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New customer interaction guidance from the Gambling Commission

Northridge Law's **Melanie Ellis** puts the GC's new guidelines under the microscope

The Gambling Commission has published its new guidance to remote operators on customer interaction, which will come into force on 12 September 2022. The previous version of this guidance was published in 2019, with the new release including expanded and strengthened requirements.

The guidance is intended to assist operators in implementing new social responsibility code provision 3.4.3, which comes into effect on the same date. While operators are required by the new provision to take the guidance into account, it is open to them to follow different approaches, if they are able to demonstrate that their alternative solution equally meets the required outcomes. In practice, a licensee would need to have very good evidence that a departure from the guidance achieved compliance with the LCCP and licensing objectives, in order to avoid regulatory action by the Commission.

Much of the previous guidance remains in place and it still requires a three-stage approach to customer interaction, although what was formerly “identify – interact – evaluate” has become “identify – act – evaluate”. What appears to be a minor terminology change in fact reflects a shift in expectations. It is no

longer sufficient for operators to just send an email or have a conversation with a customer when markers of harm are identified; in some cases they will be expected to take action, such as limiting the customer's gambling.

Identify

The new guidance expands on the Commission's expectations for customers who are in a vulnerable situation. As before, it sets out factors which might make a person more vulnerable to gambling harm but now includes additional guidance on what actions an operator should consider in response to different categories of vulnerability. The Commission's expectations have been strengthened here, as operators will now be required “to take action when they are aware that a customer is in a vulnerable situation”. Although the guidance mentions ways in which an operator might become aware of vulnerability through regular interactions, there is no positive obligation carry out specific assessments of all customers for vulnerability. However, it is clear that if signs of vulnerability are present, operators will be expected to take timely action, such as setting account limits or refusing service if necessary.

Another key change is that all operators are now expected to have automated processes in place to monitor for signs of harm, and to offer the same protection overnight as during the day.

Act

The revised guidance makes it clear that some automated processes will need to be put in place by all licensees, regardless of their size. This is to enable action to be taken in response to signs of significant harm straight away, where factors such as the volume of customers make it impossible to manually monitor customer activity in real time. If a significant level of harm is identified, systems may need to block further gambling until more tailored action can take place.

Another clarification is that the action that takes place should reflect the severity of indicators exhibited. This may mean taking strong action straight away, or it may mean an escalating response. A key addition to the guidance is an explanation of a range of actions that should be used, from “early generic action”, such as an email with responsible gambling information, through to “very strong” action, which would involve closing an account. Interestingly, setting spend limits on behalf of the customer only appears at level four of five (“strong or stronger action”), although it is expected that “backstop protections or limits” will apply at the first stage, while checks are being undertaken.

Nevertheless, many operators who have recently been through a compliance assessment have been criticised for allowing customers to spend large amounts of money, despite in some cases being subject to regular interactions. New guidance on the issue of affordability is absent from the document, but it is difficult to avoid the conclusion that spend limits must be applied to all customers in order to avoid regulatory action. To begin with this would need to be at a level which represents average discretionary spend and then, following an affordability assessment, at a level which represents that customer’s discretionary spend. The Commission accepts that the guidance will need to be updated following completion of its consultation process on the issue of affordability, although there is no indication of the timeline for this process, which has been ongoing since February 2021.

A further addition is that licensees will be expected to prevent marketing to and the take up of new bonuses by customers displaying “strong indicators of harm”. Operators will need to self-define “strong indicators”. The new guidance provides little assistance as to how this can be done, but it appears the Commission expects licensees to set out in their policies and procedures, for each of the seven defined indicators of harm, what they would consider to be “strong”. This section also includes guidance on dealing with the situation where a customer is part way through a bonus offer. Operators will need to consider in this situation whether to prevent completion of the bonus offer and, if the account is closed due to safer gambling concerns, whether it would be fair to provide the customer with a proportion of the bonus (or value of it) based on their current position.

Evaluate

An important addition to the guidance is an explanation that once an action has taken place, the licensee must monitor changes in the customer’s play data including number of products used, spend, deposit patterns and play patterns. If the interaction is not found to have had the desired impact (i.e. reduced the relevant indicators of harm), the guidance explains that there will be a need to increase the strength of the action

taken next. That would likely mean escalating action to the next of the five levels.

The requirements for evaluation of the general effectiveness of the licensee’s approach have also been strengthened. Tracking play data is the minimum expectation, with good practice set out to be following up with a sample of customers on an ongoing basis to understand changes in problem gambling status. Effective record keeping will be key to meeting this requirement.

In addition, licensees are expected to put processes in place to ensure “industry learning” is reviewed and implemented into their policies and procedures.

Finally, some clarification is provided on the somewhat controversial inclusion in the new code provision that licensees must take account of problem gambling rates for the relevant gambling activity, to check whether the number of customer interactions is in line with this level. The guidance states that systems should be designed to ensure interactions take place with at least the same proportion of customers as the problem gambling rate for the relevant activity. Operators are expected to ensure they meet the minimum number of interactions over an annual period, and assess their progress monthly.

Data is provided from a 2018 health survey, with rates for online slots, bingo and casino at 8.5% of customers, online betting at 3.7% of customers and lotteries at 1.3% of customers. Regardless of whether 8.5% of slots customers (for example) display indicators of harm, operators will nevertheless need to conduct interactions or risk being found in breach. Inevitably, for some operators this will mean revising their triggers for interaction to ensure they meet this requirement, for example lowering the level of spend which indicates a level of harm justifying the “early generic action” of a responsible gambling email.

Next steps

Before 12 September, all remote licensees should review and update their responsible gambling policies and procedures (or other document containing customer interaction processes). As a minimum, indicators of vulnerability and harm, types of action to be taken and evaluation processes will need to be revised and updated.

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.

