New LCCP rules for customer interaction

The UK Gambling Commission has set out new rules for its Licence Conditions and Codes of Practice. Northridge Law's **Melanie Ellis** looks under the bonnet…

The British Gambling Commission has finally issued a response to its Customer Interaction consultation and call for evidence. The time taken to respond may be partly explained by the volume of responses received – 971 to the consultation and call for evidence and 12,125 responses to a supplementary short survey.

The key outcomes at this stage are that the GC will, on 12 September 2022, bring in stronger and more prescriptive requirements for online operators to identify and interact with at risk customers (via a new Social Responsibility Code Provision 3.4.3) and in "early June" it will publish new customer interaction guidance for remote operators.

Non-remote operators will continue to be subject to the existing Social Responsibility Code Provision 3.4.1 on customer interaction and associated guidance.

No affordability guidance yet

A further consultation exercise will be conducted to determine specific steps operators will need to take in relation to preventing unaffordable gambling and identifying consumers who are financially vulnerable. The GC intends to "work closely with the Government to ensure that the consultation proposals are set in the wider context of the Government's Review of the Gambling Act 2005".

This means operators must continue to wait to receive more detailed guidance on the requirements for affordability assessments, including at what spend level they must be conducted and what form they must take.

Identifying customers at risk

To assist operators in identifying customers at risk from harm, the GC has specified a set of core indicators:
• customer spend
• patterns of spend
• time spent gambling
• gambling behaviour indicators
• customer-led contact
• use of gambling management tools
• account indicators

The GC flags that "time spent gambling" has been added to the list, as compared to the previous guidance. Interestingly, this already features on the list of indicators for non-remote gambling, but was not so clearly set out in the guidance for remote operators. The GC does not propose to set specific time thresholds for different products; this will be for operators to determine.

Systems will need to be in place to monitor all customer accounts for these indicators from the moment the account is opened.

Change from "interact" to "act"

A key change is that the GC will require operators to take action in a timely manner when they identify risk of harm. Further clarification is provided, explaining that operators will be expected to have processes which include:
• tailored action at lower levels of indicators of harm which seeks to minimise future harm,
• increasing action where earlier stages have not had the impact required,
• strong or stronger action as the immediate next step in cases where that is appropriate, rather than increasing action gradually,
• reducing or preventing marketing or the take-up of bonus offers where appropriate (the new LCCP provision also requires that this is prevented where there are strong indicators of harm), and
• refusing service or ending the business relationship where necessary.

These points mostly reflect the GC's existing expectations, which it has communicated to operators through compliance activity. The list will be useful, however, to operators who have not recently undergone a compliance assessment. It is worth noting that discretion remains in determining when the steps are "appropriate" or "necessary", but that the GC will take action if it considers that discretion has been exercised incorrectly.

Operators should also note that they will be required to include automated processes to deal with strong indicators of harm in a timely way. Whilst most larger operators will likely already have automated processes in place, this may be a challenge to some smaller operators who rely on manual reviews of customer accounts.

Strengthening of evaluation requirements

Operators are currently expected to evaluate the effectiveness of their interactions in terms of changing individual customers' behaviours. Under the new LCCP provision, operators will be required to also evaluate the overall impact and effectiveness of their approach, for example by trialling and measuring impact. Operators will also need to maintain records of their evaluations and produce them to the GC on request.

In addition, the new LCCP provision will require operators to assess whether their number of interactions is in line with problem gambling rates for the relevant activity, as published by the GC. The GC thinks it would be "manifestly a failure" if the numbers of customers identified is lower than the problem gambling rates for the relevant products.

The GC's data does not currently break down problem gambling rates by activity, however in another recent consultation exercise the GC considered changes to its research on problem gambling. The new LCCP provision anticipates the future publication of data with this level of granularity.

This is a strange requirement to include in the LCCP provision and it would seem more suitable for the associated guidance. Some operators will, inevitably, have a lower level of problem gamblers than the population average, due to a variety of factors including the nature of their offering, the success of their efforts to prevent problem gamblers accessing their product and the average spend levels of their customer base. The GC has also disregarded the fact that the reported levels of problem gambling are overall levels (including gambling with black market operators and in a casual way e.g. with friends), not the levels experienced by those gambling with licensed operators only. A regulated and compliant product aimed at the leisure consumer may well have a lower number of problem gamblers than in the overall population and may, therefore, be forced to carry out unnecessary interactions to keep their numbers up and comply with this condition.

Upcoming revised guidance

Operators will need to consult the guidance when it is published in June for further guidance on issues such as what should constitute "strong" indicators of harm. The GC intends to expand the guidance over time to include examples of good practice, and as available technology improves.

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.