



# **Sentencers' understanding and treatment of problem gamblers**

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The report of the Commission on  
Crime and Problem Gambling

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## Preface

This report outlines sentencers' understanding and awareness of problem gambling and gambling related crime, as well as sharing examples of sentencing practice in magistrates' courts in England and Wales when problem gambling is raised as a contextual factor to the crime. The research has engendered a greater understanding of how problem gambling is understood and approached in court and makes suggestions for future improvements. In 2020, the Commission on Crime and Problem Gambling published a research landscape on crime and problem gambling authored by Commission member Sarah Ramanauskas which informed the commissioning of this research study. This research aims to identify: the extent to which sentencers in England and Wales are aware of problem gamblers coming before them in court; their practice when problem gambling is apparent within a case; and to elicit sentencers' views on the potential for courts to account for problem gambling. This research has focused on magistrates as sentencers. Further consultation took place with a range of criminal justice stakeholders and those working in therapeutic problem gambling services, including fellow academic researchers in the field. This report is the product of collaborative work by a team from Staffordshire University, the Howard League for Penal Reform and the Magistrates Association. We extend thanks to Dr Jo Easton, Hattie Stair and Jon Collins who represented the Magistrates Association and Anita Dockley, Catryn Yousefi and Dr Helen Churcher from the Howard League for Penal Reform. Recognition goes to the wider research team at Staffordshire University including Associate Professor in Criminology Dr Jo Turner, Sarah Plimley, Simon Bratt, Kathryn McFarlyn and Laura Bailey. Particular appreciation and acknowledgement go to Anita Dockley and Dr Helen Churcher from the Howard League for Penal Reform for editing this report and Associate Professor Dr Jo Turner from Staffordshire University for related advice and guidance.

# Executive summary

## Background

The Gambling Act (2005) provides regulation for gambling in Great Britain and is currently under review (Department for Digital, Culture, Media and Sport, 2020). In 2019 the Howard League for Penal Reform launched the Commission on Crime and Problem Gambling which aimed to identify:

- What are the links between problem gambling and crime?
- What impact do these links have on communities and society?
- What should be done?

In 2020, the Commission on Crime and Problem Gambling published a research landscape on crime and problem gambling. This report highlighted concerns about the availability of treatment for problem gambling within the criminal justice system. Problem gambling is a recognised mental health disorder; gambling addiction is classified as a behavioural addiction in the Diagnostic and Statistical Manual of Mental Disorders [DSM-V] (American Psychiatric Association, 2013), and is classified in the World Health Organisation's International Classification of Diseases (WHO ICD, 2021). Problem gambling is also recognised as a public health concern (Abbott, 2020).

Research has indicated that there is a relationship between problem gambling and engagement in crime, especially acquisitive crime when funds are exhausted, yet the person remains compelled to gamble (Smith and Simpson, 2014; Zhang and Clark, 2020). The Commission on Crime and Problem Gambling (2020: 19) highlighted a key consideration in sentencing in cases where problem gambling is identified, which is the relationship between the 'inability versus an unwillingness to self-regulate.'

## Research aims and methodology

This research was commissioned by the Howard League for Penal Reform in association with the Magistrates Association (MA) to support the work of the Commission on Crime and Problem Gambling. The focus of the research was to:

- Understand the extent to which sentencers in England and Wales are aware of problem gamblers coming before them in court.
- Understand sentencers' practice when problem gambling is apparent within a case.
- Elicit sentencers' views on the potential for courts to account for problem gambling.

The research was undertaken with sitting magistrates and relevant stakeholders. A participatory, collaborative model (Page and Temple-Malt, 2018) was utilised to develop the research design and questions.

Data was collected in three ways:

1. Online survey: the research team conducted an online survey of members of the Magistrates Association. A total of 656 people took part in the survey, which asked participants to reflect on their experience of gambling as encountered in court cases, as well as their thoughts on gambling and sentencing guidelines. Participants were from all regions in England and Wales and were all over 50 years of age, with a relatively equal distribution of men and women. This was a fairly representative sample of magistrates in England and Wales.
2. Focus groups: a series of online focus groups were held with 26 magistrates who had participated in the online survey.
3. Online stakeholder world café event: 21 stakeholders took part, representing a range of sectors and organisations which enabled the research team to gain further insights and solutions from a range of leaders within the criminal justice system and therapeutic community.

## Findings

### **Sentencers' awareness of problem gambling**

- Most magistrates surveyed had an average understanding of problem gambling. Some drew on personal and general knowledge, whilst others reflected on their courtroom experience of sentencing cases involving problem gambling.
- Concerns were raised by magistrates and therapeutic stakeholders about the pervasiveness of gambling advertising in society. Incentives to gamble and early exposure to gambling were identified as possible precursors to problem gambling. The views of focus group respondents suggested that online gambling opportunities had the potential to facilitate under-age gambling. Magistrates highlighted the need for more responsible practice from the gambling industry to safeguard young people and those addicted to gambling. Stakeholders queried the ways in which financial services could also safeguard vulnerable groups.
- Magistrates shared insights about problem gambling from their experiences in adult criminal and family courts. Problem gambling did not come up frequently in criminal cases, but magistrates and stakeholders agreed that it was likely to be a hidden rather than non-existent issue. Of those magistrates surveyed, 54.4 per cent said that problem gambling had never come up in a court hearing.
- Whilst gambling knowledge varied, good understanding about drug and alcohol addiction was apparent, and informed magistrates' responses. 93 per cent of survey participants perceived gambling as an addiction similar to drugs and alcohol.

- Neurocognitive impacts of problem gambling were less well understood, a factor which magistrates and stakeholders felt could have implications for sentencing practice regarding evidencing how problem gambling impacts decision making relating to offending behaviour. Without the development of a mainstream understanding across the criminal justice service, defence lawyers would be unlikely to raise gambling in court as a mitigating factor.
- Therapeutic stakeholders were aware of evidence of how gambling affects the brain (see Leeman and Potenza, 2012; Pettorruso et al, 2019; Zhang and Clark, 2020; Goudriaan, 2020). This knowledge needs to be translated into the criminal justice sector to improve understanding and inform practice.
- Participants agreed that training was needed for magistrates (and the wider criminal justice sector) about awareness of gambling behaviour, problem gambling, gambling related harm and its links to crime and criminality. Research findings suggested that training should include the voices of those with lived experience of problem gambling.
- Awareness of a defendant's problem gambling issues might be communicated (albeit in varying degrees) by the defence solicitor and/or the pre-sentence report written by a probation officer. Criminal justice stakeholders described how some police forces, probation officers and liaison and diversion staff were beginning to identify problem gambling and refer people to appropriate agencies. However, findings revealed current inconsistencies in knowledge levels and good practice. Overall, it was perceived that gambling screening and treatment referral is not mainstream.
- Magistrates who participated in the research highlighted that there was insufficient information gathered by the probation service regarding their clients' issues with problem gambling and whether this might lead to further offending. The OASys assessment used by probation to complete the pre-sentence report does not specifically ask the defendant about problem gambling in this context (except in regard to debt management). Magistrates and criminal justice stakeholders welcomed such screening, along with earlier identification by the police and liaison and diversion.
- Magistrates, criminal justice and therapeutic stakeholders described how people with problem gambling issues are not always forthcoming about their gambling involvement. There should be systematic recognition of problem gambling among criminal justice professionals, and training about how to support people with disclosure.

## **Sentencing practice and criminal justice treatment provision**

- Surveyed magistrates identified the types of crimes being committed in court cases where problem gambling was a contextual factor: 25.7 per cent of responders recalled that the cases involved theft; 14.6 per cent recalled that the cases involved unauthorised credit cards; 11.4 per cent recalled that the cases involved domestic violence; 3 per cent recalled that the cases involved assault; 2.7 per cent recalled that the cases involved street robbery; 1.7 per cent recalled that the cases involved public order offences; and 0.6 per cent recalled that the cases involved child abuse. They recalled that it was rare for problem gambling to be raised in a case, in contrast with other addictions such as alcohol and drugs which were raised regularly in court sittings.
- Magistrates rely on sentencing guidelines. Survey participants showed a preference for more sentencing guidance on problem gambling (58.1 per cent). Magistrates who participated in the focus groups, as well as stakeholders, supported the idea that sentencing guidelines should recognise when gambling should be considered as an aggravating or mitigating factor.
- Presently, mitigation can only be applied if the defendant has voluntarily taken steps to address their problem gambling in cases where the court establishes a direct causal relationship between gambling and the offence. Under current sentencing guidelines, magistrates can ban an individual from attending or using gambling facilities, including online gambling sites. However, findings from magistrates' responses suggested that there was a degree of uncertainty regarding their power to do this.
- Recalling their experience of gambling related crime cases, participants recognised that in many cases where fraud or theft was committed, it was over the financial threshold that could be dealt with at the magistrates' court. These cases were referred upwards to the crown court. It was suggested that these cases could be dealt with in the magistrates' court if they were given the authority. Magistrates and stakeholders acknowledged how gambling debts could swiftly spiral out of control. They reported incidents where first time offences involved theft from workplaces of hundreds of thousands of pounds. Magistrates recalled that these cases often involved defendants who were in court for the first time and had previous good character. This was presented as another reason to enable these cases to remain in the magistrates' court.
- Of the magistrates surveyed with experience of sentencing cases where problem gambling was a contextual factor, 25.5 per cent noted that the defendant was also unemployed. Focus group and stakeholder participants mostly referred to cases where crimes were committed by employed people in positions of trust. Connolly et al (2018) found

that the connection between unemployment and problem gambling was higher than was recognised by magistrates. This difference could be explained due to the way in which crime type can influence the likelihood of reporting (Tarling and Morris, 2010); employers may be more likely to prosecute due to the sums of money stolen, thus these cases may appear more frequently in court.

- Participants were asked to reflect on the demographics of people they had seen at court in cases involving problem gambling. Survey data revealed that magistrates most commonly recalled seeing white male defendants aged 30 years and over in these cases. There was significantly less recognition of cases involving women and people from Black and minority ethnic backgrounds. Therapeutic stakeholders had more experience of women attending their services, compounding findings that problem gambling is rarely raised or recognised in court.
- Survey participants recalled that people presenting in court with problem gambling issues also experienced the following: 56.7 per cent recalled financial difficulties such as debt; 31.2 per cent recalled alcohol addiction; 29.9 per cent recalled relationship breakdown; 21.5 per cent recalled drug addictions; 20.5 per cent recalled job loss; 17.4 recalled poor mental health; and 5.7 per cent recalled adverse childhood experiences.
- Magistrates in the focus groups preferred therapeutic intervention as part of a community sentence. This was as opposed to a custodial sentence or fine, which were seen as having the potential to exacerbate gambling, offending behaviour, and any incurred debt issues. Acknowledging that some offences would pass the custody threshold based on the sentencing guidelines, findings suggested that magistrates also welcomed better access to treatment in custody. Magistrates highlighted their obligation to be mindful of compensation to and justice for the victim, as well as the promotion of safer communities.
- Findings suggested that financial penalties as a sentence were considered problematic. Despite being the lowest level sentence, participants suggested that it could lead to further financial problems, gambling, and criminal involvement. Magistrates felt that this sentence needed to be reviewed. However, detailed pre-sentence reports are not required for low level crimes (Chaplin et al, 2017) and such crimes are more likely to result in a fine. Therefore, problem gambling might not be identified prior to the court case by probation and as such would not come to the attention of sitting magistrates.
- 14 per cent of survey respondents were aware of a treatment service in their locality to which someone identified with problem gambling issues could be referred. Therapeutic stakeholders pointed out that criminal justice staff needed greater awareness of gambling treatment services

already available, for example the National Gambling Treatment Service (including GamCare and their network partners), as well as online, remote provision and the National Gambling Helpline.

- Magistrates wanted to be confident that gambling issues would be addressed by bespoke courses provided or endorsed by probation, delivered by experts using evidence-based approaches. They also recognised the potential need for debt management guidance and mental health support and felt that people needed appropriate interventions to meet individual needs. Magistrates and stakeholders highlighted a link between domestic abuse and problem gambling, suggesting that there is also a need for healthy relationship education intervention. Therapeutic stakeholders highlighted that women may have slightly different treatment needs to men. Probation officers could assign Rehabilitation Activity Requirement (RAR) days to gambling-specific interventions as part of a community sentence.
- Probation officers were regarded as being well placed to identify intervention needs, with the support of training from experts in therapeutic services. A multi-agency approach to meeting gambling related need was perceived as best practice.
- Magistrates recognised that resource limitations in the criminal justice system could hinder the opportunities for treatment and rehabilitation. They agreed that robust information about prevalence should inform future service delivery developments and resource allocation.

## Recommendations

### Crime prevention and community safety

- The research presents a compelling case for adopting a public health approach (McGee, 2020; Purves et al, 2020) that places greater restrictions on advertising and online gambling provision to safeguard children, people experiencing problem gambling, and people at risk of gambling related harms.
- There needs to be improved awareness of and signposting to gambling treatment services among professionals in the criminal justice system, including services for affected others within the community.
- More awareness of and greater support for victims of gambling related crime is needed, as well as providing the opportunity for victims and affected others to articulate the impact that crime and problem gambling has had on them. It is plausible that the private and inter-personal nature of common gambling related crimes such as theft from family members or friends and domestic violence contribute to the hidden nature of

gambling related crime. Not all victims want criminal justice involvement and, in such instances, appropriate support and treatment should still be made available. The adoption of restorative justice practices in the community, outside of the criminal justice system, could reduce the need for future criminal justice involvement.

- As a further community safety measure, engagement with financial services providers would be beneficial in exploring the kind of safeguards that could be put in place to protect vulnerable customers and those in debt.

### **Sentencing guidance, sentencing and associated training**

- The research findings support the need for amendments to sentencing guidelines to include problem gambling as a mitigating or aggravating factor. Associated training should be provided to magistrates.
- There should be a review of the financial thresholds for acquisitive/fraudulent crimes that can be dealt with at the magistrates' court.
- A review of the use of fines is needed with recognition to when pre-existing debts feature in a case.
- Bespoke gambling treatment options in the criminal justice system are needed to support suspended sentences, community sentences, and treatment in prison. The research found that magistrates and therapeutic stakeholders agreed that custodial sentences were not effective when therapeutic intervention was required.

### **Criminal justice practice**

- An understanding of problem gambling, gambling related harms, the neurocognitive impacts of gambling and the prevalence of such issues when investigating crime is essential for probation practitioners, liaison and diversion staff, the police and wider criminal justice professionals including sentencers. Useful resources include research by GamCare (2021) and the Beacon Counselling Trust (Mann, 2018).
- Early identification and diversion are key. Referral pathways tailored to problem gambling treatment should be introduced by police and liaison and diversion teams.
- Probation and liaison and diversion services should use a gambling screening tool and use this information when assessing a person's risk of reoffending. Pre-sentence reports should include this information and signpost to treatment and support intervention.

- Where problem gambling is identified, it would be advantageous to include in-depth assessment from therapeutic professionals working in the field to support with evidence for mitigation and identify further referral pathways.
- Magistrates advocated for experienced therapeutic and treatment providers to deliver criminal justice treatment interventions for problem gambling in the community. Tailored treatment and support programmes should contribute to rehabilitation activity requirement (RAR) days. Consideration and more research are needed into gender and culturally specific support pathways and therapeutic best practice.
- Training for magistrates and criminal justice professionals regarding problem gambling, behavioural addiction, gambling harms and sentencing options should be developed. The voices of those with lived experience of problem gambling, including affected others, alongside shared knowledge from the therapeutic field, would enhance criminal justice practice.

# 1. Introduction

*“... if it's something they have less control over because it is an addiction, then they need help to get rid of that addiction, rather than just punish them...”*  
(Magistrate P6, focus group 2)

The opening quote highlights the perception that treatment is of importance when sentencing a problem gambler. There is very little research in England and Wales pertaining to gambling related crime, the sentencing of such offences and criminal justice treatment interventions available for those addicted to gambling (Commission on Crime and Problem Gambling, 2020). This study aims to bridge the gap in research knowledge to support the Howard League's Commission on Crime and Problem Gambling. Researchers from the Staffordshire University Crime and Society Research Group and the Centre for Crime, Justice and Security were commissioned to facilitate this research. A collaborative model involving Commissioners allowed the research team to undertake a participatory research with sentencers. Further data collection was also undertaken with criminal justice and therapeutic stakeholders in the field.

This research was specifically aimed at understanding the perspectives and experiences of magistrates as sentencers in England and Wales. Magistrates are sentencers who are trained volunteers from the community, and they work in criminal, family and youth courts, however the focus of this research was adult criminal courts. Magistrates sentence criminal cases and less serious legal disputes, adhering to national sentencing guidance with consideration to contextual information and recommendations outlined by the probation service through a pre-sentence report. They also take into account evidence from defence and prosecution. Magistrates may also receive an assessment report from liaison and diversion teams if the defendant is considered vulnerable. The assessment identifies health and social care needs and outlines treatment referral options in more detail. Presently, problem gambling is not a mitigating factor in the sentencing guidance. Criminal justice treatment for problem gambling is scarce within sentencing (Brooks and Blaszczyński, 2011).

Our research aimed to:

- Understand the extent to which sentencers are aware of problem gamblers coming before them in court.
- Understand sentencers' practice when problem gambling is apparent within a case.
- Elicit magistrates' views on the potential for courts to account for problem gambling.

## 2. Policy and research context

### 2.1 Gambling legislation and industry overview

The Gambling Act (2005) provides legislation for gambling in Great Britain and is currently under review (Department for Digital, Culture, Media and Sport, 2020). The Gambling Commission was set up by the government to oversee regulation and licensing and to safeguard the consumers (Gambling Commission, 2020). It provides advice and guidance to the sector (ibid). The statutory duties of the Gambling Commission (2020: 7) are to:

- Prevent gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime
- Ensure that gambling is conducted in a fair and open way
- Protect children and other vulnerable persons from being harmed or exploited by gambling.

Both internationally and in the UK, the gambling industry has rapidly grown into a 'large-scale commercial operation' over recent decades (Adams, et al, 2009: 669; Wardle et al, 2020). The gaming and gambling industry have become interconnected, with opportunities to gamble also offered in games played by young people and adults alike (Sanders and Williams, 2019; Kuss and Gainsbury, 2021). Online and mobile phone gambling has increased, mainly through sports-based betting and the National Lottery, with a decrease in in-person activities (Gambling Commission, 2020: 12-13). Researchers argue that sports betting is becoming increasingly normalised for young adult males in the UK due to the growth of technology assisted gambling and sports apps, resulting in public health concern (McGee, 2020; Wardle et al, 2020). Gambling participation data regarding prevalence rates in Great Britain shows that 47 per cent of participants aged 16 years and over reported that they had gambled once or more in the four weeks prior to their response (Gambling Commission, 2020: 8).

In contrast, public awareness levels regarding gambling policy in Great Britain are low. Approximately 20 to 38 per cent of the public know about existing legislation which aims to safeguard them against gambling harm (Gambling Commission, 2020: 38). Conversely, awareness of gambling and gambling providers is likely to be high due to extensive television advertising (both day and night) and during televised sports matches viewed by both children and adults (Pitt et al, 2017; Purves, et al, 2020; McGee, 2020). Currently, British restrictions on gambling advertising are minimal (Wardle et al, 2020; Critchlow et al, 2020), but include restrictions on inviting underage people to gamble (Critchlow et al, 2020). The impact of these restrictions is limited due to the omission of a range of gambling forms in a subsection of the regulations

(Section 46, Gambling Act 2005: 21). There is no legal requirement in Great Britain for gambling adverts to contain harm reduction messages (Critchlow et al, 2020). This is in contrast to other behaviours such as smoking in which advertising restrictions are implemented for smoking products due to addiction harms (Adams et al, 2009). There are some instances whereby the gambling industry has been taken to court over licensing matters (Brooks and Blaszczynski, 2011). Despite this, public health research in the UK continues to evidence the need for tougher restrictions (Critchlow et al, 2020; McGee, 2020; Purves et al, 2020).

## **2.2 Gambling as a behavioural addiction**

The Gambling Commission conducts research into developments in the gambling industry and publishes data relating to usership. In Great Britain, the most recent figures from 2016 indicate that the prevalence of problem gamblers in the population is '...somewhere between 200,000 and 410,000 adults according to the DSM-IV' (Connolly et al, 2018: 71). This represents an increase over the past decade (Brooks and Blaszczynski, 2011). The DSM is a diagnostic manual for mental health disorders, in which gambling disorder is classed as a behavioural addiction, with similarities to substance misuse addictions (American Psychiatric Association, 2013). Some countries, including the USA and Australia, use the DSM diagnostic tool. Others, including Great Britain, use the World Health Organisation's International Statistical Classification of Diseases and Related Health Problems (ICD) assessment manual which first included gambling disorder in 1975 (Clark et al, 2017; Abbott, 2020). It is estimated that problem gamblers make up 0.07 per cent of the Great British gambling population (Connolly et al, 2018: 70). In the UK, 3 per cent of the population is thought to be at risk of experiencing gambling related harms (Critchlow et al, 2020: 79). Public health models show that gambling related harms extend beyond the gambler themselves to affected others, including family members, the wider community, places of employment and/or study and society more broadly (Langham et al, 2016). Harms encompass financial, relational, emotional and psychological harms, as well as harms relating to health, employment, education, culture and crime (ibid). Gambling related harm can lead to the development of mental health issues, the exacerbation of existing mental health issues, as well as increased risk of suicide (Wardle et al, 2020). Researchers in the field continue to develop an understanding of the impact of gambling addiction on neurocognition (Blaszczynski et al, 2008; Leeman and Potenza, 2012; Pettorruso et al, 2019; Zhang and Clark, 2020; Goudriaan, 2020; Lee et al, 2020). This report uses the term problem gambling as it is acknowledged as being most generally understood by the public and those working within the criminal justice system when talking about individuals with a gambling addiction. Smith and Simpson (2014) note that those with problem gambling issues are highly likely to have an addiction to gambling.

## 2.3 Gambling related crime, sentencing and criminal justice treatment

One area of gambling related harm outlined by Langham is crime and criminality (Langham et al, 2016). Whilst gambling related crime also encompasses illegal gambling and breaches of legislation by the gambling industry (Banks and Waugh, 2019), this research focused on sentencing in cases where problem gambling influences criminal behaviour (ibid). Researchers have identified possible patterns between gambling and criminal activity; crimes are committed by those experiencing problem gambling when legitimate funding streams cease, when debts occur, and when people chase losses, thus losing control in cognition and behaviour (Smith and Simpson, 2014; Zhang and Clark, 2020). Crime related to problem gambling is more likely to be associated with income-generating activity to fund gambling or to pay off gambling related debt. Researchers have also identified a relationship between problem gambling and interpersonal violence (Banks and Waugh, 2019; Brown, 1987). More broadly, Roberts et al (2016) found co-morbidities among British males between gambling, domestic abuse, alcohol, drugs and mental health issues. In the criminal justice system, a pilot study conducted with Cheshire Constabulary found that 13 per cent of detainees in police custody suites had a problem gambling issue (Mann, 2018).

Understandings of the relationship between crime and gambling have been enhanced by research regarding gambling and prisons (May-Chahal et al, 2012; May-Chahal et al, 2017). Zurhold et al (2013) found that just under half of those incarcerated in Hamburg with problem gambling issues had committed offences directly related to their gambling. Whilst there is evidence of direct and indirect links between gambling and offending behaviour, research conducted with people in prison found that there are also examples where identification of problem gambling is coincidental and has no direct link to the person's offending (Lahn and Grabosky, 2003). Clearly, in such cases mitigation for problem gambling in sentencing would not be appropriate, but treatment for problem gambling would be beneficial. When problem gambling is identified in prison settings, treatment provision is rare, with only a few examples cited in American and Canadian prisons (Turner et al, 2017). Even less is known about treatment in criminal justice settings in England and Wales and little is known about sentencing practice when problem gambling is mentioned in court (Commission on Crime and Problem Gambling, 2020). However, international research surveyed suggests that community sanctions with treatment were more effective than custodial sentences where problem gambling can be exacerbated (Commission on Crime and Problem Gambling, 2020).

The literature review published by the Commission on Crime and Problem Gambling (2020) highlighted a lack of awareness or knowledge about treatment availability for problem gambling in the criminal justice system. It suggested that treatment provision was limited both in the criminal justice system and more broadly (Brooks and Blaszczynski, 2011; Wardle et al, 2020).

In England and Wales, court ordered treatment in community sentences was introduced by the Crime and Disorder Act 1998, including court ordered drug treatment and testing orders (Naeem et al, 2007). In contrast, research in English and Welsh courts showed that problem gambling was not considered to be a mitigating factor, even in cases where the judge received evidence of gambling addiction from psychiatric, medical or pre-sentence reports (Brooks and Blaszczyński, 2011). The Commission on Crime and Problem Gambling (2020: 19) suggested that 'further clarity is needed for sentencing as to whether an offender has an inability, or unwillingness to self-regulate gambling behaviour'.

Research has provided an overview of different approaches in international jurisdictions. In Canadian courts, testimonial from an expert witness and the defence providing evidence of gambling debt prior to the offence allows for mitigation (Smith and Simpson, 2014). Canadian defence lawyers highlight certain behaviours as evidence of distorted thought process. These behaviours include depleted personal funds, exposure to gambling industry incentives and advertising, and selling of personal items prior to the crime being committed (ibid: 322). A full assessment of gambling behaviour is undertaken by an expert. This provides the court with evidence of problem gambling and how this relates to the offence (ibid). For less serious crimes, Canadian courts show a preference for conditional sentences in the community with options for treatment requirements and gambling bans (ibid). Other countries such as Australia do not see problem gambling as a mitigating factor. Instead, they have developed a tailored approach. In southern Australia, problem-solving courts have been piloted. These are based on an American model and better allow for treatment, as opposed to traditional punitive approaches (Adolphe et al, 2019). American problem-solving courts take a multi-agency approach and recommend therapeutic intervention that addresses contributing factors to offending behaviour (Dollar et al, 2018). These courts regularly result in a reduction in recidivism (ibid; Turner et al, 2017).

## 3. Research methodology

### 3.1 Introduction

This research was commissioned by the Howard League for Penal Reform in association with the Magistrates Association to support the work of the Commission on Crime and Problem Gambling. The research aims to:

- Understand the extent to which sentencers are aware of problem gamblers coming before them in court.
- Understand their practice when problem gambling is apparent within a case.
- Elicit magistrates' views on the potential for courts to account for problem gambling.

### 3.2 Research approach

The research employed a participatory approach, which can help shape policy and services through meaningful engagement with stakeholders (Bovaird, 2007; Boyle and Harris, 2009; Gratton and Beddows, 2018). Participatory research aims to reduce power dynamics (Brown, 2021) and allows for 'collaboration between academic and non-academic research partners to produce both practical and academic knowledge' (Darby, 2017: 230). Research partners are encouraged to share power and perspectives to jointly determine research design (Stalker et al, 2020). Inclusion of those with lived experience and those working in the community aims to neutralise power dynamics and capitalise on differing expertise (Littman et al, 2021). The research advisory group consisted of a Justice of the Peace, staff and committee members from the Magistrates Association, and staff from the Howard League for Penal Reform.

Collaborative online meetings and data collection events attended by representatives from the research advisory group helped to develop a community of practice (Wenger, 1999), where mutual learning occurred across organisations. This enabled reflection and quality assurance. The Staffordshire University model was adapted to emphasise the importance of creativity, involving others, listening and learning, cross checking, and action planning (Gratton and Beddows, 2018). Littman et al (2021) highlight that it is typical for university participatory action researchers to abstain from being the drivers of research and instead facilitate community partner engagement. In light of this, it was important to incorporate the insights of the Magistrates Association in facilitating engagement and quality data capture.

### 3.3 Research methods for data capture

Data collection took place in three phases.

The first phase was an online survey sent to sitting magistrates in England and Wales who were members of the Magistrates Association. Online surveys are quick to administer via email and are effective for gathering data from a large sample size, and these benefits are increased when there is a link between the sender and participants (Bryman, 2012). The Magistrates Association sent emails via respective networks with relevant information about the study and a link to the online survey. A total of 656 participants took part in the survey. Questions asked participants to reflect on their experience of problem gambling as encountered in court cases, as well as their thoughts on gambling and sentencing guidelines. Participants were from all regions in England and Wales, over 50 years of age, with a relatively equal distribution of men and women. The length of experience as a magistrate ranged from 12 months to over 21 years. This was a fairly representative sample of magistrates in England and Wales. At the end of the survey, participants were asked to register their interest in taking part in a focus group (second phase of data collection), ensuring that sampling was purposive and opportunistic in nature (Bryman, 2012).

For the second dataset, the research team conducted a series of online focus groups with 26 magistrates who had participated in the online survey. Focus groups provided an opportunity to discuss the topic more broadly, with the aim of gaining a more nuanced understanding of the survey data. Six focus groups with a total of 26 participants were conducted. Research into this methodology suggests that four to six focus groups are considered viable to reach data saturation (Morgan, 1996). Focus groups utilised pre-prepared questions and resources to facilitate discussion in a semi-structured style (Frost, 2011). This allowed for participant-driven discussion and flexibility (Shensul, 2012; Reimer, 2012). Participants also explored sentencing options in more depth using a vignette prepared by the Magistrates Association. Online focus groups accommodated geographical challenges and public health restrictions in response to the COVID-19 pandemic. In addition to meeting public health requirements, online data collection via various methodologies has been recognised as an emerging and positive method for data collection in a digital era (Bryman, 2012). Focus groups were audio recorded, then transcribed and anonymised during the transcription process.

For the third phase, the research team held an online stakeholder world café event. This enabled the research team to gain further insights and solutions from a range of leaders within the criminal justice system and therapeutic community. A total of 21 stakeholders took part, representing a range of sectors and organisations.<sup>1</sup> World café research is a participatory methodology that facilitates gathering knowledge, opinions and generating solutions (Brown and Issacs, 2005; Page and Temple-Malt, 2018; Page et al, 2020; Page, 2020).

<sup>1</sup> Delegates attended from: the Sentencing Council, public health, debt advice services, academics representing the lived experience voice, GamCare, the police, the Justice Clerk's Society, the Bar Council, the Law Society, Liaison and Diversion, the Probation Institute, Gambling Integrity, Refuge, Gamble Aware and Beacon Counselling.

The world café event took place online. This was an innovative approach as the methodology is ordinarily used in a face-to-face setting. A presentation was delivered on the research findings and research assistants hosted audio recorded break-out room discussion groups with participants. Participatory research allows for continued development in the research design and following the world café event, the research team concluded that further data would be welcomed from stakeholders (Darby, 2017: 234). Ethical approval was granted for a follow-up email questionnaire containing four questions sent to those who attended the world café event.

### 3.4 Data analysis

Theoretical thematic analysis as outlined by Braun and Clark (2006) was used to process the qualitative data sets, supported by a review of existing literature and policy documents. The phases of analysis included: data familiarisation, generating colour codes, searching for themes, reviewing, defining and re-defining themes and reflecting through report writing (adapted from Braun and Clark, 2006: 87). SPSS software was used to analyse and cross-check the quantitative findings from the online survey data. Thematic analysis was selected for qualitative responses characterised by essentialist methodology where participants shared experiences and meanings (Braun and Clark, 2006). Theoretical themed analysis was used to assess four themes: investigate awareness of problem gambling; identify associated crime; clarify sentencing practice and treatment provision; generate possible solutions. Our research was deductive in that the four aforementioned themes transpired from the Commission on Crime and Problem Gambling's literature review (Commission on Crime and Problem Gambling, 2020).

Theoretical themed analysis was conducted in what Bachman and Schutt (2017: 418) refer to as 'progressive focusing'. This meant that after each data collection event there was a research team debrief to discuss reflections on the data collection methodology and content. These discussions informed the coding of transcripts and subsequent qualitative analysis.

### 3.5 Ethical considerations

Research supervision in this project was undertaken, which is a mark of good practice in social science research (Kara, 2018). A participatory approach allowed for ongoing scrutiny by relevant stakeholders, ensuring the project remained accountable in achieving its aims and objectives. This approach also allowed for those engaged to shape the research from design to analysis (Gratton and Beddows, 2018). This helped to ensure that from the outset, the questions being asked were ethical and reduced the likelihood of emotional distress. Principles of confidentiality, anonymity, informed consent, right to withdraw and debrief were applied in line with ethical guidance from the British Society of Criminology and British Sociological Association (British Society of Criminology, 2015; British Sociological Association, 2017). Participants

were provided with detailed information about participation, and had the right to withdraw their response to the survey for one month after completion. Participants in the focus groups and world café event were able to withdraw during the data collection session. It was clearly articulated that participation in this study was voluntary and that responses would be anonymised. Data storage procedures were explained and were in compliance with GDPR.

Debriefing occurred at the end of each stage of data collection and included signposting to NHS and support services to ensure participant well-being. Participants also received details regarding internal support within the criminal justice system available to magistrates if emotional distress impacted their work. Although survey and focus group questions were not personal in nature, experience of gambling related harm could not be ruled out and signposting support for participants was good practice.

## 4. Sentencers' awareness of problem gambling

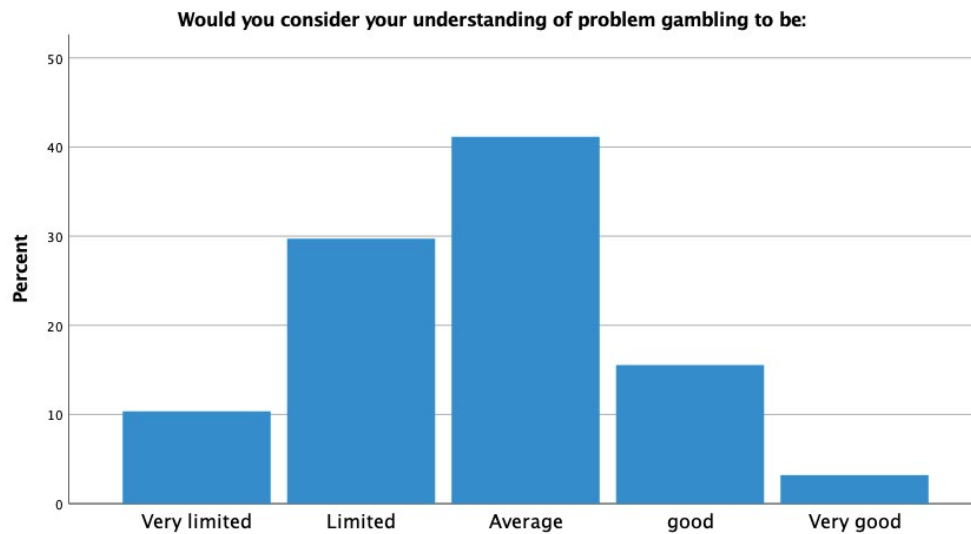
### 4.1 Introduction

Magistrates' general awareness of problem gambling and gambling related crime varied. Some magistrates and therapeutic stakeholders raised concerns about the pervasiveness of gambling advertising in society and how this might lead to the development of problem gambling. Just under half of the magistrates shared insights from infrequent experiences of cases where problem gambling was raised in criminal courts. These findings suggested that problem gambling was a hidden issue in the courtroom that needed to be better identified in order to improve sentencing practice. Furthermore, screening for problem gambling could be included in probation assessment used to inform sentencing. Whilst knowledge of gambling behaviours and harms varied amongst participants, there was good understanding about drug and alcohol addiction, which informed responses to problem gambling. A need for training about behavioural addiction was identified, alongside training in sentencing cases involving problem gambling. The research highlighted that it was important for magistrates to appreciate the physiological impacts of problem gambling and its influence on offending behaviour. The research showed that magistrates' existing awareness of problem gambling issues was mostly acquired through pre-sentence reports from probation officers or lawyers. Training on gambling screening, gambling related harms and support service referrals across the criminal justice sector was highlighted as beneficial. Stakeholders referred to innovative projects that could provide learning points for magistrates. Examples included Beacon Counselling Trust's police custody pilot screening programme, and GamCare led a whole-systems criminal justice education programme in Hertfordshire. The research suggested that learning from these projects could assist future developments.

### 4.2 General awareness

When responding to the survey, most magistrates reported that they had an average understanding of problem gambling (see figure one). Levels of awareness were further explored in the focus groups, where participants noted that their awareness of problem gambling and associated harms was based on the following: courtroom hearings; personal experience of being an affected other; observing others gambling; personal experience of taking part in non-problematic gambling; and drawing upon knowledge of substance addiction from sentencing.

**Figure 1: Self-report survey responses on sentencers' awareness of problem gambling**



Magistrates who participated in the focus groups talked about types of gambling from traditional in-person participation at betting shops, casinos and bingo halls, through to more contemporary online, mobile phone and app-based gambling. They commented on the proliferation of sports gambling, slot machines and the links between gaming and gambling, as well as the lottery, scratch cards and gambling tourism. Illegal versus legal gambling was discussed. Findings about the trends in gambling participation resonated with nation-wide findings from research conducted by the Gambling Commission (2020) and literature outlining the expansion of the gambling industry over recent decades (Adams et al, 2009; Sanders and Williams, 2019; Wardle et al, 2020; McGee, 2020; Kuss and Gainsbury, 2021). Just under two thirds of stakeholders perceived magistrates' understanding of the gambling attitudes and behaviour in the UK as good. During data collection, both magistrates and stakeholders expressed that online gambling facilitated easier access and they raised concerns regarding safeguards against underage usage:

*"... it's made so easy now through mobile phones and computers, they just do it, rather than having to go to a bookies..." (Magistrate P4, focus group 3)*

*"... we had one lad that went into serious debt... He had offended, he hadn't got caught... He was only 17...so he was doing everything illegally... gambling under the age of 18 online, on his computer... he won once and then he kept thinking he was going to keep winning..." (Magistrate P1, focus group 5)*

Gambling related crime amongst young people was beyond the scope of this research. However, the example of this young person's experience highlights the harms associated with underage online gambling. It also supports Brown's (1987) finding that not all gambling related crime is detected or dealt with by the criminal justice system. The participant involved (Magistrate P1, focus

group 5) described how criminal justice was not pursued in this case. Instead, a community group had supported restoration between the victim and the young person and provided support for behaviour change. This indicates potential for restorative justice practices to be utilised when problem gambling features as a contributing factor in a crime. Restorative justice with young people in the UK is a cost-effective approach to reducing recidivism and enhancing victim well-being (Sherman et al, 2015). There is also merit in using restorative justice with adults who have committed a crime (Maxwell and Morris, 2001).

### 4.3 Gambling advertising

The findings unearthed a feeling among magistrates and therapeutic stakeholders that advertising for gambling in the UK was pervasive and exacerbated problem gambling. Pitt et al (2017) argued that enticements to gamble, such as free gifts or samples, influenced young people to gamble. Critchlow et al (2020) critiqued gambling advertising legislation in Great Britain due to the lack of age restrictions and harm reduction information. Analysis of adverts showed that such details are mostly omitted, but when included, were not particularly visible (ibid). Such minimal requirements may explain why magistrates did not share any experience of sentencing gambling providers, although Brooks and Blaszczyński (2011) found some evidence of UK court cases regarding gambling legislation and patenting.

During data collection, magistrates expressed desire for tougher restrictions on gambling advertising, a view supported by public health research (Adams et al, 2009; McGee, 2020; Purves et al, 2020; Critchlow et al, 2020). This was motivated by the need to safeguard children, young people and problem gamblers. McGee (2020) also emphasised the importance of safeguarding those vulnerable to gambling harms (McGee, 2020). Binde (2016: 398) argued that 'Gambling companies... should act more proactively if it is suspected that customers have gambling problems or are spending huge sums of money that few people are likely to be able to afford'. Magistrates participating in focus groups highlighted the problematic nature of daytime advertising and gambling product incentives:

*"...I watch a lot of football on the television... I'm very conscious of the in-game gambling that goes on because it's always being mentioned, and when you follow the sports apps there's always an opportunity to gamble, a lot of the players have shirts advertising the companies..." (Magistrate P2, focus group 4)*

*"... definitely get rid of the free offers... I mean people must start gambling at some point in their life... they're not born a gambler... these adverts are viewed by 16, 17, 18 year olds in the family home... and I would guess that when you're within that £10 freebie, you're going to get a few little wins, to entice you to carry on gambling... we're almost spoon feeding our younger generation to see that gambling is acceptable cos if you look at those advertisements, they're all really happy, colourful, lots of music, cool people on and it's making the whole thing look attractive." (Magistrate P3, focus group 3)*

Adams et al (2009) argued that advertising restrictions implemented for smoking products could be utilised with the gambling industry. In relation to problem gambling, advertising restrictions could have health benefits and could support crime prevention measures. Research participants explored the ways in which other industries could also act to safeguard people against gambling harms. One therapeutic stakeholder commented that due to links between gambling and poor mental health, more responsibility could be placed on banking services to protect those vulnerable with their finances.

#### 4.4 Gambling related harms and addiction

The research findings suggested that magistrates recognised the impact of gambling related harms upon the gambler, the immediate community and wider society, including engagement with crime to fund problem gambling. Similar harms have been cited in public health research (Langham et al, 2016). Despite this, discussions with magistrates also revealed a degree of complexity with regard to attitudes about gambling related harm. On the one hand, it was recognised that people could gamble without associated harms, concurring with data that problem gamblers constitute a smaller group of the gambling population in Great Britain (Conolly et al, 2018). Yet participants also recognised that social gamblers may be vulnerable to problem gambling and that people with neurodivergence or existing mental health issues could be at more risk (supported by Wardle et al, 2020).

*"A lot of people have a gambling limit... But the danger is... they have a bad month they might keep on going a bit more, because they want to get it back... Some people have addictive personality, and they can't put brakes on... For people with a background of mental health issues, or maybe ADHD, so they're more impulsive, that's going to create issues as well..." (Magistrate P2, focus group 2).*

Ninety-three per cent of magistrates who participated in the online survey drew similarities between gambling addiction and alcohol and drug addictions. Knowledge of substance misuse related addictions informed discussions on gambling addiction in the focus groups. However, awareness about behavioural addictions among all criminal justice professionals was identified as a training need. Participants expressed that greater awareness might allow for appropriate sentencing and a more streamlined response to gambling related crime:

*"...when you work through the system so, the victim, the perpetrator, the police, the Crown Prosecution Service, the magistrates, the crown court ... I've worked with the whole system. I often think that we're just not as educated as we are in other elements of addiction... education for the whole system... is really, really important, there's lots of different elements to it and we need to get to the point where we're 'consciously competent' when it comes to gambling in the criminal justice system, and we're not." (World café participant, criminal justice stakeholder)*

Criminal justice stakeholders who participated in the world café event concurred that whilst there was a comprehensive and cohesive approach to alcohol and drug addiction, this did not occur for problem gambling. Similarly, stakeholders who work with people with lived experience of problem gambling perceived a lack of understanding and support throughout the criminal justice system in comparison to other substance-related addictions:

*“...their perspective is certainly that there’s just a lack of understanding throughout the whole court process... from first contact with the police and then legal teams..., going to court whether that’s magistrates, and crown court... yeah and then if they got a prison sentence. The questions aren’t even really asked around gambling addiction... from the people that I’ve spoken to, they just don’t think that there is that parity in terms of understanding and support, and they sort of feel like it’s quite an invisible addiction” (World café participant, therapeutic academic stakeholder)*

## 4.5 Pre-sentence reports and defence solicitors

The Criminal Justice Act (1991) required that information be made available for sentencing in the form of a pre-sentence report which captures information from probation assessment about the defendant’s circumstances and the alleged offence, and provides advice on sentencing (Cavadino, 1997). Today, probation officers do not have to produce detailed pre-sentence reports for all cases, particularly where the risk level is low (Chaplain et al, 2017). The most basic probation reporting mechanism involves a 30-minute verbal assessment on the day of court, prior to sentencing, to clarify mitigating and aggravating factors to the case (ibid). A liaison and diversion assessment to determine treatment pathways might occur if mental health, learning disability, substance misuse problems, or other vulnerabilities are identified as factors that should be taken into account. Similar assessments can take place in police custody to provide early intervention and diversion options (Kane et al, 2020). Magistrates who participated in focus groups discussed their ability to pause sentencing to request more detailed reports from probation:

*“...It came up through the defence... it was theft... the reason he did it is cos he had a problem with gambling. So, they give you the reason. Then it’s down to you to decide whether this is made up, or if he has actually got a problem with gambling... Probably, if I had that up now, especially doing this, I would ask for a probation report on it, on his gambling.” (Magistrate P4, focus group 3)*

*“... I don’t think I’ve ever seen a case where gambling was cited as a major factor, but I think that’s partly because the question probably doesn’t get asked... So, it may well be a hidden ... issue.” (Magistrate P1, focus group 3)*

Magistrates surveyed noted that information regarding a defendant’s problem gambling issue was often cited in pre-sentence reports and/or by the defence solicitor. In contrast, focus group participants noted that it rarely came up in pre-sentence reports and they expressed concern that the OASys assessment did not screen for problem gambling. Findings from the focus group participants’ experience suggested that another reason for

a lack of information regarding gambling might be due to the shorter nature of the interactions between duty solicitors and defendants. Criminal justice stakeholders who participated in the world café event identified two reasons as to why a defence solicitor might not raise problem gambling: it is not a mitigating factor in the sentencing guidelines, and it might encourage a negative reaction from magistrates.

Focus group participants reported that in their experience as magistrates, detailed contextual information assisted with appropriate sentencing. These magistrates supported the idea of probation officers conducting gambling screening in their assessments:

*"... I thought it was a good idea somebody suggesting that there would be a standard sort of question, on a similar par to drugs or alcohol... I can't recall ever seeing anything about gambling." (Magistrate P6, focus group 2)*

*"I think the training should go to the probation service... and it be part of their ... analysis thing, and then if they supply that information to us in court, I'm sure we would take on board" (Magistrate P5, focus group 2)*

These findings suggest that probation would need training on screening for problem gambling and gambling related harms, as well as referral options for treatment and support. Criminal justice stakeholders at the world café noted that some probation, liaison and diversion and police staff receive training, but that practice across the sector is largely inconsistent. Despite pockets of good practice, barriers to disclosure were highlighted by world café participants from the therapeutic and criminal justice sectors:

*"...we're just putting together a national workshop to raise awareness about gambling and how we can point to specific pathways for people... the biggest problem is when you're assessing someone in police custody... they don't always disclose straight away in custody, it's about having that relationship with them and getting that information around their issues around gambling... We are looking at using the screening tool ... from Beacon Trust... so that can be used in prison, custody settings or the courts... hopefully that should make some, some difference." (World café participant, criminal justice stakeholder)*

*"... It's the shame in admitting that the debts have been caused by gambling and it will take us quite a while for somebody to actually admit that these enormously high credit card balances come from gambling. There is also I think the link with mental health problems... people who have like bipolar and are going through a manic episode, will spend like mad on gambling, shopping..." (World café participant, therapeutic stakeholder)*

Findings from across each phase of data collection highlighted the importance of professional questioning about problem gambling to contextualise crime and make appropriate treatment referrals. These findings illustrated a need for training amongst professionals about reducing barriers to disclosure. Evidence gathered by Cheshire police custody suite pilot supports this need; when gambling screening training was undertaken in their custody suites, 13

per cent of those detained were identified as having gambling problems and appropriate support was offered (Mann, 2018). Ultimately, greater knowledge of problem gambling and gambling related crime would facilitate appropriate sentencing and therapeutic interventions (Binde, 2016).

## 4.6 Training

Whilst magistrates reported receiving training on sentencing and contextual factors such as poor mental health, substance misuse addictions and domestic abuse, problem gambling was not featured. Focus group participants explained how training acted as a prompt when sentencing:

*“... we'd need to get in touch with the judicial college and make sure, you know, gambling is included in some way into one of their exercises. The Magistrates Association have representation on the training committees... they are currently becoming more digitised... if gambling, like domestic abuse, like mental health are included in an exercise, in a training package, it would enhance our ability to sentence correctly.” (Magistrate P1, focus group 5)*

Suggestions for training provision included training being developed by the Judicial College, the e-judiciary website and the Magistrates Association. Magistrates who participated in focus groups indicated that they would welcome the inclusion of a sentencing scenario and examples of lived experience in the training.

GamCare's criminal justice whole-systems gambling education and support programme in Hertfordshire was referenced by stakeholders at the world café as a model of good practice (GamCare, 2021). It was noted that learning from this pilot and police custody work could help inform future practice (GamCare, 2021; Mann, 2018). Despite pockets of good practice and expertise, the research identified that a more consistent approach across the criminal justice sector was needed to improve equity and quality of justice outcomes and reduce recidivism.

## 5. Sentencing and criminal justice treatment provision

### 5.1 Introduction

Whilst problem gambling rarely came up in criminal court settings, cases experienced by research participants mostly involved acquisitive crime with breach of trust, or domestic abuse. Findings highlighted magistrates' responsibility to uphold justice for victims of crime, as well as providing appropriate interventions for people who experience problem gambling. Magistrates wanted affected others to be empowered to articulate issues they have experienced due to problem gambling thus informing criminal justice therapeutic intervention. Research participants, including magistrates and stakeholders, made frequent suggestions about the potential benefit of revised sentencing guidelines which outlined the parameters for problem gambling as a mitigating or aggravating factor. This was supported by just over half of the survey participants, and all of the focus groups. This would allow for court ordered gambling treatment. When recalling experiences of cases relating to acquisitive crime, research participants noted that the amount stolen (from workplaces in particular) typically exceeded the threshold dealt with at magistrates' court, and so cases were referred upwards to crown court where a custodial sentence was more likely. Participants perceived sentences involving fines and custody as problematic and likely to exacerbate problem gambling, which could lead to recidivism. Suggestions to achieve better outcomes for both victim and defendant included: improved sentence guidance, gambling screening and probation and expert-led treatment options. Focus group discussions suggested that, with better resources, probation could better access multi-agency treatment pathways. Identifying the extent of problem gambling within the offender population was seen as imperative in ensuring developments in the criminal justice system, including treatment provision, were designed to address need.

### 5.2 Contextual information about the defendant

Magistrates across all focus groups agreed that problem gambling rarely came up in court sittings, as one focus group participant explained:

*"... I've been on the bench for 20 years and chairing the adult court for 15. It's very rare I come across a specific mitigation for gambling. I'm concerned that maybe we are missing a lot of instances... I quite often will ask the defendant, you know, is there an underlying cause of the offending and it is an addiction, but it's either drugs or alcohol that's the main ones... I've probably twice come across ... gambling." (Magistrate P4, focus group 6)*

Some magistrates recalled that problem gambling was identifiable as a contextual factor in a handful of cases each year. However, magistrates who also presided in family courts said that problem gambling was raised more

frequently in childcare disputes, in contrast to their work in criminal courts. Therapeutic stakeholders explained that gambling may provide a form of escapism from other issues, and so defendants may not prioritise disclosing problem gambling when describing their welfare context to criminal justice professionals. Surveyed magistrates suggested that, from their experience of sentencing, people experiencing problem gambling also presented with the following issues:

- Financial issues e.g., debt (56.7 per cent of responders)
- Alcohol addiction (31.2 per cent of responders)
- Relationship breakdown (29.9 per cent of responders)
- Drug addiction (21.5 per cent of responders)
- Job loss (20.5 per cent of responders)
- Poor mental health (17.4 per cent of responders)
- Adverse childhood experiences (5.7 per cent of responders)

Academic literature suggests that problem gamblers might also have a co-morbidity pertaining to alcohol, drugs and/or mental health (Karlsson and Hakansson, 2020; Luczak and Wall, 2016; Håkansson, Karlsson and Widinghoff, 2018; Roberts et al, 2016; Sundqvist and Rosendahl, 2019). Acknowledging this range of co-morbidities, magistrates who participated in the research noted that this range could be mirrored in criminal justice treatment, including support for key co-occurring factors such as mental health, debt management and domestic abuse. In the world café event, therapeutic stakeholders drew attention to public health initiatives exploring treatment pathways for people experiencing cross addiction with problem gambling and alcohol. Current probation treatment options were perceived of by magistrates and a criminal justice stakeholder as being insufficient to address the complex needs of a problem gambler.

Research participants were asked to reflect on the demographics of people they had seen at court in cases involving problem gambling. Survey data revealed that magistrates most commonly recalled seeing white male defendants aged 30 years and over in these cases. There was significantly less recognition of cases involving women and people from Black and minority ethnic backgrounds.

This is in contrast to research findings that severe gambling problems were more prevalent (proportionally) among people from Black and minority ethnic backgrounds than among people from white backgrounds (Gunstone and Gosschalk, 2019). Therapeutic stakeholders who took part in the world café event noted that higher numbers of women were engaged in treatment, and so expected that this would have been reflected in court. They also noted that women had slightly different treatment needs to men. This assumption was supported by McCarthy et al (2019) who identified a trend of increased gambling participation among women over the twenty-first century. These

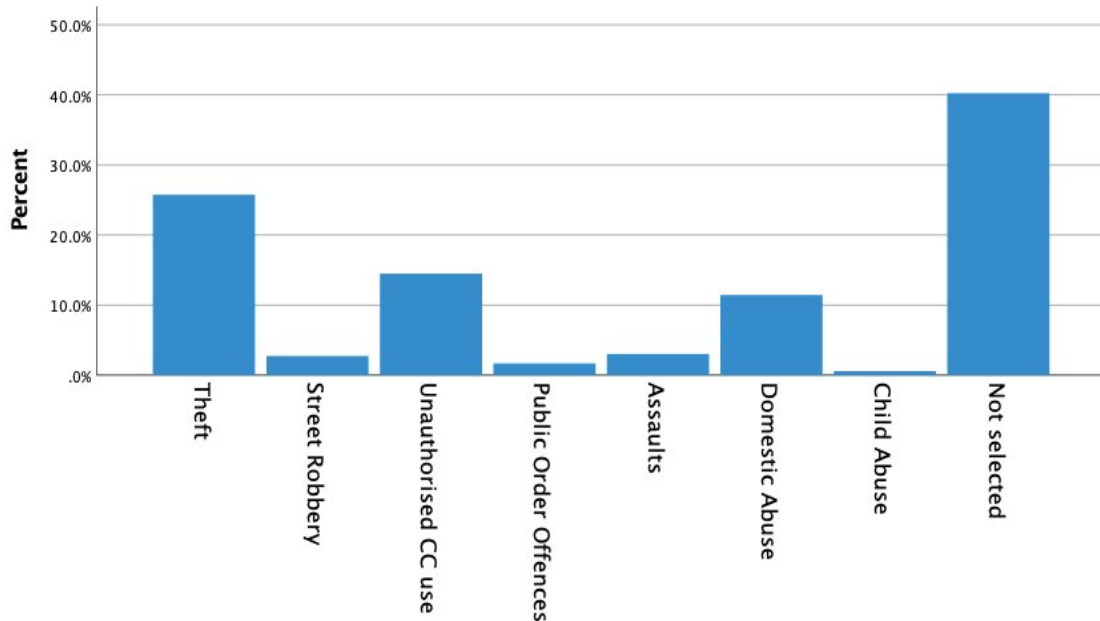
discrepancies lent further weight to the finding that gambling goes undetected by the criminal justice system, reinforcing the need for improved awareness and screening.

Among magistrates surveyed with experience of sentencing cases relating to problem gambling, 25.5 per cent recalled that the defendant was also unemployed. This is in contrast to findings by Connolly et al (2018) which suggest that unemployment features more prominently alongside problem gambling. However, focus group and stakeholder participants mostly referred to cases where crimes were committed by people employed in positions of trust. One explanation for this discrepancy could be the under-reporting of crimes occurring within the family. An employer as victim may be more likely to report a crime. Tarling and Morris (2010) suggest that family ties no longer reduce the likelihood of reporting crime per se. However, interpersonal crimes and theft of personal property (such as theft from the person; violence, assault with and without minor injury; wounding; robbery) are less likely to be reported to the police (ibid). Brown (1987) asserted that property crime without violence was more apparent among cases involving problem gambling in the UK. Brown also noted that embezzlement, fraud and theft tended to be more common convictions among problem gamblers, than among people who did not gamble (ibid). Similar crimes featured in a review of England and Welsh court cases by Brooks and Blaszczyński (2011), where cases of domestic burglary, fraud, embezzlement, and robbery of building societies were common. Crimes more prevalent among problem gamblers may be less likely to be reported to the police in the first instance. A further compounding issue is that problem gambling is not detected by criminal justice professionals when assessing the defendant's context; when problem gambling is not identified by criminal justice staff (e.g., police, probation, or liaison and diversion), it is difficult to ascertain a full picture.

### **5.3 Gambling related crime identified in the courtroom**

Brown (1987) observed that problem gamblers in the UK conducted similar crimes to those addicted to illegal substances, largely property crimes. Figure two illustrates the crimes most commonly seen by magistrates in cases involving problem gambling: 25.7 per cent of responders recalled that the cases involved theft; 14.6 per cent recalled that the cases involved unauthorised credit cards; 11.4 per cent recalled that the cases involved domestic violence; 3 per cent recalled that the cases involved assault; 2.7 per cent recalled that the cases involved street robbery; 1.7 per cent recalled that the cases involved public order offences; and 0.6 per cent recalled that the cases involved child abuse.

**Figure 2: Sentencers' recollection of gambling related crimes from their casework**



In research conducted in Australian prisons, Lahn and Grabosky (2003) found that gamblers tended to have committed property crime (including fraud), violent crimes and road traffic offences (including drink driving). Whilst the gambling landscape has diversified with more women gambling than previously (McCarthy et al, 2019), related offence types still seem to centre around theft (including theft from workplaces and people) and violent offences (including domestic abuse). Roberts et al (2016) conducted research with adult males in the UK who self-reported as having gambling problems. Their research showed that violent offences were more prevalent alongside mental health and impulsivity issues, and/or drug or alcohol misuse.

Some magistrates who participated in the research recalled cases involving domestic violence, in which the abuse stemmed from arguments about finances. Magistrates and therapeutic stakeholders noted that problem gamblers could be victims, as well as perpetrators of domestic abuse:

*"...there is a huge correlation between gambling and domestic violence, on both sides you know where a gambler will take it out on their partner, and you know a partner might also inflict violence on someone who was gambling because of their frustrations and anger..." (World café participant, therapeutic stakeholder)*

Magistrates and therapeutic stakeholders who took part in the research acknowledged negative impacts upon family life and relationship breakdown from problem gambling. Dowling et al (2016: 944) found that relationship breakdown occurred in 18.4 per cent of their sample who were receiving gambling treatment support in Australia. Participants commented that their family members experienced a decline in mental health, stress, trust issues and financial loss as a result of their problem gambling (ibid). Children also

experienced neglect due to the time-consuming nature of gambling, and related debts meant that welfare needs were not always met (ibid). Despite this recognition, Dowling et al (2016: 949) also found that one third of people in treatment for problem gambling refused to acknowledge the negative impacts on their family.

Magistrates who responded to the survey estimated that 11.4 per cent of cases that they had experienced which involved problem gambling related to domestic abuse offences; 0.6 per cent of cases related to child abuse. Gambling was also raised in family courts, in disputes over childcare suitability:

*"... its more ... seen in family court in our experience... Generally, when everything is thrown at the other partner, it's [referring to gambling] one of the things that comes up." (Magistrate P1, focus group 5)*

When discussing their experience of domestic abuse cases, focus group participants suggested that a victim statement could be documented and shared in court to help the gambler appreciate gambling impacts upon others:

*'... if you had other people who had been affected by the gambler, like their family coming into court and giving sort of a statement of how their behaviour is affecting them... and use that as a way of looking at a holistic approach to helping that person, you know some people may never have voiced their concerns to the gambler through fear of making matters worse or like, domestic violence or stuff like that.' (Magistrate P3, Focus Group 3).*

Whilst crimes in the domestic sphere were cited by research participants, most of the sentencing examples provided related to acquisitive crime and breaches of trust in the workplace:

*"... he was a boiler engineer, and he had ... taken about £3,000 off... a couple, to replace their boiler... he didn't turn up for work, and the money had gone towards, to fund his gambling addiction... It was part of his, sort of mitigation if you like... he was incredibly remorseful... think he got a community order and he had some RAR days. But it was difficult to pinpoint help for him... That's where the hole is (pause). The couple were awarded compensation to get their money back..." (Magistrate P3, focus group 6)*

*"...the one case that I can recall, that involved gambling was to do with a ... lady who was doing theft from a shop to fund her habit of ... purchasing the lottery scratch cards... it was causing issues at home, and this was raised you know in mitigation... I think eventually we did manage a community disposal... I don't think there was anything specific [gambling therapeutic support] ... it was just things probation would have to organise through the supervision element of the community order..." (Magistrate P6, focus group 2)*

In both examples, magistrates recalled that treatment for problem gambling was not available through the criminal justice system and a community order was issued. In the example of the boiler engineer, the magistrate involved further explained that the victims seemed to be pursuing court proceedings to obtain therapeutic help for the accused. More commonly, the sums of money

being stolen exceeded financial thresholds at magistrates' courts, so cases were referred up to crown court where prison sentences were more likely:

*"... there's been about four actually in the past four to five months who have been solicitors, tax experts... they've been big amounts of money, you know, we're talking about £150,000–£200,000 worth. So, of course that goes to crown court." (Magistrate P3, focus group 6)*

*"... It was a lady who was in debt due to gambling, and she had claimed that somebody was living with her, so she was getting more housing... I'm pretty sure it must have been that we were getting a bail hearing... I know it went up. It was £40–£50,000 over a number of years..." (Magistrate P1, focus group 5)*

*"I've had a case... she had been involved in theft and breach of trust... she did work in the payroll department... and had got access to the payment card... and she had helped herself to that... in 3 weeks she had managed to divert, I think something like £25,000... she had spent it on the horses... I don't remember any other addictions... It was striking really, because it was so much money, and this is a woman with previous good character. It was quite astonishing... I think that we declined a jurisdiction in view of the amount of money which she had stolen..." (Magistrate P3, focus group 4).*

Magistrates who referred cases up to crown court acknowledged a reluctance to do so when it was the defendant's first offence. Focus group participants explained how they would be able to pass appropriate sentences if the sentencing guidelines were amended by extending the financial thresholds in place for the magistrates' court:

*"... if the person has been of good character, why couldn't they be sentenced equally as well in the magistrates' court as they could be in the crown court... perhaps our sentencing powers are inadequate..." (Magistrate P1, focus group 4)*

Focus group participants queried whether the threshold could be raised when sentencing theft from workplaces of up to £50,000. Academic research has found that economic crime in the workplace typically occurs after someone exhausts funds raised through savings, selling personal property, taking out loans and borrowing from friends and family (Binde, 2016). Stealing can be impulsive and often results in psychological distress due to its incongruence with a typically law-abiding life (ibid). Magistrates participating in the focus groups suggested that criminal acts were out of character, or that problem gambling had spiralled out of control. Academic research has attempted to explain and classify the way in which gambling impacts on behaviour. One characterisation is 'loss chasing' (Zhang and Clark, 2020) whereby someone might continue to gamble despite being in debt; it is a 'downward spiral' in which finances, relationships and mental wellbeing decline. At this point, neurocognitive imbalance occurs, and the brain may not be able to block gambling impulses (Zhang and Clark, 2020). This has also been described as a 'slippery slope... making it increasingly difficult for the individual to regain control over gambling once he or she has begun to slip down.' (Binde, 2016: 405). 'Loss chasing' behaviour has been recognised as a marker of addiction

(Lee et al, 2020). Researchers have also identified the hidden nature of problem gambling and it is particularly hidden among those who embezzle funds in the workplace (Cressey, 1973). Neurocognitive imbalance has been identified in cases involving workplace theft and fraud; most people who committed these offences did so with the view of repaying their employer after achieving a big win (Binde, 2016). This thinking pattern had been observed by some magistrates who took part in the focus groups.

## 5.4 The importance of sentencing guidelines

Magistrates rely on sentencing guidelines and can apply a small degree of discretion based on mitigating or aggravating factors, the seriousness of the offence, the risk of re-offending, the level of culpability and the impact on the victim. The role of these guidelines was explored in the focus groups. One participant explained:

*“... we would normally have the sentencing guidelines in front of us, which would assist us in helping to assess the levels of harm and culpability... then you'll have a category of offence, then there will be a sentencing starting point and a range, when you can then consider the aggravating and mitigating factors...” (Magistrate P6, focus group 2)*

Some magistrates prioritised obtaining justice for the victim, and others were focussed on getting the right treatment for the defendant to reduce the likelihood of recidivism. When reflecting on their experiences, participants explained how working as a team as part of a bench can assist with a balanced outcome. Outcomes also depended on existing knowledge about problem gambling among bench members:

*“It sort of relies on the chance of somebody on the bench having the right level of experience or knowledge about it...” (Magistrate P3, focus group 6)*

*“... our focus is on the victim; we're not trying to find a sentence... 'to do the best for the offender'... The point is there would be a punishment element... So, you've got someone who's been... thumped, or whatever and gambling might be an issue in the background... there would not necessarily be a great deal of sympathy. It might be an explanation that we should know...” (Magistrate P1, focus Group 2)*

*“... I quite agree with what you're saying about the victim. But then if it's something they have less control over because it is an addiction, then they need help to get rid of that addiction, rather than just punish them. So, for me that's the difference there.” (Magistrate P6, focus group 2)*

Magistrates are required to sentence within the parameters of the sentencing guidelines, which currently do not include problem gambling as a mitigating factor. Arising from participant discussions about this, research findings suggested that greater clarity in the guidance would be welcome, along with recognition of mitigating and aggravating factors caused by problem gambling. Magistrates and criminal justice stakeholders noted that the

relationship between problem gambling and the impairment of decision-making processes was an important consideration when thinking about problem gambling as a mitigating factor. One world café participant explained:

*“...the problem gambler I think, will have a great deal of difficulty persuading a bench or a judge, that there has been some intervening factor in their mental process, that they won’t have been completely in control when they made a conscious decision to embezzle some money and then try and hide it... And that’s the problem, I think... unless that can be shown, you’ve always got that hurdle to get over...”* (World café participant, criminal justice stakeholder)

This has been addressed in Canadian courts by defence solicitors who provided evidence of irrational financial decision making occurring prior to the offence, using bank statement evidence and submission of an academic expert witness statement to the court based on assessment with the defendant (Smith and Simpson, 2014). Canadian courts recognise mitigation based on the DSM V which categorises gambling as a behavioural addiction under the umbrella of mental health disorders (ibid). There is growing evidence in the neurocognitive research fields that gambling distorts thinking (Blaszczynski et al, 2008; Leeman and Potenza, 2012; Zhang and Clark, 2020; Goudriaan, 2020; Lee et al, 2020). A recent small-scale study highlighted the impact of gambling on dopamine levels (Pettorruso et al, 2019). Some magistrates recognised the psychological impact of gambling, and how this might be a mitigating factor:

*“At the end of the day, it’s a mental health issue, it’s a situation where somebody starts something, and they lose control of that habit... the serious people need to have that support...”* (Magistrate P1, focus group 5)

## 5.5 Current sentencing and treatment options

Only 14 per cent of magistrates surveyed were aware of gambling treatment available in or near their jurisdiction. Generic probation courses were considered inappropriate to address problem gambling in the context of RAR (rehabilitation activity requirement) days which could include engagement in bespoke gambling treatment:

*“Accredited courses. The same as there are with drug and alcohol rehabilitation... provided by professionals... where their progress can be assessed... and possibly specialists within the probation service with understanding of gambling...”* (Magistrate P2, focus group 4)

*“... if probation recommended it... make attendance at a particular organisation, a charitable organisation, or whatever, that does treat gambling addiction, to be a requirement of the order, rather than just saying it as a voluntary thing... if it’s part of the order, then it becomes more, you know, more official and they have to do it and there are consequences for not doing it.”* (Magistrate P6, focus group 2)

Therapeutic stakeholders who took part in the world café event clarified that gambling treatment options were available in most areas, but magistrates and

probation practitioners were not always aware of such services. Therapeutic stakeholders also commented that some magistrates in England and Wales did ban people from using gambling facilities (both in person and online). However, magistrates who participated in the focus groups were uncertain about the use of bans:

*"I've just had an idea – if we take... football hooligans. I can ban them from going to any live football match in the UK for up to five years. (SP: Ok). It would be nice to have something like that as an option for problem gamblers. Not that we can stop them totally, but we can be able to somehow stop them from gambling for a period of time." (Magistrate P1, focus group 6)*

Focus group participants highlighted issues with the current sentencing options available to them. Fines represented the lowest tariff of community order without an equivalent. Fines were viewed as counterproductive in cases involving problem gambling and related debt or financial issues and might in fact lead to further problem gambling or offending. One magistrate explained why an alternative to a fine would be welcomed:

*"... a financial penalty is ridiculous in a situation where, like this, it's just stupid. So, we need a kind of bypass to get to a community penalty, but even then, they're supposed to pay the ... the victim surcharge, which is quite a lot for a community order anyway." (Magistrate P5, focus group 2)*

Therapeutic stakeholders and magistrates questioned whether prison would provide the right therapeutic support for a gambling addict, particularly when gambling occurred illegally in prison:

*"Well, I think gambling is rife in prisons, so I suspect it doesn't help going into prison." (Magistrate P2, focus group 2)*

*"... most of the people we see in court need help and sending people to prison is a definite last resort. So, the crux is really, back to Probation on getting the right... programmes and courses to help these people who've succumbed and that's a great frustration, because you're sometimes in court thinking I can't give them what they need." (Magistrate P4, focus group 6)*

The research findings suggested a degree of frustration on the part of magistrates who took part in the focus groups, as treatment options were not available to address contributing factors to offending behaviour in the community or in prison. Focus group participants expressed concerns about the utility of custodial sentences which not only reduce employment (and thus, repayment) opportunities, but might lead to an accumulation of debt, creating further stressors for an individual upon release:

*"... It depends who they owe money to... some people owe money to ... let's call them loan sharks, informal lenders... Which means even if we put them in prison, when they come out their debt will have increased." (Magistrate P1, focus group 6)*

*“... a lot of these people are very vulnerable to loan sharks, or illegal lending and how that would fuel any further behaviour as well.” (World café participant, therapeutic stakeholder)*

Therapeutic stakeholders acknowledged further problems with the use of custodial sentences, relating to issues such as childcare, trauma, or inherited debt.

The research findings identified concern regarding custodial sentences and their therapeutic capacity. However, some magistrates acknowledged that there were occasions where prison was needed as a safeguard to the community:

*“... We know that prison is not necessarily the place they can get help, but sometimes they’ve got to go there because of the scale of their whatever crime that is.” (Magistrate P2, focus group 1).*

Overall, the findings suggested that current sentencing and criminal justice treatment options did not appear to be meeting perceived and identified needs of offenders experiencing problem gambling. Goudriaan (2020: 83) recommended that treatment should include ‘targeting cognitive, motivational, and affective factors’, whilst acknowledging need for more evidence-based research on treatment. Treatment stakeholders talked about the importance of motivational interviewing and relapse management. Magistrates were concerned about budget constraints impacting the criminal justice system and the implications of this on treatment. More research is needed into the efficacy of gambling treatment.

## 5.6 Alternative sentencing models

In the focus groups, magistrates were provided with an outline of problem-solving courts (Guenaga, 2011; Turner et al, 2017; Adolphe et al, 2019) and asked whether this model could work in England and Wales. The majority were positive about the principles of problem-solving courts but noted that courts in England and Wales already had multi-agency access through probation to form treatment interventions for RAR (rehabilitation activity requirement) days. Moreover, they noted that suspended sentences could provide an opportunity to breach for non-engagement, usually resulting in a harsher sentence being applied. Magistrates raised three concerns about problem-solving courts: the costs to convene a problem-solving court; whether it would be viable based on the prevalence of problem gambling; and whether it would be necessary if gambling treatment was available more readily for RAR days as directed by the probation officer. One magistrate explained:

*“... We sort of do that anyway when we give someone a Rehabilitation Activity Requirement because that’s what probation is supposed to be... a sort of gateway into a multi-disciplinary world of people to help and fix... it might be possible to put a programme together for gambling... it depends on how much it would be used and how it would be delivered... Again, we have to be careful of spending a lot of money that we haven’t got and reinventing the wheel.” (Magistrate P6, focus group 2)*

Research involving people with lived experience of problem gambling and crime supports the involvement of treatment experts in the criminal justice process:

*“... that's a sense of frustration from people who have gone through the criminal justice system as a result their problem gambling is the experts by their experiences or not necessarily called upon to share their views as much as what they might be...” (World café participant, therapeutic academic stakeholder)*

The consensus in the focus group discussions was that the magistrate court model could work for sentencing cases related to problem gambling if: the issue was detected earlier; multi-agency treatment resources were at the disposal of probation to co-ordinate a treatment pathway with expert intervention; sentencing guidance permitted for mitigation; and if criminal justice professionals, including magistrates, were trained on sentencing those with behaviour addictions, such as gambling.

## 6 Discussion and recommendations

### 6.1 Introduction

This research was undertaken with magistrates and stakeholders (from the criminal justice and therapeutic fields) and has provided a basis for the consideration of policy and practice relating to crime prevention and community safety that impact on gambling related crime. It has highlighted the need for criminal justice and sentencing policy and practice to improve the sentencing outcomes for adults engaged in problem gambling who are committing crime, with consideration to balancing justice for victims and treatment for offenders. Magistrates and stakeholders supported a change of direction that prioritises treatment for problem gamblers who go through the criminal justice system.

### 6.2 Crime prevention and community safety measures

The increasing normalisation of gambling and its associated harms has warranted greater public health and criminal justice attention (Abbott, 2020). Magistrates who participated on focus groups discussed how gambling advertisements had contributed to their knowledge of the gambling industry. Magistrates and therapeutic stakeholders who participated in the world café raised concerns about normalisation through online access to gambling provision and the proliferation of gambling advertisements. Findings unearthed concerns about young people and online gambling, and the link between problem gambling, gambling harm, debt and crime. More research is needed to understand the relationship between young people, gambling and crime in the England and Wales.

The research findings also supported existing recommendations from public health research calling for greater restrictions on gambling advertising (Adams et al, 2009; Critchlow et al, 2020; McGee, 2020; Purves et al, 2020). Age restrictions and information about gambling harms need to be visible in advertisements and there should be restrictions regarding the timing of broadcasts and the use of incentive offers to gamble. There was consensus among participants that the gambling industry needed to be held into greater account for the harms of problem gambling; there is potential to explore how the banking industry can implement further safeguards for vulnerable people. Academic literature has suggested that people with learning disabilities, or with mental health disorders including impulsivity are more vulnerable to problem gambling (Wardle et al, 2020). As such, more should be done to safeguard these individuals. Such safeguarding actions support crime prevention and community safety measures. Raising awareness of gambling treatment services available in the community would also be of benefit, including support available for affected others and restorative justice options.

The findings suggest that gambling is not always brought to the attention of criminal justice professionals. Identifying the prevalence of problem gambling among people who commit crime is imperative to ensure that treatment in the criminal justice system is designed to address need. The findings of this study suggest that there may be a hidden section of gambling related crime that is not being detected in magistrates' courts. The early identification of problem gambling in police custody could have positive ramifications for earlier treatment referral. Extending examples of good practice (such as the work done by Beacon Counselling Trust) across the wider police force would be advantageous (Mann, 2018). Common gambling related crimes such as personal property offences and domestic abuse are less likely to be reported to the police (Tarling and Morris, 2010), so more support to victims in reporting crime would be helpful.

### **6.3 Sentencing guidance, sentences, and associated training**

There are three guidance issues highlighted in the research:

- 1) The sentencing guidelines do not currently allow for mitigation for problem gambling
- 2) The current sentencing guidelines include restrictions regarding what levels of crime can be sentenced in a magistrate's court. This can lead to referral up to crown court for people who are appearing in court for a first offence and have an acknowledged gambling addiction.
- 3) The lowest tariff community sanction, a fine, is problematic when a person is in debt. An alternative to the fine would be welcomed.

Problem gambling is internationally regarded as a mental health issue that is included in the DSM V and the World Health Organisations ICD assessment manual (Clark et al, 2017). Within England and Wales, the Sentencing Council advocate that if a defendant has a 'mental disorder, neurological impairment or developmental disorder', this needs to be considered when sentencing. Culpability can be reduced if, at the time of committing the offence, an individual was 'suffering from an impairment or disorder' (Sentencing Council, 2020). Problem gambling is actively considered to be a mitigating factor in other jurisdictions such as Canada, as explained throughout this report. The findings of this study advocate for a similar approach in England and Wales. Probation officers, liaison and diversion practitioners, gambling treatment experts and defence solicitors could undertake screening and explain how problem gambling impacted on the defendant and linked to the alleged offence. Research participants welcomed suggestions for revised sentencing guidelines which would indicate how and when gambling was a mitigating and/or aggravating factor to crime. There is a growing body of academic research regarding how gambling impacts rational thinking ability and behaviour which

could be fed into amendments to sentencing guidelines (Blaszczynski et al, 2008; Leeman and Potenza, 2012; Pettorruso et al, 2019; Zhang and Clark, 2020; Goudriaan, 2020; Lee et al, 2020).

Sentencing guidelines outline the financial thresholds for crimes that can be sentenced in a magistrates' court. In discussing these thresholds, magistrates noted that the sums of money often involved in cases where problem gambling was an identified issue were such that they were referred up to crown court where prison sentences were more likely. Financial penalties and custodial sentences were perceived as problematic and likely to exacerbate problem gambling and possibly reoffending. Court ordered mandatory gambling treatment was preferable, but few magistrates were aware of gambling treatment options in their jurisdiction. Therapeutic stakeholders highlighted that women have slightly different treatment needs to men. Consideration and more research is needed into gender and culturally specific support pathways, and in identifying treatment efficacy more generally. Better training and resources are needed to enable probation officers to access multi-agency treatment pathways for those defendants with gambling problems. This has happened in Hertfordshire (GamCare, 2021), and there are pockets of good practice that could be formalised throughout England and Wales.

Overall, there was a consensus among magistrates who participated in the research that improved sentencing guidelines, gambling screening and probation-commissioned gambling treatment options delivered by experts would achieve effective sentencing, resulting in better outcomes for both offender and victim.

Gambling knowledge among magistrates varied and a training need was identified concerning gambling as a behavioural addiction, alongside training in sentencing those with gambling problem and gambling issues. It is important for magistrates to understand the physiological impact of problem gambling and how it influences offending behaviour. Changes in sentencing guidelines provide further opportunity to offer training and development throughout the criminal justice sector on the revised sentencing guidance and gambling as a behavioural addiction.

## **6.4 Criminal justice practice changes**

This study found that problem gambling was a hidden issue in the courtroom that needed better identification in order to improve sentencing practice. Magistrates and stakeholders who participated suggested that gambling screening questions could be included in probation assessments used to inform sentencing. At present, awareness of a defendant's problem gambling issues is acquired through pre-sentence reports from probation and/or solicitors. There was recognition that due to problem gambling being a mental health issue, liaison and diversion practitioners should be involved and could screen for gambling in police custody suites. Currently, there are

efforts from treatment providers, such as the Beacon Counselling Trust, to provide treatment pathways with the aim of providing systematic coverage. Training on gambling screening, gambling related harms and support service referral across the criminal justice sector would be beneficial. The research also indicated that problem gamblers may not be forthcoming in disclosing a gambling addiction, and as such, training on addressing barriers to disclosure would be helpful across the sector. Positive outcomes have been identified in the few locations that this is happening already, which could assist in learning and wider implementation (Mann, 2018; GamCare, 2021).

Further consideration is needed regarding support for victims of crime and affected others within the criminal justice process. Magistrates proposed that the police could be engaged in supporting affected others to write a victim statement that includes the impacts of gambling upon the family and interpersonal relationships. This could be shared in court to help with identifying holistic treatment and assisting people in acknowledging the wider impact of their gambling. Magistrates were mindful that justice needed to be done for the victim. Financial compensation was raised as a possibility. However, this may be problematic in cases relating to problem gambling due to existing debt. It was suggested that gambling operators could pay into a victims' compensation fund (supported by Smith and Simpson, 2014).

## **6.5 Recommendations**

### **Crime prevention and community safety**

- The research presents a compelling case for adopting a public health approach (McGee, 2020; Purves et al, 2020) that places greater restrictions on advertising and online gambling provision to safeguard children, people experiencing problem gambling, and people at risk of gambling related harms.
- There needs to be improved awareness of and sign posting to gambling treatment services among professionals in the criminal justice system, including services for affected others within the community.
- More awareness of and greater support for victims of gambling related crime is needed, as well as providing the opportunity for victims and affected others to articulate the impacts that crime and problem gambling has had on them. It is plausible that the private and interpersonal nature of common gambling related crimes such as theft from family members or friends and domestic violence contribute to the hidden nature of gambling related crime. Not all victims want criminal justice involvement and, in such instances, appropriate support and treatment should still be made available. The adoption of restorative justice practices in the community, outside of the criminal justice system, could reduce the need for future criminal justice involvement.

- As a further community safety measure, engagement with financial services providers would be beneficial in exploring the kind of safeguards that could be put in place to protect vulnerable customers and those in debt.

### **Sentencing guidance, sentencing and associated training**

- The research findings support the need for amendments to sentencing guidelines to include problem gambling as a mitigating or aggravating factor. Associated training should be provided to magistrates.
- There should be a review of the financial thresholds for acquisitive/fraudulent crimes that can be dealt with at the magistrates' court.
- A review of the use of fines is needed with recognition to when pre-existing debts feature in a case.
- Bespoke gambling treatment options in the criminal justice system are needed to support suspended sentences, community sentences, and treatment in prison. The research found that magistrates and therapeutic stakeholders agreed that custodial sentences were not effective when therapeutic intervention was required.

### **Criminal justice practice**

- An understanding of problem gambling, gambling related harms, the neurocognitive impacts of gambling and the prevalence of such issues when investigating crime is essential for probation practitioners, liaison and diversion staff, the police and wider criminal justice professionals including sentencers. Useful resources include research by GamCare (2021) and the Beacon Counselling Trust (Mann, 2018).
- Early identification and diversion are key. Referral pathways tailored to problem gambling treatment should be introduced by police and liaison and diversion teams.
- Probation and liaison and diversion services should use a gambling screening tool and use this information when assessing a person's risk of reoffending. Pre-sentence reports should include this information and signpost to treatment and support intervention.
- Where problem gambling is identified, it would be advantageous to include in-depth assessment from therapeutic professionals working in the field to support with evidence for mitigation and identify further referral pathways.

- Magistrates advocated for experienced therapeutic and treatment providers to deliver criminal justice treatment interventions for problem gambling in the community. Tailored treatment and support programmes should contribute to rehabilitation activity requirement (RAR) days. Consideration and more research is needed into gender and culturally specific support pathways and therapeutic best practice.
- Training for magistrates and criminal justice professionals regarding problem gambling, behavioural addiction, gambling harms and sentencing options should be developed. The voices of those with lived experience of problem gambling including affected others, alongside shared knowledge from the therapeutic field, would enhance criminal justice practice.

## Glossary

The following terms and definitions are used in the report. They relate to gambling and criminal justice practice and roles. For an explanation of the different terminology used to denote problem gambling, see [Crime and Problem Gambling: a research landscape](#) (Commission on Crime and Problem Gambling, 2020: 7)

**Affected Others** in the broadest sense refers to biological and non-biological relatives, friends, community members, employers and education providers that experience concern about a person's problem gambling. Affected others can also experience neglect, financial loss and other hardships. They may also be victims of crime or abuse as a result of problem gambling. Affected others can benefit from support to process their own emotional distress and personal losses.

**Crown courts** in England and Wales deal with more serious crimes, such as murder, rape and robbery. They also address cases which are referred up from magistrates' courts, or cases where the defendant appeals against a magistrate court decision. A jury determines the defendant's guilt, and a paid judge passes a sentence based on sentencing guidance. The jury is made up of people from the community. Jury members can claim expenses and financial remuneration for any paid work they have lost during the trial.

**Gambling addiction** is a behavioural addiction classified in the Diagnostic Manual of Mental Disorders (DSM-V) (American Psychiatric Association, 2013) and in the International Classification of Diseases (ICD) (World Health Organisation, 2021) which is more commonly used in European countries such as the UK. Gambling addiction has similarities to substance misuse addictions. A self-report screening assessment tool is used to identify the severity of the gambling disorder.

**Gambling related harm** refers to harm (physical, psychological, emotional, financial) resulting from, or exacerbated by gambling behaviour to the individual gambler, affected others and the wider society.

**Liaison and diversion** assessments are undertaken when it is thought the defendant is vulnerable and has a mental health or drug/alcohol addiction need or has a learning disability. These assessments are undertaken by NHS or community health and well-being professionals with specialist training.

**Magistrates' courts** specialise in crime, family and young people and generally deal with disputes or crimes that are considered less serious. The bench is comprised of a chairperson and two other magistrates who act as advisors. The bench is supported by a legal advisor and sentences are in alignment with Sentencing Council guidelines.

An **OASys assessment** tool is used by probation in England and Wales with adult clients to identify rehabilitation needs and to prepare the pre-sentence report. A detailed OASys assessment occurs at some point between police charging and the court hearing. Magistrates and judges can also request a pre-sentence report and suspend sentencing until they ascertain further details from it. The defendant and their solicitor can read the report prior to the court case and can raise objections about its content in the courtroom. Rapid pre-sentence report assessments can also be undertaken. These contain less detail and are used when offences are lower level and are likely to warrant a fine or similar. Rapid assessments usually occur on the same day as the court case.

**Pre-sentence report** (also known as a PSR) refers to a report prepared by a probation officer and shared with the magistrates or crown court to assist with sentencing. Probation officers are professionals working predominantly in the community with people who have committed crimes to influence positive behaviour change. The pre-sentence report outlines the seriousness of the offence, as well as contextual welfare information about the defendant. The pre-sentence report makes recommendations for sentencing with reference to offender management programmes and treatment that can be provided by probation and/or other agencies as part of a sentence.

**Problem gambling** is the most common term currently used for those suffering from gambling addiction/ disordered gambling. Whilst it does reference a specific score on various diagnostic screening tools, it is also acknowledged as the term most generally understood by the public and those working within the criminal justice system when talking about individuals with a gambling addiction (Commission on Crime and Problem Gambling, 2020: 7).

**Sentencing guidelines** refers to documentation prepared by the Sentencing Council that helps to ensure consistency in sentencing practice across England and Wales. Sentencing guidelines outline factors to consider when determining a sentence. For example, a sentence for the same crime will vary slightly depending on: the level of harm to the victim(s); factors influencing criminal activity; whether the defendant acknowledges guilt and shows remorse for the crime; and whether the defendant has made effort to address personal problems that contributed to the crime. Sentencing guidelines are also used in the crown court system.

**Types of sentences** vary according to a range of factors, including the seriousness of the offence. The following are the four main sentences used in England and Wales: discharge, fine, community sentence or custodial sentence. Community sentences and suspended sentences may include Rehabilitation Activity Requirement (RAR) days where the probation officer requests structured interventions to address rehabilitative needs.

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## **Legislation**

Gambling Act 2005, c.19, available at: <https://www.legislation.gov.uk/ukpga/2005/19/contents>

Crime and Disorder Act 1998, c. 37, available at: <https://www.legislation.gov.uk/ukpga/1998/37/contents>

Criminal Justice Act 1991, c. 53, available at: <https://www.legislation.gov.uk/ukpga/1991/53/contents>

## Acknowledgements

This research project has been conducted using participatory methodology and as such has been supported by a wider research team from Staffordshire University, the Howard League for Penal Reform and the Magistrates Association. Several people provided help and guidance in the production of this report. The Magistrates Association generously lent their time and expertise, helping to shape the research design and piloting research materials with their members. They hosted and distributed the online survey and assisted in identifying focus group participants. Staff from the Magistrates Association also designed the vignette which was used in the focus groups. Acknowledgement and thanks to Dr Jo Easton, Hattie Stair and Jon Collins from the Magistrates Association. The Howard League for Penal Reform were also active members in shaping the research project and this report. Acknowledgement and thanks to Anita Dockley, Catryn Yousefi and Dr Helen Churcher for their guidance and contribution. Recognition also goes to Associate Professor in Criminology Dr Jo Turner (Staffordshire University) for her advice and guidance on this project, and her work as a facilitator during the world café event. Thanks to: Sarah Plimley (PhD student and lecturer) for her analysis work on the online survey data; Simon Bratt (PhD student and lecturer in social work) for his work as a world café facilitator; Kathryn McFarlyn (part time lecturer) for her work as a world café facilitator; and Laura Bailey (student research assistant) for undertaking data transcription and for her work as a world café facilitator. Participatory research is a team effort, and this research would not have been possible without this team, collaborating and sharing expertise, knowledge, and resources.

## About the Howard League for Penal Reform

The Howard League for Penal Reform is a national charity working for less crime, safer communities and fewer people in prison. We campaign and research on a wide range of issues including short term prison sentences, real work in prison, community sentences and youth justice. We work with parliament and the media, with criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change to create safer communities.

Our legal team provides free, independent and confidential advice, assistance and representation on a wide range of issues to young people under 21 who are in prisons or secure children's homes and centres. By becoming a member, you will give us a bigger voice and give vital financial support to our work. We cannot achieve real and lasting change without your help. Please visit [www.howardleague.org](http://www.howardleague.org) and join today.

## **About the Commission on Crime and Problem Gambling**

The Commission on Crime and Problem Gambling was launched by the Howard League for Penal Reform in 2019 and is scheduled to run until the end of 2022.

The Chair of the Commission is Lord Peter Goldsmith QC. He leads a team of 16 Commissioners, comprising of academics and professionals with expertise in the criminal justice system and public health, as well as experts with knowledge of the gambling industry and with lived experience of addiction.

The Commission seeks to answer three questions:

- What are the links between problem gambling and crime?
- What impact do these links have on communities and society?
- What should be done?

## **About the Magistrates Association**

The Magistrates Association is an independent charity and the membership body for the magistracy. We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With over 14,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy. Please visit <https://www.magistrates-association.org.uk/>.

## **About the author**

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ISBN 978-1-911114-59-8

**2021**