

# THE NUMBERS GAME

## The Numbers Game as played by City Gents and Mobsters

**'Another problem which has caused difficulty in recent months is that of distinguishing between legitimate investments and unenforceable gaming contracts. The public have been offered arrangements ranging from betting on whether the quoted price of a listed stock or index (such as the FT index) will rise or fall, to entrusting a capital sum to a company to invest and use the income to bet on horses' - Gower Report: (Review of Investor Protection: Cmnd 1984). (1)**

The 'arrangement' offered by one Nicholas Young, erstwhile executive director of city firm Clark Whitehill, son of a late Chaplain to the Queen and recently convicted fraudster, went a little further than those surveyed by Professor Gower in his famous survey of the wild and woolier fringes of the financial services game.

Young was convicted on eleven counts of fraud, deception and forgery for conning his clients (amongst whom he counted his mother) into investing in various 'offshore' high yield schemes, when in fact he was using the money to experiment with his system for betting on horses. He had been obsessed with finding a perfect system since student days in Cambridge. He ran the scheme as a classic 'ponzi', paying off clients with new clients' money.

After being sent down, being divorced by his wife and denied further contact with his children, he was still pursuing his quest from prison, writing to potential buyers offering to sell them his horse betting system.

Professor Gower's other category of 'arrangements' - betting on financial market indices - (a field of gambling pioneered by the big groups, such as Coral and Ladbrokes in the seventies but now covered by specialist city bookies) has its attractions for the less well-heeled speculator. The amount of capital required up front may be less prohibitive than that required by a more orthodox broker and the Inland Revenue takes no interest in the punter's winnings.

One such young punter, a 21 year old 'financial consultant' recently discovered to his cost (approximately £35,000) that as a result of the passing of the 1986

Financial Services Act (S 63), gaming contracts on indices were enforceable at law and Mr Leslie was found liable to City Index for his gambling debts. (2)

It might have been supposed that such a change in the law may bring with it a swift and enthusiastic response from the Inland Revenue, but the prospect of dealing with concomitant losses claims is enough to persuade them that it's wiser to take a raincheck on this one.

The spectacle of young and inexperienced punters being offered, as in Leslie's case, credit limits of up to £500 per week to bet on a system that could produce theoretically unlimited losses (if you bet that the market will go down and it goes up...) was seen by the Judge in the case as sufficiently disquieting to warrant a few words of advice in his Judgement to AFBD (Association of Futures Brokers & Dealers - the regulatory body concerned in the case) to the effect that they should change their rules to at least protect the very young from unlimited losses. In response AFBD has introduced a new system of 'adequate credit management' designed to protect all investors by instigating thorough procedures for investigating client credit worthiness and monitoring client credit limits.

The problem, however, of '*distinguishing between legitimate investments and unenforceable gaming contracts*' (1) is one which has existed almost as long as stock markets themselves. Despite a range of legal difficulties particularly from the early 18th century, such speculation (i.e. option dealings short selling(3) and staggung (4)) has continued apace for the past three hundred years.



The impact of being involved in deals which were outside the protection of the courts meant that the exchanges had to develop self help methods to protect their members both from each other and from unscrupulous clients. The legal fiction was developed that a broker is both an agent for his or her client but a principal vis a vis other market members resulting in the classic situation of making members accountable to each other in the event of a client default.

Disputes were dealt with by means of internal committees and arbitration at the exchanges and the famous boast '*my word is my bond*' was born - it had to be.

In the anti gambling climate of the US where such activities are usually not only **unenforceable at law** but in breach of the criminal law as well, it is not surprising that organised crime elements have found rich pickings. Many and various rackets have flourished, some of which are not so far removed from the activities of posh city bookies in the UK (at least as far as the basis of the betting goes).

Most numbers rackets, where many small illegal bets are taken on random numbers base their winning numbers on the unpredictable outcomes of the World Series or the turf, but some rackets eschew these more plebian activities and base their winning numbers on stock market indices.

In one such racket the winning number would depend on the results of the stock market for that day - the number being composed of the number of stocks which went up, went down or stayed put. (5)

Even more random and tenuous connections to the markets were to be found in a racket where the winning numbers were arrived at by the selection of whatever number just happened on a particular day to appear under, for example the letter 'a' of the 'bond sales' of the financial pages of the Columbus Ledger and Inquirer which published the quoted prices of the New York Stock Exchange (6)

*It should be noted however that Mobsters have been known to use rather more exotic modes of enforcement.*

### References

1. Review of Investor Protection. Report Part 1 Cmnd (1984) para. 4. 04
2. City Index Ltd v Leslie. (1991) 3 ALL ER 180
3. Morgan & Thomas. The Stock Exchange: its history and functions, Elek. (1969).
4. Pennington R., The Investor and the Law. McGibbon & Kee (1968)
5. US v Van Vert Mullan et al. April 7 1975 516 F 2d 591.
6. US v Jack Earle Barrentine et al. March 22 1979 591 F. 2d 1069.

*Helen Parry is a Senior Lecturer in the Department of Law, City of London Polytechnic.*