What's in a word

Northridge Law's **Melanie Ellis** scrutinises just what the Gambling Commission means with the word 'learning

From 12 September 2022, remote gambling operators licensed by the Gambling Commission will be required to ensure that "industry learning", including public statements from the Commission's casework, is reviewed and implemented into their policy and procedures. Despite not being subject to this new guidance, the Commission nevertheless has an expectation that non-remote operators review and learn from these public statements. So, it seems like a good time to consider the recent statements issued by the Commission and pick out which "learning" should be incorporated and how.

A total of eight public statements have been released in the past year. In addition, regulatory action has led to three operating licences being revoked and nine fines being issued against operators, but it is the voluntary settlements which led to the publication of "learning" for the industry.

Although the new requirement specifically relates to customer interaction learnings, many issues feed into this, for example a failure to obtain adequate source of funds information could lead to missing the need to conduct an interaction with a customer who might be gambling beyond their means. Most of the content of the public statements are likely to be in scope for this requirement (as well as the Commission's general expectation), but some of the key customer interaction "learnings" are as follows.

Rationale for decisions

The importance of recording the rationale for decision making on customer interaction was highlighted in the public statements for VGC Leeds and Progress Play. The VGC Leeds casino was pulled up for recording a number of "no concern" interactions on a customer's profile, with no rationale as to why the interaction was undertaken in the first place. It is clear that merely conducting an interaction is not sufficient, the casino must also make a note of the problem gambling indicator identified and the reason why, following the interaction, it was determined that no further action was required.

A number of the public statements also highlight as "good practice" logging decisions not to interact, including a sufficient level of detail (presumably about the rationale for that decision).

Automated alerts and action

Whilst the new customer interaction provisions make it a requirement that all operators implement automated processes to identify harm and take action where there are strong indicators of harm, the public statements also warn against over-reliance on automated processes. Jumpman gaming was criticised for "a reliance on automated, as opposed to human, interactions by the Licensee when customers hit SG alerts" and BV Gaming for "an overreliance on automated thresholds to request SoF".

It is somewhat challenging for operators to square these criticisms with the new requirements, but the conclusion must be that operators need to use both automated and manual interactions. Looking in particular at cases where strong indicators of harm are identified (which must be defined in the operator's own policies), the Commission's expectation appears to be that automated processes will take immediate action when the system identifies such indicators, for example by placing a deposit limit on the player's account. This would not be sufficient in itself, however, and this action should be followed by a manual review of the account to determine whether alternative or additional action would be appropriate, such as a discussion with the customer.

Thresholds and triggers

A number of operators have been criticised for having thresholds and triggers which are set too high and/or are over-reliant on financial triggers. The customer interaction guidance documents for both remote and non-remote operators set out a list of triggers, which include items such as time spent gambling and time of day, in addition to financial triggers. However, in terms of the specific level of those triggers there is little detailed guidance. We do know from the public statements that the following were considered inadequate:
 - processes which allowed a customer to lose £20,000 in 6 weeks without triggering an affordability assessment (Jumpman Gaming)
 - overly reliance on a £1,000 30-day net loss threshold to identify potential signs of problematic gambling (Rank Digital and Greentube)
 - a customer being allowed to deposit £9,379 in eight days without an adequate responsible gambling interaction (IMME)

In terms of what is acceptable, the following triggers were apparently accepted by the Commission, as Annexio's new policy:
 - a £500 monthly gross deposit limit pending completion of an affordability assessment
 - a £10,000 lifetime deposit limit pending affordability and source of wealth being established

Affordability

Whilst it seems we must await publication of the Government's White Paper for specific requirements for affordability assessments, there is some guidance to be found in the public statements, or at least indicators of what the Commission considers is insufficient to meet its expectations. The requirement to undertake affordability assessments stems from the fact that the Commission considers that unaffordable gambling is an indicator of gambling harm, which should trigger an interaction or other action by the operator.

The Commission criticised both Greentube Alderney and Rank Digital for making "assumptions based on other open-source information which should have been corroborated against other independent sources of information". BV Gaming was also found to have obtained insufficient information from customers to substantiate the open-source profile, such as occupation details and potential earnings.

Many operators use third party providers to conduct initial affordability assessments and these providers base their results on various pieces of open-source information. What remains

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unclear from the public statements and other guidance issued by the Commission is whether all open-source information must be substantiated (which significantly reduces its usefulness) or it can be relied on up to a certain level.

Research and best practice

Finally, it is worth noting that the new requirement does not just apply to industry learning derived from public statements. It will be a regulatory requirement that operators also review and implement research and industry best practice. The Commission does not appear to have any intention to publish a summary of relevant research or comment on industry best practice in any formal or systematic way (other than within some public statements), so it appears all operators will need to develop a system for monitoring industry news and research journals. As is often the case, putting a reasonable system into effect and documenting the steps taken to meet this requirement will go a long way towards satisfying the Commission, even if the occasional new piece of research is missed.

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.