

Opinion

When a bet's not a bet in Ireland

A&L Goodbody discusses the wider implications of a recent court decision for the gambling industry

Words by | **Joe Kelly**

In a recent decision by the Circuit Court, it was held there is no legal guarantee under Irish law that gamblers will be paid their winnings as the applicable legislative regime in Ireland, the Gaming and Lotteries Act 1956 ("the 1956 Act"), prohibits the enforcement of gambling contracts.

Sayed Mirwais took an action against D1 Casino Club and one of its directors over their refusal to pay a sum of €11,713 that Mirwais claimed he won after placing several bets on an automated roulette machine.

Mirwais alleged he first won about €7,500 and then a further €6,713. He received €2,500 in cash and €5,000 worth of chips, and was told that he would be paid the remaining monies the following day. Mirwais claimed the casino refused to pay him despite multiple requests and that its behaviour constituted an unfair commercial practice. At trial, the casino club claimed there had been a "suspiciously high amount of money lost by the roulette machine". Mirwais denied that he had found a flaw in the machine, which allowed him to play even though the screen indicated 'no more bets' could be placed.

The decision

While the judge was sympathetic to Mirwais, he said he had no option but to rely on the 1956 Act, which provides that "no action shall lie for the recovery of any money or thing which is alleged to be won". He stated: "If you happen to be too lucky while placing a bet or gambling, the person can simply say 'no, you're not entitled to the money'. That is simply the law in Ireland." The judge dismissed Mirwais' claim but refused an application by the casino for its legal costs.

The law

There has been surprisingly little case law on the interpretation of Section 36 of the Act. Older case law on the predecessor to Section 36, which made gambling contracts

unenforceable, held that subsequent agreements between the parties in relation to the wager (in this case an agreement to hold over for a number of days a cheque that was issued to discharge the debt) may be enforceable. In that case, it was held that the new agreement was enforceable. However, later case law found that any claim that had its origins in a gaming contract could not succeed as that would defeat the intention of the legislature.

In the recent case of Sporting Index Limited vs John O'Shea, the High Court overturned a decision that found that two English court orders arising out of gambling debts were enforceable in Ireland. It found that the applicable legislative regime in Ireland prohibits the enforcement of betting contracts as they are manifestly contrary to public policy. However, the Court held that an order for £17,500 in respect of legal costs was enforceable as it related to litigation costs rather than a gambling contract.

Time for change

The Irish government has previously signalled its intention to reform rather than outlaw gambling. These cases further highlight the urgent need to advance the Gambling Control Bill which has lain dormant since the Scheme of the Bill was published in 2013.

The detailed provisions in the Bill are to be published "later in 2017". The Scheme contemplates increased player protection measures including the treatment of bets as enforceable contracts save where the bet is entered into by a minor.

In the meantime, bookmakers should note that while the current law might mean a punter cannot sue on foot of unpaid winnings, the new betting legislation, which was introduced in 2015, provides that the required Certificate of Personal Fitness can be revoked or refused where a bookmaker unreasonably refuses to pay winnings to punters. ●

Bio



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Joe Kelly is a partner in A&L Goodbody and head of the firm's Gaming & Betting Group which advises online and land-based gaming operators, casinos, bookmakers, betting exchanges, betting shops, amusement arcades, and gaming industry suppliers.