

Gambling Commission consultation and call for evidence on remote customer interaction requirements and guidance



Consultation section 1: overall requirements and process

The Commission proposes:

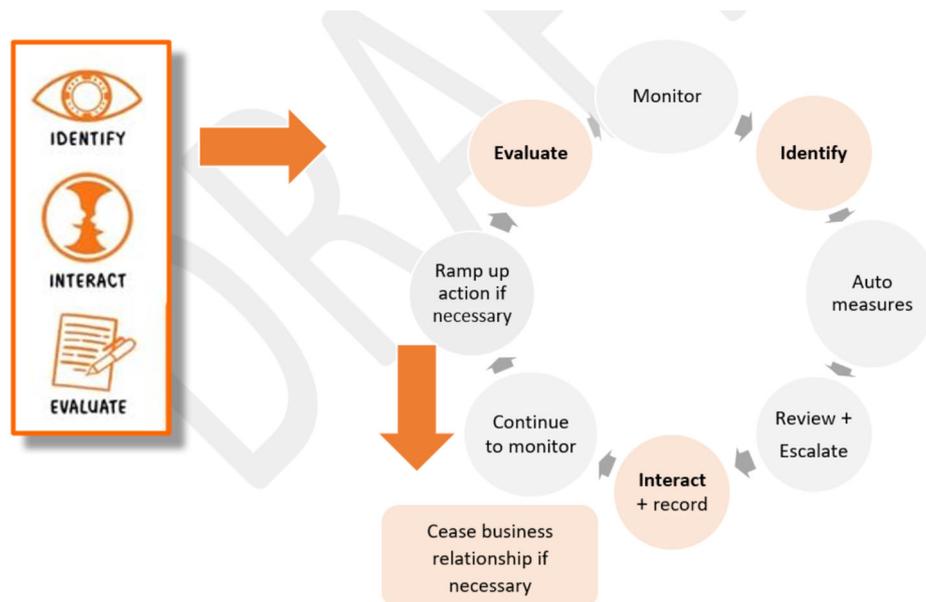
- Retaining the existing LCCP requirement to deliver interaction in a way which minimises the risk of customers experiencing harms associated with gambling, as well as the three processes to deliver this outcome: identification, interact, evaluate.
- The addition to the LCCP requirement of specific measures that operators are required to deliver.
- The creation of a new remote customer interaction ‘manual’ which will reference the LCCP requirements and set out implementation guidance on how to meet each of these requirements. The existing remote customer interaction guidance would no longer apply.

Social Responsibility provision 1 – addition to SR Code 3.4.1

Customer interaction processes

Licencees must implement effective customer interaction processes which embed the three elements of customer interaction – identify, interact and evaluate – and which reflect that customer interaction is an ongoing process.

Overview of the process:



Consultation questions: identify

5 To what extent do you consider that the diagram above illustrates the ongoing and continued process which operators must deliver to identify harm to consumers and take action?

With the exception of the “auto measures” bubble (see response to question 6 below), the Council agrees that this diagram illustrates the process.

6 Do you have any comments on this overall process?

The consultation states that the “existing social responsibility code provision sets out the outcome which operators are required to deliver interaction a way which minimises the risk of customers experiencing harms associated with gambling [and] specifies three processes which operators must deliver in order to meet this outcome – identifying customers who may be at risk of harm, interacting with those customers, and understanding the impact on the customer and of their overall approach.” This gives operators the flexibility to take account of the particular circumstances of their product when considering how best to minimise the risk of harm.

Some products are very different to others and what may be the best solution for one may not be appropriate for them all. The inclusion of the step “auto measures” in the diagram implies that all operators could be required to implement automated, real-time measures for identifying those at risk of harm.

The Council suggests that the Commission takes a risk-based approach to requiring the additional customer interaction measures proposed, in a similar manner to the risk-based approach taken to low-frequency and subscription lotteries in respect of matters such as customer identify verification requirements (LCCP 17.1) and age verification requirements (LCCP SR 3.2.13.2(f)(i)). It therefore suggests that suggest low-frequency and subscription lotteries should be exempt from the "auto measures" and additional requirements for specific indicators proposed within this Consultation. The Commission has already recognised that such products have a much lower risk profile.

Although remote subscription lotteries could be included within the specific requirement for operators to conduct affordability checks if players spend above the Commission-specified threshold (on the basis that it is possible, if unlikely, that some consumers might spend more than the affordability threshold on a subscription lottery in a month, the other additional proposed measures do not seem appropriate for subscription lotteries. For example, it does not seem proportionate, practical or worthwhile to require subscription lotteries to have automated measures to monitor matters such as time spent gambling, time of gambling, choice of product, in-play betting, patterns and amount of spend (particularly if, in the unlikely event anyone sought to spend over the Commission threshold on a subscription lottery, the mandatory affordability check would apply). The existing requirements of LCCP 3.4.1 already provide consumer protection proportionate to the level of risk posed by subscription lotteries, which would be further enhanced by the proposed Commission set affordability threshold requirement.

Consultation section 2: identify

The Commission aims to clarify the requirement to identify harm is clarified by specifying:

- the forms of activity which must be monitored,
- that the processes must flag up indicators of harm in a timely manner,
- that they must work to support automated responses in some instances.

Proposed LCCP Social Responsibility provision 2 - addition to SR Code 3.4.1

Indicators of harm

Licenseses must have in place effective systems and processes to monitor customer activity to identify harm or potential harm, from the point when an account is opened.

The system must flag indicators of risk of harm in a timely manner for manual intervention and feed into automated protections as set by requirement [proposed SR provision 4].

Licenseses must use a range of indicators relevant to their consumers. These must include:

- consumer spend
- patterns of spend
- time spent gambling
- gambling behaviour indicators
- customer-led contact
- use of gambling management tools, and
- account indicators.

Licenseses are responsible for ensuring that they comply with the requirements. If the licensee works with third party business to business providers to offer facilities for gambling, the licensee is responsible for ensuring that processes are in place to monitor the activity on the account for each of the indicators above.

Proposed LCCP Social Responsibility provision 3 - addition to SR Code 3.4.1

Requirements for specific indicators

Licenseses must follow set requirements for specific indicators:

- a. Licenseses must conduct affordability assessments at the level specified in this provision following the call for evidence. The definition of relevant affordability assessments will be provided - and different types of assessments may be set at different levels.
- b. Licenseses must consider the factors that might make an individual more vulnerable to experiencing gambling harm and implement processes to take appropriate and timely action where indicators of vulnerability are identified. Licenseses must take account of the Commission's definition of vulnerability.
- c. Licenseses must implement actions specific to time spent gambling which is appropriate to the nature of the gambling provided.

Consultation questions: requirements for specific indicators

7 *To what extent do you agree with the proposal that remote operators should be required to conduct affordability assessments at thresholds set by the Commission? Please see the Call for Evidence for questions on the appropriate thresholds.*

Agree

8 *To what extent do you agree with the proposed requirement that remote operators must implement processes to take action where there are indicators of other forms of vulnerability (elevating this issue from guidance to requirements)? Please see the Call for Evidence for questions on experiences of vulnerability and what operators should do in response.*

Disagree – see response to Q11 below

- 9 *To what extent do you agree with the proposal that remote operators must implement actions in relation to time spent gambling which are linked to the nature of the gambling provided? Please see the Call for Evidence for questions on experiences of vulnerability and what operators should do in response.*

Disagree – see response to Q11 below

Consultation section 3: requirement to act

The Commission proposes that operators are required to take action in a timely manner (which in some cases may mean through automated, real-time measures), that this action reflects the seriousness of the indicators of harm, including refusing service and ending the business relationship where necessary.

Proposed LCCP Social Responsibility provision 4 - addition to SR Code 3.4.1

Requirement to act

Licensees must interact and take appropriate action in a timely manner when they have identified the risk of harm.

Licensees must tailor the type of action they take based on the number and level of indicators of harm exhibited. Importantly, this may mean taking strong or stronger action straight away, rather than increasing action gradually. This will include giving consideration to refusing service or ending the business relationship where necessary.

Licensees must ensure that strong indicators of harm are acted on in a timely manner by implementing automated solutions where necessary.

Consultation questions: requirement to act

- 10 *To what extent do you agree with the proposal to require remote operators to interact in a timely manner, to interact at a level appropriate to the indicator, and to require automated solutions where necessary?*

Disagree – see response to Q11 below

- 11 *Do you have any comments on the proposed requirement SR provision 4 to require remote operators to interact in a timely manner, to interact at a level appropriate to the indicator, and to require automated solutions where necessary?*

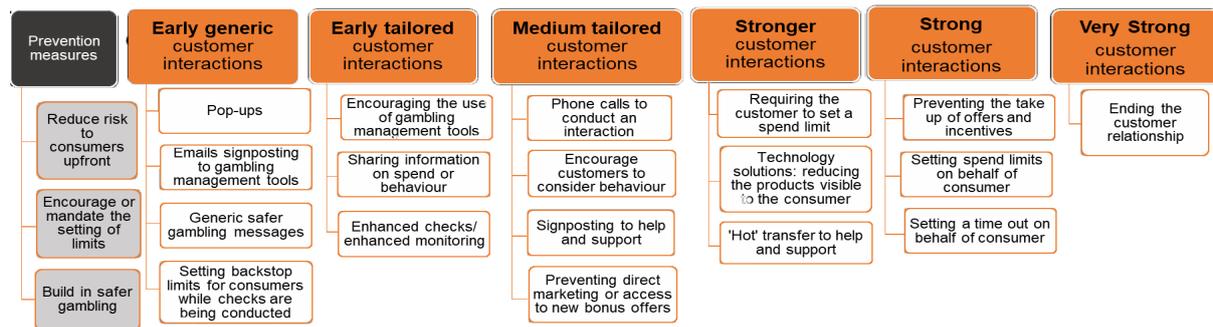
The Council disagrees with the proposals at questions 8, 9, 10, 13 and 14 because it does not seem appropriate, proportionate or practical for subscription lotteries to be required to implement automated measures for the range of indicators specified/implement set requirements for specific indicators such as time spent gambling. Although the proposed wording refers to needing to use "a range of indicators relevant to their consumers", it also says "These must include" indicators such as consumer spend, patterns of spend, time spent gambling and behaviours (eg choosing higher-risk products, in-play betting, erratic patterns). It appears, therefore, that all operators must have automated tracking measures for the indicators listed, with a requirement to then also have automated measures applied when these indicators are triggered.

As mentioned in its response to question 6 above, the Council is concerned such a "one size fits all" approach to requiring automated measures to identify those at risk of harm, and automated

measures on the back of them, is not appropriate or proportionate in respect of low-frequency and subscription lotteries.

For example, it is difficult to see how the "time" indicators regarding amount of time spent gambling/time of gambling would be relevant to low-frequency or subscription lotteries. This also applies to the "patterns of spend" and "behaviour" indicators.

The Council suggests that an appropriate risk-based approach would be to exempt low-frequency and subscription lotteries from the proposed additional "automatic measure" tracking requirements. This would reflect the much lower risk-profile of those products. Consumers would still have the protection of the existing LCCP 3.4.1 requirements in respect of subscription lotteries.



Consultation questions: categories of customer interaction

12 Do you have any comments on the proposed categorisation of customer interactions to help ensure that operator actions reflect the seriousness of the indicators of harm?

For the gambling sector as a whole, the proposed categorisation seems sensible. However, as mentioned in the response to other questions, the Council suggests that it is disproportionate to require automated interventions for each stage in respect of low-frequency and subscription lotteries. The Commission should consider a risk-based approach, with the new affordability threshold applying to all remote gambling operators, but low-frequency and subscription lotteries should be exempted from the other additional measures proposed.

Consultation section 4: evaluate

The Commission proposes clearer requirements on operators and guidance on how to achieve effective evaluation at both an individual level for a consumer, and for an operator's overall processes.

Proposed LCCP Social Responsibility provision 5 – addition to SR Code 3.4.1

Evaluate

Licenses must implement processes to understand the impact of individual interactions and actions on a consumer's behaviour, the continued risk of harm and therefore whether/ what further action is needed.

Licenses must take all reasonable steps to evaluate the effectiveness of their overall approach – for example by trialling and measuring impact. Licenses must take account of problem gambling rates for the gambling activity to check whether the number of customer interactions is at the least in line with this level.

Consultation questions: evaluate

- 13 *To what extent do you agree with the proposal to strengthen the existing requirement by specifying that remote operators must implement processes to understand the impact of their actions on individual consumers?*

Disagree – see response to Q11 above

- 14 *To what extent do you agree that operators must take all reasonable steps to assess overall effectiveness of their measures?*

Disagree – see response to Q11 above

- 15 *Do you have any comments on the proposed requirements to evaluate effectiveness?*

Disagree – see response to Q11 above

Call for Evidence section A: identify risk of harm due to affordability

The Commission seeks views and evidence on the appropriate thresholds, the form of affordability assessment that should be required, and how to ensure that operators take the appropriate action following an affordability assessment.

- 16 *What additional evidence should the Commission consider in relation to the harms associated with gambling that is not affordable?*

It is worth pointing out that the 6 case studies referred to by the Commission relate to situations where individuals have been allowed to spend tens of thousands of pounds over very short time periods. This is a far cry from low-frequency and subscription lotteries, which are already subject to obligations under SR code 3.4.1 to protect consumers. Given the vastly different risk profile of these lotteries from others in the gambling sector, the Council reiterates that a "one size fits all" approach to the additional requirements on all operators within the remote gambling sector is not appropriate, and request that the Commission consider exempting low-frequency and subscription lotteries from the additional requirements proposed in this Consultation, with the exception of the affordability threshold.

- 17 *What additional information should the Commission consider in setting thresholds for affordability assessments?*

The Council has nothing to add.

- 18 *What information should operators obtain, as a minimum, to satisfy themselves that their customers are not gambling beyond their means?*

The Council has nothing to add.

- 19 *How would consumers react to a handbrake or hard stop requirement, where the operator is required to prevent further gambling unless an affordability assessment is undertaken and shows that the level of gambling is affordable?*

A handbrake is a reasonable response if an appropriate indicator is triggered.

- 20 *How long should an affordability assessment remain valid before a periodic re-assessment, and what circumstances should prompt a review by exception?*

An affordability assessment is immediately historic as circumstances may change instantaneously. Nor does it take into consideration how this would be appropriate with a consumer playing across several sites. It is only an “assessment” and so the concept of “validity” is misleading. Much depends on the information on which the assessment is based but the re-assessment should be triggered in the same way as the assessment in question was triggered.

21 *In general, we do not consider Article 22 [GDPR] to be engaged by automated solutions typically implemented by operators. We would however like to obtain views from operators on whether the current proposed requirement for automated solutions would satisfy the Article 22(2)(b) exemption to allow for automated processing, and if so, what sort of safeguards for the consumer do you think would be achievable?*

The Council is not qualified to offer legal advice and suggests a dialogue with the Information Commissioner’s Office.

Call for Evidence section B: identify risk of harm due to vulnerability

22 *What forms of vulnerable situations are particularly relevant for consumers who gamble?*

The Council has nothing to add.

23 *Are there further examples of actions operators should take to identify and prevent harm for consumers in a vulnerable situation?*

The Council has nothing to add.

24 *Do you have any further information that would support the Commission’s wider work on vulnerability and a future statement of our approach to vulnerability?*

The Council has nothing to add.

Call for Evidence section C: time

25 *To what extent do you consider that action by operators should be required after a certain time spent gambling? This would be over and above the proposed requirement that operators set their own time thresholds.*

The Council has nothing to add.

26 *If so, what products and session lengths do you consider should trigger a form of customer interaction?*

The Council has nothing to add.

Call for Evidence section D: preventing bonus offers

27 *In what specific circumstances (if any) should the Commission require as a minimum that operators prevent marketing and the take-up of bonus offers?*

The Council has nothing to add.

28 *Are there any circumstances where it would be unfair to consumers to prevent them receiving bonus offers even when there are signs of harm? For example, this could relate to bonus offers which a customer has part-earned or they are expecting to receive as it is available to all customers.*

The Council has nothing to add.

Call for Evidence section E: impact and unintended consequences

29 *Do you consider there to be any other unintended consequences of the proposed measures we have set out?*

The Council is concerned that lottery players, particularly those players of low-frequency and subscription lotteries, may be deterred from playing if forced to share private information, thus reducing the sums raised for good causes.

30 *How could these unintended consequences be mitigated most effectively?*

Lotteries, at the least low-frequency and subscription lotteries, should be excluded from the single customer view facility.

31 *Can you suggest any additional ways to measure impact of the changes proposed by the consultation?*

The Council has nothing to add.

32 *Do you have any comments on the proposed approach for regulatory data?*

The Council has nothing to add.

33 *Do you have any evidence or information which might assist the Commission in considering the equalities impacts, within the meaning of section 149 of the Equality Act 2010, of any decision it takes in the light of this consultation?*

The Council has nothing to add.

34 *Do you have any evidence or information, at this stage, which might assist the Commission in considering what the economic impact of these changes would be on businesses?*

The Council has nothing to add.

35 *Do you have any comments on the Commission's next steps?*

The Commission in previous guidance highlighted the importance of education, as this has more of an impact on behaviours than those that are forced by operators. A balanced risk-based approach must be taken with all requirements, as a vast majority of gamblers gamble socially without harm, and having a "one size fits all" approach is neither fair nor balanced.

Education to increase self-awareness is an important part of the long-term strategy to reduce gambling harm. To achieve behavioural change, it is not about just highlighting the consequences and the definition, but personally relating to the behaviours being displayed to oneself that will have the biggest impact. Behavioural change research is a valid and important part of the future.

36 *Do you have any other comments on any aspect of this consultation and call for evidence?*

The Council has nothing to add.

Tony Vick, Chairman
The Lotteries Council
9 February 2021