



Parliamentarians: Gambling responsibly?

Integrity matters

John Gould on why serious work is required to re-set the collective moral compass of those in Government & Parliament

Few people can truthfully say that they have never lied or cheated when it hasn't much mattered. Whether it's everyday excuses or jumping queues, it's usually not thought of as that serious. If Euro 24 is anything to go by, rolling around on the floor clutching some vulnerable body part to feign injury is considered to be more professional performance than cheating.

Sometimes, however, cheating does matter. Society works because those with responsibility to others are not expected clandestinely to put their own interests above their duty. This is both a moral and a functional question. It is not just morally right to act with integrity, but also the failure to do so may undermine the general confidence needed to make our public systems operate.

The ongoing election betting scandal relates to a number of interlocking public interests. There are economic and social objectives in the regulation of gambling to ensure that games are fair so that ordinary punters are not cheated. The improper use of confidential information may inhibit the sharing of sensitive information to those who need it to do their jobs. A person whose presence is needed for personal protection may have to be excluded if their discretion cannot be relied upon. A candidate who bets against themselves will, at the very least, create a suspicion that they may not be wholly focused on doing their best to win.

The main task of the Gambling Commission is to licence service providers, but it does also have a rarely used power to investigate and prosecute the offence of 'cheating' under s 42 of the Gambling Act 2005. An offence may also be committed by anyone who does anything for the purpose of enabling or assisting another person

to cheat at gambling. Conviction can be punished by up to two years in prison.

Historically, Parliaments didn't like gambling and liked cheating even less. The Gaming Act of 1664 (16 Car 2 c7) imposed a forfeit of three times the winnings for cheating including 'any fraud, shift, cousenage, circumvention, deceit or unlawful device, or ill practice whatsoever'. Cousening meant to deceive, win over, or induce to do something by artful coaxing and wheedling or shrewd trickery, which sounds like a rather useful word in the modern context.

There is no all-encompassing definition of cheating, but Lord Hughes in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67, 2017 WL 04791302 identified some essential elements: 'No doubt its essentials normally involve a deliberate (and not an accidental) act designed to gain an advantage in the play which is objectively improper, given the nature, parameters and rules (formal or informal) of the game under examination.'

Cheating does not require 'dishonesty' or deception, but still some objective impropriety or 'ill practice' is likely to be required. The competition may be based on pure chance or recognised types of skill. In some games, such as poker, an element of deception is part of the game. Cheating occurs when something else is added by one player for an advantage, like loaded dice, drugs or improperly obtained information. The information might equally well come from marked cards or holding a trusted position in Government. The use of information subject to a legal duty of confidence or in a way which involved another offence such as the common law offence of misconduct in public office is particularly egregious. Members of Parliament, police

officers and civil servants all hold public offices. Remuneration from public funds is a significant factor, but not determinative (*Belton* [2010] EWCA Crim 2857).

The offence of misconduct in public office arises when a public officer acting as such wilfully neglects to perform their duty and/or wilfully misconducts themselves to such a degree as to amount to an abuse of the public's trust in the office holder without reasonable excuse or justification. The misuse of confidential information obtained while discharging the public office would be likely to generate a sufficient connection. However, where the office holder simply receives information from someone else not as part of their own duty, its use may amount to misconduct but not constitute the offence.

In initial statements concerning the election betting scandal, there was some suggestion that political parties or Government might be prevented from taking any action until the Gambling Commission or the police had completed their investigation. In fact, the Gambling Commission has no power to give such instructions and it seems unlikely that they ever did so. Obviously steps intended to impede an investigation would be impermissible, but a range of options under contracts of employment and party rules including interim suspension or the withdrawal of endorsement could have been considered without waiting for the results of any third party investigation. If that were not the case, a person who steals from their employer would have to be left in their job until they were convicted.

It is just a short step from insider betting to using confidential information to make money on the stock exchange or to assist those seeking public contracts or to peddle influence and honours for financial benefits. Perhaps we are all yet to face up to the possibility that serious corruption is not just something that takes place in other countries or at other times.

The abuse of a position of trust for personal advantage is not just morally reprehensible but also tends to undermine the essentials of effective government in the public interest. If the allegations are true, they feed the perception that the standards of integrity in parts of our public systems are even lower than people imagine. One doesn't need to compare the Nolan Principles of public service to the scandals that have emerged to suspect that serious work is required to re-set the collective moral compass of those in Government and Parliament. It is time for integrity to reassert itself.

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