the money the Defendant requested a £5 million facility but it was refused. Mr Baum's customer interaction log, completed for the stated reason that the Defendant *"had been set up with a CCF for £2 million by R Marris and Mr Al Geabury was asking for an increase on this CCF*", records a telephone conversation that night in which he tried to explain that the Casino were not in a position to give the Defendant an excess on his first use of the CCF. He continues: "*He started to speak over me saying that he wanted <u>another £5 million</u> and Roger has given another player namely (SE) a £8 million CCF and did we not think he was as good as him*" (emphasis added). The document records that: *"[The Defendant] then reduced his demand from £5 million down to £2 million then he asked for £1 million. [The Defendant] then said to me if we did not give him the excess he would VSE as it was not fair we were not giving him a chance to get his money back. I tried to explain that Mr Marris would be unable to grant the excess but again [the Defendant] spoke over me and told me to call him and tell he will VSE if he can't have the money*" . Mr Baum completed the entry as follows: "*At no point during both my conversations with [the Defendant] did he mention the fact that he had a gambling problem. His only concern was that we would not give him an excess and he seemed to be using the VSE as a threat to force us into giving him more money*" .

88. I have no reason to doubt what is recorded in the log, and was confirmed in evidence by Mr Baum. It is significant that the Defendant sought an extension of the facility before making any mention of the VSE; and sought to self-exclude only when he did not get the extension of the facility. The threat to sign a VSE if he was not granted an increase in his limit was consistent with his previous course of conduct: the VSE emerging either as a threat consequent upon not getting his way or as a reaction in order to ensure that he would get his way.

89. Mr Baum spoke with Mr Marris by phone subsequently, who confirmed the decision not to increase the limit. Mr Baum spoke with the Defendant after that, to tell him that Mr Marris would not increase his limit.

90. So far as concerns the VSE form itself, signed by the Defendant that night, he wrote:

> "I AM ADDICT. I TOLD YOU THESE BEFORE AND YOU OFFER TO ME CREDIT. THESE IS CRIMINAL".

Mr Pettican submitted that these words reflect a simple complaint that he was a gambling addict, that he told them this and they gave him credit to encourage him to gamble and this is criminal. I do not accept this submission. These words were written against the background of the Crown Aspinalls dispute and the Defendant's knowledge of the Al Daher dispute. So far as the Crown Aspinalls dispute is concerned, by 10 February 2014, this was a "*full blown legal dispute with Crown Aspinalls*" and the Defendant was "*looking for the money (he) lost*" in the dispute itself and lifetime losses on the basis that Crown Aspinalls should have known that he was a problem gambler. The Defendant accepted in his oral evidence that the dispute with Crown Aspinalls concerned the revocation of a VSE (which in that case had been revoked only three days after being made) and a dispute about dishonesty against Crown Aspinalls. He must therefore have known when he gambled on 19 February 2014 that he could at any stage make similar points against the Claimant. Further, it is clear that he knew that an allegation in the Al Daher case was of unlawful credit, and that a cheque presented in respect of credit which was illegal might not have to be met.

91. When the Defendant did not get the additional facility he asked for, he demanded a VSE form and took the point about credit being criminal. Far from this being a vulnerable person invoking the help of a VSE, this appears to have been a decision to deploy the arguments known to the Defendant from the Crown Aspinalls case and/or the Al Daher case to his advantage. This is borne out by the fact that the Defendant immediately enlisted the assistance of Mr Cartier and that there was a holding email on 22 February 2014 and a substantive letter on 26 February 2014.

The contemporaneous medical evidence

92. As I have already indicated, this is not a case presented on the basis of an unrecognised gambling problem, and accordingly, the Defendant's asserted efforts to obtain medical help for his gambling have been tested. The only contemporaneous evidence produced in response to requests for information and documents are: a report of Dr Sandy Gupta of 3 October 2014 and a letter and notes of Dr Resek of his consultations with the Defendant between 8 January 2014 and 14 February 2014.

93. So far as concerns Dr Gupta, his letter dated 3 October 2014 is so general as to be of little or no value. It contains no detail as to the nature of the Defendant's condition and cannot realistically be characterised as a 'medical report'. Attempts to contact Dr Gupta (by the Defendant's former solicitor, Mr Cartier) appear to have failed and neither Dr Needham-Bennett nor Dr Taylor was able to do so. No relevant supporting documentation or records (eg. receipts of payments to Dr Gupta, dates of travel etc.) in relation to Dr Gupta have been provided. Furthermore, Dr Resek's report and notes make no reference whatever to the Defendant seeing two previous doctors, whether Dr Gupta or anybody else, prior to the consultations with Dr Resek. In the

circumstances, I am not persuaded that there were consultations with Dr Gupta as described in the letter of 3 October 2014 or at all.

94. There is no evidence of consultations with any other treating doctors (other than Dr Resek). Not one has been named; not one address has been provided; no dates of appointments have been provided; no details of treatment have been provided; not one piece of paper supporting their existence has been provided, despite the Request for Further Information and order of Master Eastman. As regards those other doctors, in his evidence the Defendant says that he "*talked to them and I attempted from the first day of the request, until today, only the doctor in Geneva in Switzerland, only on Friday he has accepted to give me a document. I tried everything possible but they do not like to be involved in court cases and to leave their business*". This has not previously been said by him in his second and third disclosure statements, and if true, he would necessarily know the names and details of those doctors but he does not. The inference I draw is that he did not receive the significant medical assistance he says he received.

95. The position in relation to Dr Resek is different, but does not support the Defendant's claims:

(i) The visits to Dr Resek started shortly after the dispute with Crown Aspinalls (in late December 2013) on 8 January 2014.

(ii) The entry for 10 January 2014 "*Solicitor wants a letter from me to distribute",* suggests that the purpose of seeking assistance from Dr Resek at that time was to further the dispute with Crown Aspinalls.

(iii) The Defendant lied to Dr Resek about the fact that the treatment was keeping him out of casinos between appointments. This is evident from the entry of 27 January 2014 (belied by the records of attendances at the Casino on 25 and 26 January 2014 and also 27 January 2014 assuming that this was prior to the appointment, which is likely given timings). This is also evident from the entry of 14 February 2014 (belied by gambling at the Hippodrome Casino on 13 February 2014).

(iv) The Defendant ceased attending Dr Resek after 14 February 2014 despite calls from Dr Resek to have follow up appointments and treatment (referred to in the last paragraph of his report of 4 December 2014). There was no sensible reason for non-attendance if the Defendant's account of the facts was true. On the contrary, if his attendance was to deal with a gambling problem, then it is inevitable that he would have attended after the events of the evening of 19/20 February 2014 at the Casino on his account. His explanation in cross-examination for not doing so was that he was taking the medicine which Dr Resek had given him and that it was the medication and not talking to Dr Resek which helped him. When the Defendant was shown that Dr Resek's notes show that the medicines had been discontinued, he answered that he had "resumed it". I reject that evidence as implausible in the absence of any prescriptions and because the Defendant's evidence was that the medication was stopped because the Defendant himself complained of the side-effects. Further, the Defendant made no mention of continuing with medication in the consultations with either Dr Taylor or Dr Needham-Bennett.

. (v) Shortly after the attendances with Dr Resek, the Defendant procured a settlement with Crown Aspinalls, as he confirmed.

96. The question is why did the Defendant tell lies to Dr Resek. Mr Pettican submits that they can be dismissed as part of an addict's propensity to lie. Quite apart from the improbability of doing so when giving information to a treating doctor, there is no evidence that this Defendant told lies to members of his family, friends or business associates. The other suggestion made was that he told lies because he did not wish to let down Dr Resek but that was contradicted by the Defendant's own evidence before the lies were exposed when he was asked *"is the information which you provided to Dr Resek the truth?"* and responded *"Yes, of course. He is a doctor. I have to tell him the truth"*.

97. In light of all the evidence, I have concluded as Mr Freedman submits, that the evidence of Dr Resek was, to the knowledge of the Defendant (but not Dr Resek) self-serving evidence that was being procured for the case against Crown Aspinalls to show that he had a very serious gambling problem which Dr Resek had considerable success in addressing. It could therefore be used to show that this was a problem which could be corrected provided that casinos did not themselves abuse their position by allowing him in at a time when he wished to be excluded e.g. by the VSE in relation to Crown Aspinalls.

THE EXPERT MEDICAL EVIDENCE

98. The Defendant relies on the report and evidence of Dr Richard Taylor. He is a consultant forensic psychiatrist to the CNWL National Problem Gambling Clinic and is a specialist in this field of work. Dr Taylor's conclusion (at paragraph 7 of his opinion) is that the Defendant suffers from a gambling disorder which is "persistent, in early remission and severe according to DSM 5 criteria". Dr Taylor subsequently accepted that this categorisation was a "*numerical error*", and should have been 'moderate' on the basis of the number of criteria evidenced.

99. The Claimant relies on the report and evidence of Dr Needham-Bennett, a Consultant General and Forensic Psychiatrist. Dr Needham-Bennett provided a heavily qualified report, concluding that on the Defendant's account of the facts, he suffers from a mild gambling disorder.

100. Shortly before trial the experts met to identify issues of agreement and disagreement. Both experts significantly qualified their role in the joint report at paragraph 9 as follows:

> "We agree that the diagnoses we have made, as is usually the case in psychiatric practice, depend on to a significant extent on self-reporting from Mr Al Geabury. In addition to self-reported information we agree that information from all sources for example the evidence relating to Mr Al Geabury's gambling behaviour from casino documents will inform our diagnosis. We agree that it must ultimately be a matter for the court to

> make findings in relation to the facts where these are in dispute. The extent to which we are justified in making differing interpretations in this case will depend on the findings of the court where the facts are in dispute."

101. Despite expressing that view Dr Taylor was surprisingly reluctant to accept the proposition that when various assumptions he made about the Defendant and his gambling were shown to be false and were factored into the analysis, they necessarily affected his diagnosis. He appeared to have a limited understanding of the duty owed to the court as an independent expert and the impression he gave was of somebody arguing the Defendant's case rather than expressing an independent opinion (this view was reinforced towards the end of cross-examination by a late disclosure of his conflict of interest, as I shall explain). For example, he maintained a characterisation of the Defendant's gambling on 19/20 February 2014 as "frenzied and uncontrolled" even after seeing the video evidence of the gambling, and when challenged adopted an unrealistic interpretation of the words "frenzied and uncontrolled" which were favourable to the Defendant. Moreover, it appeared that he had developed a thesis about the Defendant's condition and dismissed or minimised facts that were inconsistent with this thesis or alternatively, where the factual material was not available to support his thesis, relied on stereotypical views about how a person with a gambling disorder might behave.

102. I was particularly concerned by Dr Taylor's failure to disclose (until after two hours of cross-examination when it was too late) a fundamental conflict of interest, contrary to the last line of his expert's declaration. The conflict was that he was not simply reporting as an expert, but in the last month he had attended on the Defendant as a treating doctor on four occasions. It was no answer that this did not affect his written evidence because he had no conflict at the time of his report, since the duty is a continuing one, and it did affect him at the joint experts' meeting and in preparation of the joint report (which also contained the declaration) and when giving oral evidence (in which he referred to the declaration). I was surprised too by Dr Taylor's suggestion that it did not matter because there was no material in the subsequent consultations which affected his view. This is simply no answer to what is a substantial conflict between a role as a treating doctor and an independent expert. The information communicated to him by the Defendant as his client could not be tested, and could not with any certainty be separated in his own mind.

103. By contrast, Dr Needham-Bennett was impressive. He was not challenged in cross-examination because in reality, there was no basis for doing so. He was careful and methodical in his assessment of the factual situation. Where he felt able to do so, he expressed conclusions that reflected the available evidence and on the basis of the Defendant's self-reporting, concluded that there probably was a mild gambling problem. However, he correctly recognised the need to qualify his opinions as indicated above, and where new factual evidence emerged during the trial and assumptions about the evidence were put to him, that adjustments would have to be made in relation to his opinion. Ultimately Dr Needham-Bennett confirmed that if the evidence base as regards matters dependent on the Defendant's self-reporting was removed (as false or unsubstantiated) he would be "*probably tearing up my existing report and starting again*". He said "*I think I would have to revise it down and say that he did not meet the threshold for a gambling disorder."*

104. So far as concerns the application of the DSM-5 criteria, I consider each criterion in light of the evidence and findings I have made:

(a) **Criterion (a)** – 'Needs to gamble with increasing amounts of money in order to achieve the desired excitement': although the evidence shows that the Defendant gambled with larger amounts of money on particular occasions from 2013 than he had done previously, he also continued to gamble regularly with relatively small sums of money throughout 2013 and, indeed, would regularly attend casinos and not bet at all. This contradicts (a) and there is no evidence of any need to do so to achieve the desired excitement.

(b) **Criterion (b)** – 'Is restless or irritable when attempting to cut down or stop gambling'. This criterion is not directed towards restlessness or irritability when gambling generally but when attempting to stop or cut down gambling. Dr Needham-Bennett stated that this criterion would be "*negate[d]*" if there were no evidence about the Defendant cutting down or stopping gambling. There is no such evidence: I do not accept that the VSEs signed by the Defendant were done for the genuine purpose of stopping gambling. Further, the evidence suggests that any irritability the Defendant exhibited was not attributable to his gambling. His own oral evidence was that "*I have thyroid disease, and people with thyroid disease are ill tempered*". Dr Taylor had not considered the Defendant's thyroid problem as a source of his irritability in his report, but accepted in cross examination that "*It's possible that thyroid disease could cause irritability, yes*".

(c) **Criterion (c)** – 'Has made repeated unsuccessful efforts to control, cut back, or stop gambling'. Again, apart from the Defendant's own statements to this effect (which I have found to be untruthful and unreliable) and actions taken for other purposes (the VSEs and temporary restrictions) there is no such evidence. At all times prior to 19/20 February 2014, the Defendant was gambling at casinos: there was never an effort made to self-exclude from casinos *en masse.*

(d) **Criterion (d)** – 'Is often preoccupied with gambling (e.g., having persistent thoughts of reliving past gambling experiences, handicapping or planning the next venture, thinking of ways to get money with which to gamble)'. This criterion (as Dr Taylor accepted) is "*very subjective, depends on a lot of self-reporting*". As such it wholly depends upon the credibility of the Defendant.

(e) **Criterion (e)** – 'Often gambles when feeling distressed (e.g., helpless, guilty, anxious, depressed)'. Again, Dr Taylor accepted that this is based on the Defendant's self-reporting, which is neither reliable nor truthful.

(f) **Criterion (f)** – 'After losing money gambling, often returns another day to get even ("chasing" one's losses)'. The evidence does not establish this criterion as a regular feature of the Defendant's gambling. Dr Taylor acknowledged that it was "*difficult*" to conclude from the objective information that this criterion was made out: "*[D] clearly does return repeatedly to the casino. Whether he's returning to win back losses is difficult to say.*" The only occasion on which there was evidence of this was on 19 February 2014, when the Defendant demanded a further £2 million to try to win his money back.

(g) **Criterion (g)** – 'Lies to conceal the extent of involvement with gambling'. There is no evidence of this. The Defendant regularly gambled with his brother, his friends

and his business associates. This continued right through 2013. There is no evidence that he lied to conceal the extent of involvement with gambling. When challenged on this Dr Taylor fell back to stereotypes and then suggested that the Defendant was "*economical with the truth about his gambling behaviour, for example, to his mother*". However, the Defendant's own oral evidence was "*Even my mother I told her that I was an addict*".

(h) **Criterion (h)** – 'Has jeopardized or lost a significant relationship, job, or educational or career opportunity because of gambling'. Both experts agreed that there was no evidence of this criterion.

(i) **Criterion (i)** – 'Relies on others to provide money to relieve desperate financial situations caused by gambling'. Both experts agreed that there was no evidence of this criterion.

105. Accordingly, even were I minded to attach weight to the frequency of the Defendant's gambling and attendance at casinos, this would not be sufficient to bring him into the category of even a person with a 'mild' gambling disorder (that is somebody with 4–5 of the DSM-5 criteria). Ultimately however, I have concluded that the Defendant did not have a gambling disorder at any time material to this case.

THE ISSUES

106. Against that background, and permission having been granted to plead contributory negligence by way of amendment (there being no prejudice and no opposition to this by the Defendant) the legal issues that arise for decision are as follows:

The Defence

(1) Is the Claimant unable to enforce the Cheque or to recover the sum of £2 million plus interest claimed against the Defendant because of some underlying illegality or public policy consideration, and in particular:

(a) What is the illegality / public policy issue?

(b) In all the circumstances, does any alleged illegality or public policy consideration bar the Claimant's action?

(2) Was the transaction reflected by the drawing of the Cheque the product of undue influence exerted on the Defendant by the Claimant, through Mr Marris, and/or such as to amount to an unconscionable transaction which should be set aside?

(3) Did the Claimant, through Mr Marris on 19 February 2014, make a misrepresentation to the Defendant which induced the transaction/gambling on the evening of 19/20 February 2014?

(4) Did the Claimant, through Mr Marris on 19 February 2014, enter into a collateral contract with the Defendant pursuant to which the latter could repay any gambling losses at any later time?

The Counterclaim

(5) As to breach of contract:

(a) Did the 2009 VSE signed by the Defendant amount to a contractually binding agreement requiring the Claimant to exclude the Defendant from the Claimant's casino for life?

(b) If so, did it continue in full force and effect notwithstanding the agreed revocation of the same in October 2010 and/or the conduct of the parties thereafter? (Although the Defendant's list of issues objects to the wording "the agreed revocation", this is a dispute about nomenclature: there was undoubtedly an agreed revocation, the issue between the parties is whether it was effective.)

(6) Did the Claimant owe a duty of care to the Defendant and, if so, in what terms, and, specifically, was any duty owed:

(a) A statutory duty which gives rise to a private right of action for breach; and/or,

(b) A common law duty of care?

(7) If yes to either, was the Claimant in breach of that duty such as caused the gambling in the periods (i) from August 2012 and (ii) on 19/20 February 2014, and if so, in what precise respects was the Claimant in breach of duty and how did such breach cause the relevant gambling?

(8) Would the Defendant's gambling losses in the periods (i) from August 2012 and (ii) on 19/20 February 2014 have been sustained in any event irrespective of the alleged wrongdoing of the Claimant?

(9) If, and to the extent that, the Defendant has suffered loss caused by the Claimant, are damages to be extinguished or reduced by reason of contributory negligence?

Issue 1: Illegality

107. It is common ground that the drawer of a cheque may raise as a defence to payment the fact that the cheque was given for an illegal consideration. The failure on the part of a holder of an operating licence to observe the conditions of a gambling licence is a criminal offence that could render a gambling transaction unenforceable. Accordingly, where a cheque is provided in return for facilities to gamble in circumstances where the operator has failed to observe the mandatory conditions of its operating licence that would have the effect that the cheque was given for an illegal consideration.

108. The Defendant's case is that by providing him with facilities to gamble after 22 November 2009 when he signed the 2009 VSE, the Claimant breached the mandatory conditions of its gaming licence with the result that the provision to the Defendant of those facilities was unlicensed and, consequently, unlawful. This illegality defence does not turn on any findings relating to the Defendant's gambling disorder and/or the state of the Claimant's knowledge relating to that disorder. It turns primarily on the provisions of the Gambling Act 2005 and the provisions of the Licence Conditions and Codes of Practice issued by the Gambling Commission.

109. Section 1 of the Act (titled "The Licensing Objectives") identifies three licensing objectives, namely:

(a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
(b) ensuring that gambling is conducted in a fair and open way; and
(c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

110. Section 20 of the Act provides for the establishment of the Gambling Commission and s.22 places upon the Gambling Commission a statutory duty to promote the Licensing Objectives in the performance of its statutory functions under the Act. Section 24 provides the statutory basis for the issuing of Social Responsibility Code ('SRC') and Ordinary Code ('OC') provisions by the Gambling Commission:

" Codes of practice

(1) The Commission shall issue one or more codes of practice about the manner in which facilities for gambling are provided (whether by the holder of a licence under this Act or by another person).

(2) In particular, a code shall describe arrangements that should be made by a person providing facilities for gambling for the purposes of–

(a) ensuring that gambling is conducted in a fair and open way,

(b) protecting children and other vulnerable persons from being harmed or exploited by gambling, and

(c) making assistance available to persons who are or may be affected by problems related to gambling."

111. Section 82 of the Act provides that an SRC provision is a condition of an operating licence:

"S.82 Compliance with code of practice

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

(2) In subsection (1)–

(a) the reference to a licensee includes a reference to anyone employed or engaged by a licensee to perform an operational function within the meaning of section 80, and (b) the reference to a social responsibility provision of a code is a reference to a provision identified by a code as being included in pursuance of section 24(2).

(3) This section does not prevent compliance with a provision of a code, other than a social responsibility provision, from being made the subject of a condition under section 75, 77 or 78."

Ensuring compliance with SRC provisions is therefore a condition of the licence but ensuring compliance with OC provisions is not.

112. Section 33 provides for a criminal offence in respect of breaches of a condition of a licence (and SRC provisions by virtue of being conditions of licences):

"33 Provision of facilities for gambling

(1) A person commits an offence if he provides facilities for gambling unless–
(a) an exception provided for in subsection (2) or (3) applies, or …

(2) Subsection (1) does not apply to any activity by a person if–
(a) he holds an operating licence authorising the activity, and
(b) the activity is carried on in accordance with the terms and conditions of the licence. ….

(4) A person guilty of an offence under this section shall be liable on summary conviction to–
(a) imprisonment for a term not exceeding 51 weeks,
(b) a fine not exceeding level 5 on the standard scale, or
(c) both."

It follows from this that, unless an activity is carried out by an operator in accordance with the terms and conditions of its licence, the requirements of s.33(2) will not be satisfied with the result that s.33(1) will apply and the operator will be committing an offence.

113. Section 75(1) empowers the Gambling Commission to specify conditions to be attached to (a) each operating licence, or (b) each operating licence falling within a specified class. Section 75(2) provides that "a class" may be defined wholly or partly by reference to (a) the nature of the licensed activities; (b) the circumstances in which the licensed activities are carried on; and (c) the nature or circumstances of the licensee or of another person involved or likely to be involved in the conduct of the licensed activities.

114. In addition to specifying licence conditions (the failure to comply with which involves the commission of an offence), the Gambling Commission is authorised under s.24 to issue Codes of practice about the manner in which facilities for gambling are provided. As set out at s.24(2) a Code of practice is required to "describe arrangements that should be made by a person providing facilities for gambling" for the purpose of meeting the Licensing Objectives set out in s.1 of the Act.

115. Section 24(8) of the Act provides that a "failure to comply with a provision of 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".

116. The Act accordingly draws a distinction between two different types of provisions to be issued by the Gambling Commission. First, there are licence conditions. The consequence of an operator failing to comply with these is that the operator commits

an offence under s.33. Second, there are Codes of practice. The failure of an operator to comply with a Code of practice does not, of itself, make an operator liable to criminal or civil proceedings.

117. Part II of the Licence Conditions and Codes of Practice ("the Code") (under the heading "Introduction") states as follows:

> "These are the Commission's principal codes of practice, issued under section 24 of the Gambling Act 2005. These codes will come into effect on 1 January 2009. There are two types of provisions in this document:
>
> Social Responsibility Code provisions; compliance with these is a condition of licences; therefore any breach of them by an operator may lead the Commission to review the operator's licence with a view to suspension, revocation or the imposition of a financial penalty and would also expose the operator to the risk of prosecution; these provisions are in shaded boxes in this section
> Ordinary Code provisions; these do not have the status of licence conditions, but are admissible in evidence in criminal or civil proceedings and must be taken into account in any case in which the court or tribunal think them relevant and by the Commission in the exercise of its functions; any breach of ordinary code provisions by an operator may be taken into account by the Commission on a licence review, but cannot lead to imposition of a financial penalty; these code provisions are in the unshaded parts of this section and generally set out good practice in these areas".

118. Part II, section 2.5 of the Code is titled "Self-exclusion". There are two relevant provisions. The first is a Social Responsibility Code provision which, as explained above, is a condition of an operating licence. The second is an ordinary code provision which does not have the status of a licence condition.

119. The relevant SRC provision ("SRC 2.5") states as follows:
"*2.5 Self-exclusion*

All non-remote licences and remote betting intermediary (trading rooms only) licences, but not gaming machine technical and gambling software licences

Social responsibility code provision

> "Licensees must have and put into effect procedures for self-exclusion and take all reasonable steps to refuse service or to otherwise prevent an individual who has entered a self-exclusion agreement from participating in gambling."

Licensees must, as soon as practicable, take all reasonable steps to prevent any marketing material being sent to a self-excluded customer.

Licensees must take steps to remove the name and details of a self-excluded individual from any marketing database used by the company or group (or otherwise flag that person as an individual to whom marketing material must not be sent), within two days of receiving the completed self-exclusion notification.

This covers any marketing material relating to gambling, or other activities that take place on the premises where gambling may take place. However, it would not extend to blanket marketing which is targeted at a particular geographical area and where the excluded individual would not knowingly be included.

Licensees must close any customer accounts of an individual who has entered a self-exclusion agreement and return any funds held in the customer account. It is not sufficient merely to prevent an individual from withdrawing funds from their customer account whilst still accepting wagers from them. Where the giving of credit is permitted, the licensee may retain details of the amount owed to them by the individual, although the account must not be active.

Licensees must put into effect procedures designed to ensure that an individual who has self-excluded cannot gain access to gambling. These procedures must include:

- a register of those excluded with appropriate records (name, address, other details, and any membership or account details that may be held by the operator)
- photo identification (where available and in particular where enforcement of the system may depend on photographic ID), and a signature
- staff training to ensure that staff are able to enforce the systems
- the removal of those persons found in the gambling area or attempting to gamble from the premises."

120. The relevant Ordinary Code provision of section 2.5 ("OC 2.5") states as follows:

"Self-exclusion procedures should require individuals to take positive action in order to self-exclude. This can be a signature on a self-exclusion form.

Whenever practicable, individuals should be able to self-exclude without having to enter gambling premises.

Before an individual self-excludes, licensees should provide or make available sufficient information about what the consequences of self-exclusion are.

Licensees should take all reasonable steps to extend the self-exclusion to premises of the same type owned by the operator in the customer's local area. In setting the bounds of that area licensees may take into account the customer's address (if known to them), anything else known to them about the distance the customer ordinarily travels to gamble and any specific request the customer may make.

Licensees should encourage the customer to consider extending their self-exclusion to other licensees' gambling premises in the customer's local area.

Customers should be given the opportunity to discuss self-exclusion in private, where possible.

Licensees should take steps to ensure that:

the self-exclusion period is a minimum of six months and give customers the option of extending this to a total of at least five years

a customer who has decided to enter a self-exclusion agreement is given the opportunity to do so immediately without any cooling-off period. However, if the customer wishes to consider the self-exclusion further (for example to discuss with problem gambling groups) the customer may return at a later date to enter into self-exclusion

at the end of the period chosen by the customer (and at least six months later), the self-exclusion remains in place, unless the customer takes positive action in order to gamble again. No marketing material should be sent to the individual unless the individual has taken positive action in order to gamble again, and has agreed to accept such material

where a customer chooses not to renew the self-exclusion, and makes a positive request to begin gambling again, the customer is given one day to cool off before being allowed access to gambling facilities. The contact must be made via telephone or in person

The Licensee should retain the records relating to a self-exclusion agreement at least until the agreement has been formally ended.

(Please note that the Commission does not require the licensee to carry out any particular assessment or make any judgment as to whether the previously self-excluded individual should again be permitted access to gambling. The requirement to take positive action in person or over the phone is purely to a) check that the customer has considered the decision to access gambling again and allow them to consider the implications; and b) implement the one day cooling-off period and explain why this has been put in place".

121. Mr Pettican submits that the Defendant's illegality defence turns on the proper construction of SRC 2.5 and OC 2.5 which clearly fall to be read together. The Defendant's case is that, properly construed, the effect of SRC 2.5 and OC 2.5 is as follows:

(i) licensees must have and put into effect procedures for self-exclusion. If they do not, this is a breach of SRC 2.5 (and a breach of the licence conditions).

(ii) Whilst it is a mandatory requirement of SRC 2.5 that a licensee have and put into effect procedures for self-exclusion, it does not prescribe what those procedures should be.

(iii) Guidance on their content is in OC 2.5. However, the failure of a licensee to follow this guidance does not, in itself, amount to a breach of the licence conditions.

(iv) Whilst OC 2.5 recommends that, in putting in place procedures for self-exclusion, the licensee should take steps to ensure that the self-exclusion period is a minimum of six months, and that customers have the option of extending this to five years, it is a matter for the licensee to decide what periods of self-exclusion to offer and for the customer to decide what period of self-exclusion to select. By way of example, Mr Pettican submits that a licensee who puts in place a procedure for self-exclusion allowing a customer to self-exclude for a maximum of 3 months would comply with his obligation under SRC 2.5 to "put into effect procedures for self-exclusion", but would fail to comply with his obligation under OC 2.5 to "take steps to ensure that the self-exclusion period is a minimum of six months".

(v) The period of self-exclusion applicable to a self-excluded individual is the period chosen by the customer from the options made available by the licensee at the time he self-excludes. If the licensee offers the customer the ability to self-exclude for 6 months, 1 year, 5 years or permanently, and the customer ticks the box to self-exclude himself permanently, the period of self-exclusion applicable to that customer is for life.

(vi) Licensees must take all reasonable steps to refuse service or to otherwise prevent an individual who has entered into a self-exclusion agreement from participating in gambling. If they do not, this is a breach of SRC 2.5 (and a breach of the licence conditions).

(vii) Licensees must put into effect procedures designed to ensure that an individual who has self-excluded cannot gain access to gambling. If they do not, this is a breach of SRC 2.5 (and a breach of the licence conditions).

122. The Defendant's case is that the licence condition requiring licensees to put into effect procedures designed to ensure that an individual who has self-excluded cannot gain access to gambling includes, by necessary implication, an obligation on licensees not to accede to any future request by a self-excluded individual to lift his self-exclusion. This is because, as Mr Pettican submits, any request by a self-excluded customer to gamble involves an implied request to lift his self-exclusion, it being a logical impossibility for a customer to be both excluded and admitted at the same time. To impose a licence condition that a licensee put into effect procedures designed to ensure that an individual who has self-excluded cannot gain access to gambling if it was intended that such an individual should be able to re-gain access to gambling by asking the licensee to lift his self-exclusion would render this part of the SRC a nonsense.

123. On that footing he argues that the 2009 VSE completed by the Defendant by writing in the words "Life Time" as the period of self-exclusion chosen and containing the statement underneath that: *"I understand that I cannot ask for the period of self-exclusion to be revoked or reduced from the period agreed above*" (and counter-signed by Mr Beardall) rendered the period of self-exclusion irrevocable regardless of anything else. Moreover, even on the Claimant's pleaded case that it was "entitled to (and did) treat the 2009 VSE as giving rise to a self-exclusion for a period of five years" the Defendant should not have been re-admitted to the Claimant's casino until 23 November 2014 by which time all material events giving rise to this dispute had occurred. Accordingly, by re-admitting the Defendant to gamble on 8 October 2010 and allowing the Defendant to gamble thereafter, the Claimant breached the terms of SRC 2.5, and its licence conditions.

124. This argument turns on the proper construction of SRC 2.5 read with OC 2.5. The critical obligations in SRC 2.5 are:

(i) to have and put into effect procedures for self-exclusion;
(ii) to take all reasonable steps to refuse service or to otherwise prevent an individual who has entered a self-exclusion agreement from participating in gambling; and
(iii) to put into effect procedures designed to ensure that an individual who has self-excluded cannot gain access to gambling. These procedures must include: a register of those excluded with appropriate records including photo identification (where available); staff training; and the removal of those persons found in the gambling area or attempting to gamble from the premises.

125. The provisions of SRC 2.5 do not address periods of self-exclusion, whether minimum or otherwise. The only reference to periods is OC 2.5 - "*Licensees should take steps to ensure that: the self-exclusion period is a minimum of six months and give customers the option of extending this to a total of at least five years*".

126. Nor is there any provision in SRC 2.5 (or OC 2.5) that deals with agreed revocation before the expiry of the time specified by the relevant signatories to a self-exclusion form. Both codes are silent on revocation. The situation is simply not addressed, either by expressly forbidding it or by permitting it. The question is whether this lacuna in SRC 2.5 should be filled by the necessary implication that once entered into a VSE is irrevocable.

127. I have come to the conclusion that there is no necessity to imply a prohibition on revocation in either Code. I do not agree with Mr Pettican that the licence conditions would serve no useful purpose whatsoever if a licensee could avoid them by simply treating the self exclusion period as having come to an end when the self excluded customer seeks to regain access to gambling. The requirement to put into effect procedures designed to ensure that a self excluded person cannot again access gambling, is a requirement to have and put into effect such procedures in relation to a person "who has entered a self exclusion agreement", and therefore whilst a VSE is in place. For so long as a VSE is in place, those procedures must be operated and any such person found in the gambling area or attempting to gamble from the casino premises must be removed. The condition accordingly operates irrespective of whether or not a VSE can be revoked.

128. There is no suggestion that a casino should have to implement any unilateral request by a customer to revoke a VSE. Rather, revocation of a VSE is a bilateral process: there must be a request and a reasoned decision whether to accede or not. Provided that any agreed revocation is on reasonable grounds, reflecting the non-absolute nature of the licensee's requirements (to "have and put into effect procedures for self-exclusions" and "take all reasonable steps" to refuse service or prevent a self-excluded person from participating), in my judgment there is no necessary reason why a self-exclusion cannot be lifted by an agreed revocation on this basis. This does not undermine the efficacy of the VSE system. It respects individual autonomy; and it is consistent with the limited wording of the SRC that requires the taking of reasonable not unreasonable steps. Whether or not in a particular case it will be reasonable for a casino to agree to lift a revocation will depend on all the facts and circumstances of that case.

129. I am satisfied accordingly that there is no necessity for implication of a provision into SRC 2.5 prohibiting revocation. Furthermore, absent cogent policy reasons for doing so, I would have regarded it as wrong to criminalise behaviour of a licensee without clear words.

130. Although I have not relied on these points in construing this Code because the proper legal construction is a matter for the court, having reached my conclusion I am comforted to find that it is consistent with the position adopted by the Gambling Commission, in particular as follows:

(i) the email from the Gambling Commission's Compliance Manager, Mr Kirkup, of 10 September 2010, wherein he advised that the period of self-exclusion was as set out in the Code but that as the period was an ordinary (or non-mandatory) provision of the Code, this was therefore *"suggested practice"* but not an absolute. However, he advised that: *"any operator choosing not to comply with an ordinary code provision should have clear and well argued reasons for this";*

(ii) an entry on the Gambling Commission's website (last reviewed in October 2012) which states in answer to a FAQ about customers insisting on cancelling self-exclusion agreements, as follows:

> *"Before a customer completes a self exclusion agreement, the significance and implications of this action should be explained to them, including the minimum duration of six months. Generally speaking, it is considered that this length of self exclusion is necessary to enable an individual to deal with their problem gambling behaviour.*
>
> *The Gambling Commission recommends that a self-exclusion agreement is not ended before the original agreed date but we recognise that there may be occasional exceptions to this.*
>
> *There may be occasional situations in which an operator considers it appropriate to cancel a self-exclusion agreement but the risk that an individual might subsequently allege a breach of duty of care should be borne in mind.*
>
> *Where it is considered to be appropriate to cancel a self exclusion, the reasons for the decision should be clearly documented and retained."*

Mr Pettican accepted that this was odd advice for the regulator to give if his construction that revocation is precluded is correct.

131. Had I reached the contrary conclusion I would not have accepted Mr Freedman's alternative argument that the 2009 VSE was not 'real and effective' because it was signed by a person without a gambling disorder or was signed for a purpose other than addressing a gambling disorder. I agree with Mr Pettican that whilst the licensing objectives are for the protection of vulnerable people, it does not follow that the regime put in place is only for the protection of problem gamblers prepared to say so. Motivation is in my judgment irrelevant. In any event a person can have mixed motives and to require an enquiry into the motivation of the individual self excluding makes the scheme unnecessarily difficult to operate and uncertain.

132. For the following reasons I am satisfied that the Claimant had reasonable grounds and acted reasonably in agreeing to revoke the 2009 VSE because:

i) there was nothing in the Defendant's conduct or behaviour while gambling to suggest that he had a gambling addiction or was a problem gambler;

ii) the Claimant had reasonable grounds to believe that the 2009 VSE was not made because of a gambling problem and that the Defendant was not a problem gambler, as evidenced by his behaviour;

iii) the Defendant asked repeatedly for the 2009 VSE to be lifted;

iv) six months had expired;

v) the Defendant confirmed both in writing and orally that he had no gambling disorder;

vi) before agreeing to do so, the Claimant sought and acted on guidance from the Gambling Commission.

133. It follows that there has been no breach by the Claimant of the conditions of its gambling licence. In permitting the Defendant, at his request and upon his confirmation that he had no gambling disorder, to revoke the 2009 VSE, the Claimant did not breach either SRC 2.5 or OC 2.5. In the highly unusual circumstances of this case and in light of my findings of fact, there were reasonable grounds for the Claimant to do so and I am satisfied that it acted reasonably. For all these reasons, the defence of illegality fails.

Issue 2, 3 and 4: Undue Influence, Unconscionable Transaction and Misrepresentation

134. The Defendant now accepts that if his account of what was agreed between him and Mr Marris at the Emirates is accepted, the resulting transaction/gambling would have been unlawful as involving the provision of credit and consequently the court would not enforce it so that the Defendant has nothing to gain by advancing issues 2-4 inclusive, and he no longer pursues them.

135. He is correct not to do so in any event. I have rejected his account. The allegations had no factual foundation whatever.

Issue 5: Breach of contract counterclaim

136. Since it is accepted by Mr Pettican (see paragraph 114 of the Defendant's Written Closing) that the Defendant's counterclaim for breach of contract (i.e. that Claimant failed to comply with its obligations as a result of Defendant's self-exclusion on 22 November 2009) is dependent on a finding in his favour that Claimant acted unlawfully in re-admitting Defendant to gamble in October 2010, and I have rejected such a finding, the breach of contract counterclaim fails.

137. In the circumstances I express my further views on this issue briefly. I do not consider that the 2009 VSE gave rise to a contract. Mr Pettican's argument to the contrary is artificial and contrived. In any event any such alleged agreement would be without consideration: nothing moved from the Defendant to the Claimant. That conclusion is supported by Calvert where Briggs J found that the bookmaker had assumed responsibility for the gambler, noting that such an arrangement was one "without consideration": see paragraphs 175, 178 to 180 and 186. Even on the approach adopted on the Defendant's behalf, namely that the offer by the casino to make self exclusion available is in return for obtaining the business of the customer, it is difficult to see what consideration flows from the Defendant when he enters a self exclusion agreement providing nothing in return. At best the situation is akin to a contract but without being a contract at all. Finally, even if I had concluded that the 2009 VSE was a contract, that contract was lawfully rescinded in October 2010 when the parties to it agreed that it should be revoked.

Issues 6, 7, 8 and 9: Negligence and Breach of Statutory Duty on Counterclaim

138. Mr Pettican accepts that it would be inappropriate for the court to seek to fashion a statutory duty from the broad principle stated by section 1 of the Act. However he submits the statutory duty contended for by the Defendant is much narrower and is a duty to do the specific things that SRC 2.5 requires to be done as a condition of an operating licence. The duties are owed to a limited class of customers, who have entered into self exclusion agreements. He submits X (Minors) v Bedfordshire County Council [1995] 2 AC 633 is not inconsistent with the existence of the duty contended for by the Defendant; and that the Defendant relies on the breach by the Claimant of the terms of its licence so that s. 24(8) of the Act has no application. If the Claimant breached its licence conditions by re-admitting the Defendant to gamble in October 2010, then the Defendant should be able to recover from the Claimant the losses that the Defendant has sustained as a result of that breach. There is no hardship or injustice to the Claimant in such a result.

139. I have real doubts as to whether a private law cause of action for breach of statutory duty arises here. In my judgment the indicators identified in X (above) at 731E to G suggest otherwise: the statute provides remedies for its breach and affords appropriate means of securing the protection that was intended to be conferred. It establishes a regulatory body to enforce compliance and criminal offences. These are not conclusive but are strong indicators. However it is unnecessary for me to reach any concluded view on this issue given my conclusion that the Claimant has not acted unlawfully in breach of its licence conditions in readmitting the Defendant to gamble in October 2010.

140. So far as the existence of a common law duty of care is concerned, this question was addressed comprehensively by Briggs J in Calvert in a very similar context. The claimant in that case contended that there was a broad common law duty of care (based on the voluntary assumption of responsibility by means of the social responsibility policy and associated self exclusion procedure adopted) owed by a bookmaker towards a customer who the bookmaker knew, or who appeared to the bookmaker to be, a problem gambler. That argument was rejected. The bookmaker was under no duty either to take reasonable steps to offer assistance or to refuse to allow the gambler to continue gambling. The autonomy of the individual gambler was held to be paramount. In rejecting that broad duty of care towards problem gamblers, Briggs J applied the three stage test of considering foreseeability, proximity and fairness: see paragraph 172. In relation to proximity he said "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." So far as fairness is concerned he said: "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." The case was appealed but those conclusions were not challenged (see Calvert v William Hill Credit Limited [2008] EWCA Civ 1427) and have been followed in a number of other cases.

141. I respectfully agree with and adopt that approach: no broad common law duty of care was owed by the Claimant to the Defendant in this case.

142. In Calvert at paragraph 170, Briggs J left open the question (without deciding the matter) whether a narrower duty of care could arise in respect of a customer "whose behaviour has become so extreme as to demonstrate to a bookmaker that his gambling is wholly outside his control". Instead, on the facts of Calvert, a duty of care based on a voluntary assumption of responsibility arose from a direct interaction between a representative of the bookmaker and the gambler in circumstances where the representative undertook expressly to prevent the gambler from gambling with the bookmaker: see paragraphs 175 to 179.

143. It is unnecessary in this case to decide whether as a matter of law a duty of care can arise in the narrower circumstances identified by Briggs J in light of my findings of fact. I have rejected the Defendant's evidence that he had any gambling disorder at any relevant time. Even apart from those findings, the expert medical evidence of neither expert comes anywhere close to establishing so severe a gambling disorder as to lead to the conclusion that the Defendant's gambling was wholly outside his control.

144. Moreover, since the scope of the duty of care contended for by the Defendant (see paragraph 143 of the Defendant's written closing) goes no wider than the duty that is in any event imposed on the Claimant by SRC 2.5, namely the duty to take all reasonable steps to refuse service or to otherwise prevent an individual who has entered a self exclusion agreement from participating in gambling, any responsibility which the Claimant had was discharged by its compliance with both SRC and OC provisions whilst the 2009 VSE was in force. Further, for the reasons I have already

given, in the unusual circumstances of this case, the 2009 VSE did not give rise to a voluntary assumption of responsibility by the Claimant to prevent the Defendant from gambling at the Casino after its lawfully agreed revocation.

145. As Judge Seys Llewellyn QC observed in Ritz Hotel Casino Limited v Al Daher [2014] EWHC 2847 at paragraph 116, Parliament has permitted "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." Whilst to many it may seem irrational to gamble at the levels involved here, given the Defendant's undoubted wealth, his gambling as a VIP player was plainly within his means, and his own autonomy.

146. Given these findings and conclusions, it is unnecessary to address the questions of causation and contributory negligence raised by the Claimant.

Issue 10: Late Bets

147. The Defendant has failed to adduce evidence identifying when there were late bets and with what consequences. Although some instances of asserted late bets on 19 February 2014 were identified in correspondence shortly before the trial, there was no attempt in evidence to identify how late the bet was, why there was a requirement in the particular circumstances to disallow the bet or to identify the amount of money lost on each asserted occasion. This claim accordingly fails. It appears that the Defendant has taken a deliberate decision not to pursue this issue in the course of this action and I deal with it no further.

Issue 11: Discounts

148. Again so far as this complaint is concerned, no evidence as to any written or oral agreement has been adduced. It was suggested in argument by Mr Pettican that this claim depends upon a course of dealing, but again, there was no evidence produced to support the asserted course of dealing. In particular there was no evidence from the Defendant about such a course of dealing; nor was the matter pursued in cross-examination with the Casino staff. I reject this complaint in the circumstances.

CONCLUSION

149. The facts of this case are highly unusual and unlikely to be repeated. Although it has been presented as a case about the early revocation of a VSE in place to protect a vulnerable person with a severe gambling disorder, the evidence was a far cry from establishing the Defendant's account. The defence of illegality and breach of contract, and the claims of negligence, the additional serious allegations of misrepresentation, undue influence and unconscionable transaction all fail. The Defendant failed to establish that he had any gambling disorder at any material time and ultimately accepted that he never told any of the Casino staff about any such problem. He was the author of his own misfortunes.

150. Accordingly there will be judgment for the Claimant on its claim in respect of the dishonoured cheque, together with interest as claimed. The Defendant's claims fail and are dismissed.