

Response ID ANON-28SX-J7T9-3

Submitted to **Remote customer interaction - Consultation and Call for Evidence**

Submitted on **2021-02-09 11:43:17**

Introduction

1 What is your name?

Name:

Richard Hayler

2 What is your email address?

Email:

3 What is your organisation?

Organisation:

IBAS

4 As part of this call for evidence, we may decide to publish your name and organisation on our website to indicate that you have responded to this consultation. We have asked you to indicate your consent to the Commission publishing your name and organisation to indicate you have responded to this call for evidence. Please select only one item

I CONSENT to the publication of my name and organisation to indicate I responded to this consultation

Consultation section 1: Overall requirements and process

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?

Agree

6 Do you have any comments on this overall process?

Comments on overall process:

Identification, interaction and evaluation are the basic tenets that need to be followed to confidently manage a consumer's safer gambling journey. The diagram accurately illustrates that this is an ongoing process, where the three focuses of customer interaction must be viewed as part of a healthy and sustainable business-customer relationship and not some form of inconvenient check box exercise.

The need to conduct customer interaction is a long established LCCP requirement, however from the insight we receive from consumers in the form of complaints, it is clear that the quality of this interaction varies from operator to operator. IBAS would encourage a uniform, regulatory-determined approach, so consumers can expect to receive the same standards of protections and interactions regardless of which gambling business they have an account with.

Consultation section 2: Identify

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.

Agree

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.

Strongly Agree

Consultation section 3: 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?

Strongly Agree

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?

Comments on proposed requirement - timely, appropriate, automated:

We would like to see individuals with relevant lived experience playing a prominent role in framing how such interactions can be most effective.

From an ADR perspective we see many claims where the game play evidence supplied by the operator of online slots or casino play can reveal hours of protracted play, consistently over many days without any intervention - sometimes this may be indicative of the need for intervention, sometimes this points towards a consumer simply fulfilling the requirements of a particular bonus offer (which may be a potential issue in its own right).

Clearly, licensees should already be interacting and taking appropriate action in a timely manner, when they have identified potential risks of harm. However, asking them to tailor the type of action they take based on indicators of harm exhibited will require consistency across all gambling platforms for all operators for it to be most effective. If some gambling businesses can implement automated solutions straight away while others cannot, the vulnerable consumer can be refused service and have their business relationship ended with operator X but open up a new account with operator Y and gambling freely because their indicators are not picked up.

Our view is that of course we would like to see strong indicators of harm acted on in a timely manner, but this must be:

- i) achievable
- ii) involve technology that can be applied to the same standard by all remote operators

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? This ranges from Early generic interactions to Very strong interactions.

Comments on categories of customer interactions - early generic to very strong:

We believe those with lived experience of gambling harm - hopefully working in cooperation with gambling businesses on this issue - should take the lead on how this categorisation would be most effective.

There is little doubt that some consumers would complain that business-led time limits or enforced time outs would infringe on their right to gamble as they please; inevitably IBAS will receive complaints that such interventions have prevented a specific winning bet from being placed or prevented a consumer from recovering monies previously lost. However, we understand what these categorisations seek to achieve and we support the principle of those aims.

Consultation section 4: 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?

Agree

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

Agree

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

Comments on evaluate proposals:

We believe that gambling businesses and those with lived experience should take the lead on the most meaningful, effective and beneficial forms of data evaluation.

Call for Evidence

Call for Evidence Section A: Identify risk of harm due to affordability

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

Evidence of harm of unaffordable gambling:

We believe that this is better answered by support organisations and those with lived experience.

17 What additional evidence or information should the Commission consider in setting thresholds for affordability assessments?

Evidence for affordability thresholds:

IBAS receives many hundreds of claims from consumers that gambling businesses have (irresponsibly) permitted them to lose unaffordable sums. There were 752 formal submissions of that nature in the last full reporting year. In the final quarter of 2020 the sums quoted in these submissions ranged from £200 to £230,000. The level of unaffordable expenditure is evidently an individual matter.

In the margins of different types of disputes that IBAS receives, we come across large numbers of individuals who seem to be spending more than they can afford to lose. Sometimes this is not apparent from their initial submission or the amounts deposited and gambled but rather comes up during the exchanges our case managers have with the consumer as we progress their dispute.

Sometimes it is apparent in the complainant's urgency for the dispute to be resolved.

We do not disagree that individuals spending more than they can afford to lose is one of the harms most commonly associated with gambling disorder, but setting thresholds for affordability assessments needs to be approached carefully given the impact it is likely to have on other consumers who may not be gambling beyond their means but might - for whatever reason - choose to gamble more money at some point in the year than others. It is a form of regulatory intervention that has scope to cause as many new complaints as it might hope to avoid.

We agree that strengthening requirements to minimise risk should be a priority for the Gambling Commission but the natural consequence is going to be an impact on consumer freedom and privacy. Economic experts and gambling businesses themselves are far better placed than IBAS to provide an evidenced based view on where those thresholds should be set, however our initial view would be that relatively conservative loss or deposit threshold levels should be set for a trial phase of perhaps 12 months, to see if that leads to a reduction in customers gambling beyond their means.

If not, more stringent financial checks and lower thresholds should sensibly be explored.

We note that for any thresholds to be effective, there needs to be some form of lawful and confidential data sharing between gambling businesses.

Nature of affordability assessments

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

Minimum info for affordability assessment:

We feel that IBAS has more to learn from others answers to this question than we should contribute. We believe that the question of whether adequate affordability assessments have been conducted may one day become part of our remit for dispute resolution.

If that was the case, we would want to judge the performance of businesses against objective standards set by those better qualified than us to set them. We feel it would be unwise in the circumstances for us to comment on what we believe those standards should be.

What is important, for the sake of fairness in gambling, is that whatever information is deemed appropriate for these purposes is used - as far as possible - for the purpose of assessing the affordability of gambling and not for any other commercial purpose. There may be advantages to an external, independent agency - rather than individual businesses - conducting affordability checking procedures.

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?

Consumer reaction to stops:

The consultation document makes it clear the Commission is already aware of the delicate balance between protection for the greater good and unnecessary intrusion/invasion of privacy. Clearly a balance needs to be struck and any handbrake or hardstop requirement is unlikely to be welcomed by a majority of affected consumers.

From an ADR perspective, we have learnt that the best way to avoid negative consumer feedback is to be clear, open and transparent about the potential for this type of intervention in clear messaging at the point of account opening. Communication is key, if consumers understand why measures are being applied, what the processes are and how equivalent interventions are occurring consistently with other customers of other businesses they are less likely to be surprised if/when it happens to them and they will be less likely to object.

The Commission should consider whether a handbrake stop would simply lead the affected consumer to attempt to place the same bet elsewhere - and whether a system can be devised to prevent that from happening, digitally at least.

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

Re-assessment for affordability:

We believe that others will have more relevant experience and data to answer this question.

Affordability – Data protection (GDPR)

21 In general, we do not consider Article 22 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?

Data protection:

We understand both the motivation to share data and the concerns that many consumers would understandably have about that. There would appear to be relatively little overlap between the groups who would have most to gain from data sharing and those that would object to it. This causes an obvious problem for regulators. Arguably this is little different to the role that credit reference agencies provide in the financial sector, but there is much greater clarity for consumers

about how details of their financial history will be stored and used by other providers.

In whatever way consumer data is shared, the most important point is that consumers are told how it will be shared and why it will be shared. It is important too that operators are clearly told how that data can and cannot be used and that unannounced inspections are conducted by Gambling Commission officials from time to time to ensure that data sharing designed to protect consumers is not being used for commercial reasons.

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?

Forms of vulnerability relevant for gambling:

Again, we feel that those with lived experience and support groups can provide better informed responses.

However, the thousands of submissions we receive from consumers each year does provide IBAS with a unique insight into the frequency of common themes. Many complainants comment that gambling may not be their only addiction and that excessive alcohol or drugs consumption have contributed to erratic gambling patterns. Claim forms from time to time cite bereavement/ inheritance or redundancy as a reason for feeling able to gamble and lose unsustainable sums.

Probably over 100 claim forms every year cite mental health conditions, mental health treatment or other prescription drugs as a reason for having gambled excessively and as a basis for requesting a refund of losses. While the emphasis is rightly on gambling businesses to monitor their customers and to intervene wherever they can, there may be a role for health practitioners in providing clearer warnings if certain conditions, treatments or medications have a history of resulting in periods of untypical and unaffordable gambling. Perhaps a system - similar to Gamstop - could be developed to allow for temporary exclusion from online gambling on medical grounds.

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

Further examples of vulnerability:

Those with lived experience and treatment providers/support groups are better placed than IBAS to answer this question.

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?

Vulnerability - wider work:

Those with lived experience and treatment providers/support groups are better placed than IBAS to answer this question.

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.

Time spent gambling:

Although we don't record statistics for this, our First Contact Team have informally observed a correlation between people complaining about unaffordable gambling and people who can demonstrate extended periods of continuous gambling, particularly at night.

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

Products for time spent gambling:

This is possibly better answered by those with lived experience, but our informal observations might include any account holders:

- i) playing the same casino game for a period in excess of two hours (triggers interaction)
- ii) playing the same casino game for a period in excess of four hours (triggers intervention)
- iii) frequently interspersing sports betting with casino or virtual sports products during gambling sessions
- iv) frequent account activity late at night and/or into the early hours of the morning

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?

Preventing marketing and bonus offers:

IBAS's experience of bonus offers has been largely negative.

Based on consumer testimony it is clear that in some cases they contribute towards unaffordable gambling. In almost all cases they require levels of gambling that would be considered untypical in order to unlock any cash value from the offer. The CMA observed that to some extent, bonus offers may conflict with the requirements of LCCP to avoid linking prizes to mandatory, extended periods of gambling.

There is sound logic to introducing measures to stop marketing of bonus offers to customers displaying indicators of harm, and to prevent such customers taking them up.

By their very nature bonuses/ promotions encourage gambling on products or events that the consumer might not have otherwise chosen to pursue. We recognise that for the majority of consumers this will present no difficulties and that for many, bonus offers will be a welcome addition to their remote gambling experience.

However, bonus requirements, frequently require levels of gambling that are often excessive in order to unlock any cash value in that offer. This can only be detrimental to an at-risk gambler and where new account 'welcome' bonuses are concerned the business will have very little KYC data before encouraging their new customer to enter a potentially irresponsible pattern of gameplay.

We agree that if consumers are identified as being at risk of harm they should not be encouraged to gamble further until that risk has been addressed. We have already shared evidence with the Commission of links between consumer submissions which mentioned both unaffordable gambling and bonus offers.

We further believe that the very principle of permitting bonus offers which offer 'free credit' in return for undertaking a certain amount of gambling should be subject to additional, careful regulatory scrutiny.

It would be interesting to explore whether - if welcome bonuses were prohibited - businesses might be able to redeploy some of the substantial resources involved in policing 'bonus abuse' to more positive types of customer interaction.

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.

Marketing - unfair to prevent:

Consumers should always be treated fairly, but our Adjudication Panel have on occasions concluded that awarding a vulnerable consumer e.g. a 'cashback' sum based on gambling losses counterintuitive when there is clear evidence that the individual has complained about having been allowed to gamble unaffordable sums.

The key, as ever, is to make the terms of offers – including those relating to vulnerable customers – clear and accessible, so that consumers have the opportunity to understand the bases on which they might be denied access to certain offers in certain circumstances.

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?

Unintended consequences:

We believe that the views of consumers and businesses are more important here.

We receive a small number of complaints each year from individuals who are concerned that gambling related searches have featured on credit reports and ask whether anything can be done about the potential negative impact of such searches on future applications for credit.

30 How could these unintended consequences be mitigated most effectively?

Mitigating unintended consequences:

See above.

How to measure impact of the changes

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

Measuring impact:

IBAS would be willing to share consumer complaints data from identified periods before and after changes were implemented to measure their effect on complaint volumes relating to (among others):

- Allegations of irresponsible business practice/permitting unaffordable gambling
- Interruption/disruption of gambling caused by mandatory consumer interactions
- Bonus offers

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

Regulatory data:

See above.

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?

Equalities impacts:

We have no observations.

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?

Impact on businesses:

Not applicable to IBAS.

Consultation and Call for Evidence – Next Steps

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

Next steps:

We support the Commission's planned next steps.

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

Other comments:

We recognise that there is scope for concern for businesses and some consumers about the implications of what this consultation addresses.

We believe that affordability checks – applied strategically – can help reduce the impact and extent of gambling harms.

We also believe there is scope for them to increase the number of complaints, e.g. where consumers argue that the assessments interfere unreasonably with their freedom to use their own money to gamble.

IBAS would be willing to participate in any planning process involving the implementation of affordability assessments to see whether potential causes of complaint could be avoided without compromising the core intention of those checks.

Additional information and/or evidence

37 If you have any additional information and/or evidence that will support your response, then please do so here.

File upload:

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