

Gambling Commission consults on enhanced customer interaction requirements

Northridge Law's **Melanie Ellis** looks at the latest developments in gaming in the UK

The Gambling Commission has launched a consultation exercise on its proposals to strengthen customer interaction requirements, with a focus on affordability checks. This comes hot on the heels of the conclusion of regulatory action against three operators (BGO, GAN and NetBet), which highlighted issues with inadequate interactions with some high spending customers. These issues included interactions with one customer who lost £159k involving mainly pop up questionnaires and another customer who deposited large amounts between 12am and 1am receiving only an email in the morning, because no one from the operator's responsible gambling team was on duty at night.

Although the consultation suggests amendments to Social Responsibility Code Provision (SRCP) 3.4.1, which applies to all operators, it states that the new requirements would apply to remote operators only. Many of the proposals rely on account-based play to be implemented, however, some are capable of being applied equally in a non-remote setting, for example a proposed requirement to interact with customers in a timely manner when risks of harm have been identified. To avoid creating a two-tiered level of expectations, there may be calls for some of the proposed new provisions to be applied to non-remote settings as well.

The Commission plans to make it clear to operators what is expected, by setting out specific customer interaction

measures which its remote licensees will be required to deliver. A call for evidence is being carried out at the same time, which will assist the Commission in setting figures for the key indicators and triggers, in particular a financial threshold for mandatory affordability checks. The new provisions would be accompanied by a customer interaction manual, setting out implementation guidance.

Additional requirements are proposed for each of the Commission's existing three customer interaction processes: identification, interaction and evaluation.

Identification – indicators of harm

The Commission acknowledges that it can be difficult to identify customers who are at risk of harm, or are experiencing harm from gambling. However, it has found deficiencies in the current practices employed by some operators, including procedures that are too slow, rely on manual action or rely on third parties to have sufficient processes.

To address these issues, the Commission proposes to specify the types of activity which must be monitored by operators, that their processes must flag up indicators of harm in a timely manner and that they must work to support automated response in some instances. A new SRCP would specify that operators must have effective systems in place to monitor customer activity and identify harm or potential harm from the point an account is opened and that this system must flag indicator of harm in a timely manner for intervention. The "must" wording in these provisions means that in any case where an operator's system fails to flag an indicator of risk in a timely manner, they would be in breach of their licence and could be subject to a regulatory penalty. This will place a high compliance burden on licensees.

For three key indicators – affordability, vulnerability and time spent gambling, the Commission proposes to set specific requirements following a call for evidence, which will run in parallel to the consultation.

Proposed triggers

In relation to a monthly loss trigger for affordability checks, the Commission is clear that this figure should reflect average discretionary incomes and cannot be more than £2,000 per month. However, the Commission will not set the figure at anything less than £100, appreciating the need for action to be proportionate. It appears to be leaning towards a figure of a few hundred pounds per month, which



accords with its views expressed over the past couple of years, and asks for additional evidence to be provided to consider in setting this threshold.

Considering what would be required for a compliant affordability check, the Commission's view is that open source data giving figures from e.g. local average salaries is unlikely to be sufficient. In responding to the consultation, operators may wish to emphasise the usefulness of such data at least as an initial assessment at the lowest trigger level, with more personalised information required as spend increases. What is missing from the Commission's analysis in the consultation document is that, as with other compliance matters, affordability checks should be scaled using a risk-based approach.

It is obviously much more difficult to specify figures to trigger vulnerability assessments, so this will be subject to further guidance, with a particular focus on what actions operators can take when they identify vulnerability.

Turning to time spent gambling, the Commission has already specified in recent customer interaction guidance that there should be an interaction after one hour of play and seeks views on the impact that has had. It recognises that different gambling products such as poker or bingo have different typical session lengths so may be amenable to a more nuanced approach.

Interaction

New SRCP provisions would state that licensees must interact and take "appropriate" action in a timely manner when they identify risk of harm and must tailor the type of action based upon the number and level of indicators of harm exhibited. This makes it clear that the Commission could take action against an operator who took timely action upon identifying an indicator of harm, however, the action was insufficient in light of the risks – for example they used a pop-up message when a personal interaction was needed, or implemented a spend limit when the customer should have been suspended. It may be difficult for smaller operators to meet these requirements if the scale of the business does not justify having someone qualified to make these judgments available 24/7.

The consultation invites comments on a proposed categorisation of levels of interaction, ranging from "early generic" interactions such as safer gambling messaging to the "very strong" measure of ending the customer relationship.

Evaluation

The Commission proposes to make it a requirement for operators to "implement processes to understand the impact of individual interactions" and "take all reasonable steps to evaluate the effectiveness" of their approach. This is a slight change from the current wording of SRCP 3.4.1, but is quite helpful to operators as under the current drafting the way they interact with customers "must include: understanding the impact of the interaction on the customer, and the effectiveness of [their] approach". The Commission might find any operator who does not understand the impact or effectiveness of an interaction in breach under 3.4.1, however, the new wording only requires processes to be implemented and reasonable steps to be taken.

Bonuses and offers

Finally, the Commission is considering the circumstances in which operators should be prevented from giving customers bonus offers. In particular, it states that it does "not consider the direct marketing of futures bonuses to consumers identified as displaying indicators of harm is appropriate". Further, the Commission is considering a requirement to prevent customers from taking up bonus offers in such cases, but recognises that in some circumstances revoking an offer may breach consumer rights legislation, for example if a customer has already spent money in the expectation of receiving a bonus.

Unintended consequences

The Commission has specifically considered potential unintended consequences of its proposals in this consultation and asks respondents to add any others which have not been considered, along with suggestions for mitigating the potential issues.

The consequences considered by the Commission focus on the impact of the proposed measures on the customer experience. The Commission has a statutory duty to permit gambling in so far as it accords with the licensing objectives, but two of these objectives may come into conflict in relation to some of the proposals – vulnerable persons should be protected from being harmed by gambling, however, gambling must also be conducted in a fair and open way. Customers may well find it unfair that they are required to provide evidence of their income and resources before being permitted to gamble at a certain level, or that they are prevented from receiving an offer made available to others due to spending more time gambling.

Any requirements added by the Commission will need to be carefully drafted, otherwise operators may be put in the difficult position of deciding between the risk of regulatory action by the Commission and the risk of legal action by the customer. The risk of higher spending customers being driven to illegal unlicensed operators is very likely to increase as a result of the proposals, so the Commission will need to step up its enforcement activity.

Melanie is a gambling regulatory lawyer with 13 years' experience in the sector. Melanie advises on all aspects of gambling law including licence applications, compliance, advertising, licence reviews and changes of control. She has acted for a wide range of gambling operators including major online and land-based bookmakers and casinos, B2B game and software suppliers and start-ups. She also frequently advises operators of raffles, prize competitions, free draws and social gaming products.

Melanie has a particular interest in the use of new technology for gambling products and novel product ideas.

