

**Changes to licence conditions and codes  
of practice linked to the fair and open  
licensing objective**

**Consultation response**

**August 2018**

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# 1 Executive summary

1.1 We exist to safeguard consumers and the wider public by ensuring that gambling is fair and safe. We are focusing on a number of priorities to achieve this as set out in our [Strategy 2018-21](#) to:

- Protect the interests of consumers
- Raise standards in the gambling market
- Improve the way we regulate

1.2 We have considered all the responses to our [consultation](#) on changes to the Licence conditions and codes of practice (LCCP). We have taken the decision to strengthen requirements on licensees in key areas, in order to ensure gambling is fair and open for consumers. The changes will clarify the outcomes licensees must deliver for consumers, and provide a firmer basis for us to tackle those licensees who fail to deliver them.

1.3 The changes to the LCCP relate to marketing and advertising, unfair terms and the handling of customer complaints and disputes and can be summarised as follows:

## Marketing and advertising

Working with partners like the Advertising Standards Authority (ASA) and the Committees of Advertising Practice (CAP) we will make sure that marketing communications for gambling are fair, do not mislead, and are not targeted at vulnerable people. To achieve this we are introducing changes so that:

- Licensees adhere to UK Advertising Codes
- Requirements about misleading advertising are clear
- Consumers do not receive 'spam' marketing by email or SMS
- Licensees are responsible for the actions of third party parties, including marketing affiliates

## Unfair terms and practices

We will continue to work with the Competition and Markets Authority (CMA) to tackle concerns about unfair terms and misleading practices within the gambling industry. We are introducing changes to LCCP that make it easier to take action where a licensee is not following the rules covering:

- Consumer notices
- Changes to customer contracts
- Unfair commercial practices at any stage of a customer relationship

## Complaints and disputes

Licensees should handle complaints in a fair, open, timely, transparent and effective manner. We will make changes to LCCP to make this outcome clearer to licensees.

We will also provide guidance to assist licensees in handling customer complaints. This will include guidance on:

- Defining complaints and disputes
- Complaint handling procedures
- Receiving complaints from different sources
- Time limits for complaint handling and escalation
- Customer information standards
- Reporting requirements

- 1.4** We received an unprecedented level of consumer interest in our consultation with widespread support for the proposals. In addition to the specific issues covered by the consultation we received a number of responses concerning the restricting or closing of gambling accounts for commercial purposes.
- 1.5** In the absence of new legal or regulatory requirements, we consider the steps taken by some licensees to adopt minimum bet guarantees on a voluntary basis to be a sensible approach. Such initiatives, where implemented in good faith, indicate a willingness to listen to and act on consumers' concerns. We will continue to facilitate engagement between operators and consumer groups. And we will consider how we can factor such developments into our wider work on ensuring consumers are able to differentiate between operators on the basis of customer care and values.
- 1.6** We also used the consultation to flag that not all written information that licensees provide to consumers is easy to understand. This is particularly true of the terms and conditions provided on gambling websites, which often form the basis of complaints, disputes or consumer dissatisfaction. We welcome the feedback received and will consider this issue further to see what more can be done to make consumer material easier to read. In the meantime we continue to urge licensees to consider what more they can do in this area. Progress here should lead to a decrease in complaints and increase in consumer satisfaction.
- 1.7** Strengthening regulations alone does not guarantee the outcomes we seek. That is why these changes should be viewed as one part of a much wider programme of work in which regulators, industry and consumer groups work together to deliver a fairer and more trusted gambling market.

## 2 Introduction

- 2.1** In 2017, we published *Making gambling fairer and safer gambling*, our three-year strategy showing how we will work with our partners to deliver a gambling market that works better for consumers. Our vision is for a market where consumers are:
- Empowered to make informed choices about gambling
  - Fully informed of, and able to make use of, their rights
  - Free to enjoy gambling and to feel confident that they will be treated fairly
  - Aware of the risks, and clear about when and how to seek help or redress
  - Able to differentiate, and choose between operators in a competitive market on the basis of customer care and values.
- 2.2** To start to deliver our vision, in January 2018 we launched a twelve week consultation on proposed changes to LCCP linked to the fair and open licensing objective. The three main themes of the consultation were that gambling businesses should offer fair choices to consumers, ensure that consumers have access to swift, fair and effective dispute resolution, and to minimise the risk of gambling-related harm from advertising.
- 2.3** The consultation was based on a range of indicators of the need for action. These included consumer feedback and survey results showing declining trust in gambling, themes arising from our regulatory casework, data routinely collected by the Commission, ASA and ICO, and the findings of the CMA investigation into the gambling industry.
- 2.4** The consultation attracted 130 formal responses including an unprecedented 81 responses from consumers. We welcome this direct engagement from consumers and consumer groups and will continue to explore opportunities to strengthen the voice of consumers as part of our work.
- 2.5** We have provided a list of the non-confidential respondents to the consultation in appendix 2. We received written responses from the following categories of respondents:
- Licensed operator – 21
  - Regulator - 4
  - Trade association – 9
  - Licensing authority – 2
  - Alternative dispute resolution provider - 2
  - Consumer or consumer group – 87
  - Others - 5
- 2.6** As well as considering the views provided by respondents, our response builds on our review of complaints processes in the gambling industry published in March 2017 and also the *Resolving Consumer Complaints* report published in April 2018 by the Department of Business, Energy and Industrial Strategy.
- 2.7** Throughout the consultation period we have continued to engage with the CMA, ICO and ASA to ensure we each strike an appropriate balance between achieving common objectives, having due regard for our respective roles and responsibilities. We have also engaged with alternative dispute resolution providers (ADRs) as well as continuing to draw on ad-hoc feedback and experiences that consumers share with Commission staff daily via our contact centre.
- 2.8** This response to the consultation represents the next step in our work to deliver a fairer gambling market by confirming our intention to introduce measures which strengthen the rules on advertising, unfair terms and practices, and complaints and disputes.
- 2.9** As well as raising standards by setting minimum requirements, we will continue to support industry to put consumers first. We will do this by providing guidance and by helping to share best practice from within the gambling industry or from other sectors.

- 2.10** The outcome of our consultation is also linked to the Government's response to their wider review of *Gaming Machines and Social Responsibility Measures* within the gambling industry, in particular in addressing the concerns around gambling advertising.

**Next steps**

- 2.11** Having confirmed the outcome of the consultation we will be notifying those licensees impacted by any of the changes. **The changes to LCCP will take effect from 31 October 2018.**

## 3 Marketing and advertising

- **We will continue to work with partners to make sure that marketing communications for gambling are fair, do not mislead, and are not targeted at vulnerable people**
- **We will be introducing changes so that:**
  - **licensees adhere to UK Advertising Codes**
  - **requirements about misleading advertising are clear**
  - **consumers do not receive ‘spam’ marketing by email or SMS**
  - **licensees are responsible for the actions of third parties, including marketing affiliates.**

### Consultation proposal: Compliance with the UK Advertising Codes

- 3.1** We consulted on elevating compliance with the UK Advertising Codes (the Codes) from an Ordinary code provision<sup>1</sup> (which sets an expectation around good practice) to a new Social responsibility code provision (which sets a requirement). This would mean that licensees that breached any aspect of the Codes in future could be subject to the full range of our regulatory powers, including financial penalties. The proposal would have the effect of retaining the existing element of LCCP OC 5.1.6, which refers to licensees following relevant industry codes of practice, in a new standalone Ordinary code provision.
- 3.2** We considered that this proposal would reinforce the importance of the Codes and help raise standards in gambling advertising. We also asked if there were particular aspects of the Codes which would benefit from additional advice or guidance.

### Respondents’ views

- 3.3** Respondents to this proposal included licence holders, consumers, consumer groups, trade bodies, and regulators.
- 3.4** A significant majority of respondents, including the ASA, agreed with the proposal, with overwhelming support from consumers.
- 3.5** Some respondents expressed queries or reservations about the proposal, most of which related to risks associated with regulatory overlap and/or “double jeopardy”. Some licensees queried the appropriateness of the Commission using its regulatory powers to enforce parts of a non-statutory and inherently self-regulatory system. Others expressed concern about the potential unfairness of penalising licensees who have taken all reasonable measures to comply with a set of subjective rules. It was also suggested that the process by which the Commission and the ASA would determine breaches was not sufficiently clear.
- 3.6** A number of respondents suggested that additional advice or guidance would be helpful. Suggested areas of focus included ‘particular appeal to children’, the use of the term ‘free’, the practice of licensees not honouring advertised prices, and the proximity of gambling advertising to ‘vulnerable sites’ such as schools. One respondent requested that all relevant advice or guidance should be easily accessible, in a single location. There was also a general call for more training and awareness sessions. One respondent suggested gambling-specific ASA/CAP Advice sessions.

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<sup>1</sup> Presently reflected in LCCP OC 5.1.6 and OC 5.1.9.

## Our position

- 3.7** We have carefully considered the responses and intend to proceed with the proposal to elevate compliance with the Codes from an Ordinary code provision to a Social responsibility code provision, while retaining an Ordinary code provision relating to relevant industry codes of practice. We welcome the widespread support for the proposal.
- 3.8** We note some respondents' concerns about the risks associated with regulatory overlap, particularly when dealing with rules that can be subjective. We are clear that the ASA is, and will remain, the responsible lead regulator for enforcing the Codes and the principal body towards which consumers should direct complaints about gambling advertising standards. We will continue to work closely with ASA/CAP to ensure, as we have done on matters of misleading advertising, a consistent approach towards compliance and enforcement is achieved.
- 3.9** Our 'Statement of principles for licensing and regulation' and 'Licensing, compliance and enforcement under the Gambling Act 2005: policy statement' commits us to continue to regulate in accordance with risk and likely impact on the licensing objectives. We have a range of regulatory tools at our disposal which allow for a proportionate response to breaches of LCCP. This includes taking account of steps taken by licensees to ensure compliance with the Codes.
- 3.10** We have worked very closely with ASA/CAP over the past 12 months to deliver key messages and guidance to industry. This has included new CAP guidance on:
- responsible advertising, with a focus on mitigating potential harms associated with gambling
  - adverts of particular appeal to under-18s
  - the marketing of free bets and bonus offers
  - affiliate advertising
- 3.11** ASA/CAP will be providing further guidance on protecting children and young people later this year. We will explore with ASA/CAP the potential for additional, easy to access, guidance and training.

## New LCCP provisions (From 31 October 2018)

### **Social responsibility code provision 5.1.6**

#### **Compliance with advertising codes**

#### **All licences, except lottery licences**

1. All marketing of gambling products and services must be undertaken in a socially responsible manner.
2. In particular, Licensees must comply with the advertising codes of practice issued by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) as applicable. For media not explicitly covered, licensees should have regard to the principles included in these codes of practice as if they were explicitly covered.
3. The restriction on allowing people who are, or seem to be, under 25 years old (ie: those in the 18-24 age bracket) to appear in marketing communications need not be applied in the case of non-remote point of sale advertising material, provided that the images used depict the sporting or other activity that may be gambled on and not the activity of gambling itself and do not breach any other aspect of the advertising codes.

**Ordinary code provision 5.1.8**  
**Compliance with industry advertising codes**  
**All licences**

1. Licensees should follow any relevant industry code of practice on advertising, notably the Gambling Industry Code for Socially Responsible Advertising.

**Social responsibility code provision 5.1.7**  
**Compliance with advertising codes (lotteries)**  
**All lottery licences**

1. All marketing of gambling products and services must be undertaken in a socially responsible manner.
2. In particular, licensees must comply with the advertising codes of practice issued by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) as applicable. For media not explicitly covered, licensees should have regard to the principles included in these codes of practice as if they were explicitly covered.

**Consultation proposal: Marketing of offers**

- 3.12** We consulted on re-drafting existing Social responsibility code provision 5.1.7 (Marketing of offers) to make it more understandable, with a view to securing improved compliance outcomes. The proposal did not seek to change the purpose of the provision (to ensure that the marketing of offers is transparent and doesn't mislead).

**Respondents' views**

- 3.13** Respondents to this proposal included licence holders, consumers, consumer groups, trade bodies and regulators.
- 3.14** A significant majority of respondents, including the Competition & Markets Authority (CMA), agreed with the proposal.
- 3.15** Some industry and trade body respondents queried whether the proposed change of wording in 5.1.7.1 from 'satisfy themselves' to 'ensure' creates a requirement that cannot, in legal terms, be met. Those respondents requested that we make qualification criteria and/or guidance available if we proceed with the proposal.
- 3.16** Some respondents queried what is meant by "except...limitations of space make this impossible" in 5.1.7.2 and requested specific guidance and/or a list of circumstances where it could apply. One operator queried whether this drafting was consistent with the respective positions of the CMA and ASA/CAP.
- 3.17** A few respondents also asked for clarity on what constitutes a 'significant condition or term'.

## Our position

- 3.18** We have carefully considered the responses and intend to proceed with the proposal to re-draft Social responsibility code 5.1.7. We are pleased with the widespread support for the proposal.
- 3.19** While we note concerns about the inclusion of the word 'ensure' we think it is appropriate and necessary. Interaction with licensees has indicated that many of them have satisfied themselves that they are compliant by looking at practices within the rest of the industry rather than making efforts to fully understand and apply consumer law to their own business. A requirement solely for a licensee to "satisfy themselves" that they are compliant does not go far enough to achieve the outcome that consumers are not misled. Our approach to licensing, compliance and enforcement means we take into account what steps a licensee has taken to ensure compliance when deciding what action (if any) to take. Where enforcement action is taken, licensees are able to make representations and have the right of appeal.
- 3.20** We are confident that 5.1.7.2 reflects the outcome of the recent [CMA enforcement activity](#) and new [CAP guidance](#). We expect licensees to use creative opportunities to ensure consumers have the information they need to make an informed decision about an offer. It is difficult to envisage circumstances in which unavoidable limitations of space are such that licensees cannot include significant terms in their offers. If in doubt, we encourage licensees to seek advice from the [CAP Copy Advice service](#).
- 3.21** A significant condition is one that is likely to affect a consumer's understanding of a promotion and which might affect whether they take advantage of it. It isn't possible to provide a definitive list of significant conditions because this will depend on the nature of an individual offer. However, they will typically include, but not be limited to, restricted odds, limited eligibility criteria and any deposit, wagering or withdrawal requirements.

## New LCCP provisions (From 31 October 2018)

### Social responsibility code provision 5.1.9

#### Other marketing requirements

##### All licences

1. Licensees must ensure that their marketing communications, advertisements, and invitations to purchase (within the meaning of the Consumer Protection from Unfair Trading Regulations 2008) do not amount to or involve misleading actions or misleading omissions within the meaning of those Regulations.
2. Licensees must ensure that all significant conditions which apply to marketing incentives are provided transparently and prominently to consumers. Licensees must present the significant conditions at the point of sale for any promotion, and on any advertising in any medium for that marketing incentive except where, in relation to the latter, limitations of space make this impossible. In such a case, information about the significant conditions must be included to the extent that it is possible to do so, the advertising must clearly indicate that significant conditions apply and where the advertisement is online, the significant conditions must be displayed in full no further than one click away.
3. The terms and conditions of each marketing incentive must be made available for the full duration of the promotion.

## Consultation proposal: [Direct] Electronic marketing consent

**3.22** We consulted on introducing a new Social responsibility code provision to ensure that licensees do not send direct electronic marketing without the specific, informed and withdrawable consent of the recipient. The proposed requirement reflects the relevant requirements of the Privacy & Electronic Communication Regulations (PECR), which are enforced by the ICO. We also invited views on the desirability of broadening the proposed provision to capture all forms of direct marketing.

### Respondents' views

- 3.23** Respondents to this proposal included licence holders, consumers, consumer groups, trade bodies and regulators. A sizeable majority of respondents, including the ICO, agreed with the proposal.
- 3.24** Some industry and trade body respondents cited the risks of regulatory overlap and double jeopardy, arguing that licensees are already subject to PECR and General Data Protection Regulations (GDPR) which the ICO enforces.
- 3.25** A few respondents, while supporting the proposal, raised concerns that the proposed wording of the new provision (which infers the *immediate* cessation of direct electronic marketing) is not reasonable or practically achievable. One licensee suggested that the provision should have clearly defined terms relating to direct electronic marketing which reflect relevant legislation.
- 3.26** One respondent argued that direct electronic marketing is mostly relevant to the remote sector and the proposal should therefore apply to remote licensees only. Another respondent requested assurances that the proposal would not capture 'service messages' so that customers can be contacted regarding their accounts.
- 3.27** One respondent queried whether the withdrawal of consent relates to the licensee and/or the third party in cases where direct electronic marketing is sent by third parties (eg affiliates).
- 3.28** One respondent commented that the proposed provision makes no mention of a consumer's ability to 'opt back in' to remote communications after consent has been withdrawn.
- 3.29** Views on extending the proposed provision to apply to all forms of direct marketing (eg direct postal mail) were mixed. More respondents felt that it was not appropriate or necessary compared to those who did. General objections focused on there being little evidence of a problem, regulatory overlap, and a lack of clarity in the consultation around what is meant by 'all forms of direct marketing'.

### Our position

- 3.30** We have carefully considered the consultation responses and intend to proceed with the proposal to introduce a new Social responsibility code provision to ensure that licensees do not send direct electronic marketing without the specific, informed and withdrawable consent of the recipient. We do, however, intend to make some changes to the wording of the provision to reflect some of the consultation feedback.
- 3.31** We note some respondents' concerns about the risks of regulatory overlap. But, for the reasons set out in the consultation document, we believe that it is a desirable and necessary step, which will help protect consumers. We welcome the ICO's support for the proposal and will continue to work closely with them to ensure a joined-up and consistent approach to compliance and enforcement.

- 3.32** We acknowledge that there may be some circumstances in which the *immediate* cessation of direct electronic marketing may not be possible and have amended the provision to reflect this. We consider ‘as soon as practicable’ in this context to be a reasonable acknowledgement of the concerns expressed. We would still expect to see operators take all necessary steps with a sense of urgency, which means hours or days, not weeks.
- 3.33** The GDPR do not define ‘direct marketing’ but Section 122(5) of the Data Protection Act 2018 defines it as, “...the communication (by whatever means) of advertising or marketing material which is directed to particular individuals.” This definition also extends to PECR. The wording of our new provision is intended to reflect existing and emerging legislation (most notably, PECR) which is concerned with direct *electronic* marketing, such as that by telephone, e-mail and text. We have amended the title of the provision to reflect this.
- 3.34** While the majority of direct electronic marketing communications for gambling are issued by or on behalf of remote operators, that is not always the case. For that reason, the new code provision will apply, as intended, to all licences.
- 3.35** The proposed provision is concerned with direct electronic marketing communications and isn’t intended to capture service messages associated with an individual’s account.
- 3.36** The question as to whether the withdrawal of consent relates to the licensee or affiliate will depend on the nature of the contractual arrangement between the parties and the circumstances of the individual case. In some circumstances the withdrawal of consent could apply to both. Licensees should have regard to the ICO’s updated guidance on [Direct Marketing](#).
- 3.37** Although implicit, we acknowledge that the drafting of the provision didn’t explicitly recognise consumers’ ability to opt back in after consent has been withdrawn. We have amended the provision accordingly.
- 3.38** We have considered consultation feedback and, for some of the reasons outlined, including a lack of evidence of a problem, we have decided not to broaden the provision to capture non-electronic forms of direct marketing. We might review this position in the future.

**New LCCP provisions (From 31 October 2018)** – Changes to the consultation proposal shown in red

#### **Social Responsibility code provision 5.1.11**

##### **Direct electronic marketing consent**

##### **All licences**

1. Unless expressly permitted by law consumers must not be contacted with direct electronic marketing without their informed and specific consent. Whenever a consumer is contacted the consumer must be provided with an opportunity to withdraw consent. If consent is withdrawn **the licensee must, as soon as practicable, ensure** the consumer is not contacted with electronic marketing thereafter **unless the consumer consents again**. Licensees must be able to provide evidence which establishes that consent.

## Consultation proposal: Responsibility for third parties

**3.39** We consulted on changes to Social responsibility code provisions 1.1.2 (Responsibility for third parties – all licences) and 1.1.3 (Responsibility for all parties – remote). The proposed re-wording sought to clarify our position and reduce some duplication of existing requirements.

### Respondents' views

- 3.40** Respondents to this proposal included licence holders, consumers, consumer groups, trade bodies and a regulator. There was very strong and widespread support for this proposal.
- 3.41** A couple of respondents suggested that we ought to license and/or accredit affiliates and some thought that additional guidance would be helpful.
- 3.42** A licensee respondent noted that there could still be scenarios where the actions of an unauthorised third party could lead to what appears to be a breach of this provision by a responsible operator eg the unauthorised misuse of brands and trademarks.
- 3.43** One licensee argued that certain defences should be available to operators, particularly where a breach has been caused by a third party affiliate and the operator has taken all reasonable steps to ensure compliance.

### Our position

- 3.44** We have carefully considered the responses and intend to proceed with the proposed changes to social responsibility code provisions 1.1.2 and 1.1.3.
- 3.45** We consider that this provision and its interaction with other licensing requirements sets out a clear and robust means of addressing failings which arise from licensees' arrangements with third parties, including marketing affiliates. We therefore have no plans to introduce a licensing regime for marketing affiliates. We encourage licensees and the affiliate industry to continue working together to raise standards.
- 3.46** We will explore with partners, including ASA/CAP, options for new or additional guidance.
- 3.47** As set out in our 'Statement of principles for licensing and regulation' and 'Licensing, compliance and enforcement under the Gambling Act 2005: policy statement', we will continue to regulate in accordance with risk and likely impact on the licensing objectives. We have a range of regulatory tools at our disposal which allows for a proportionate response to breaches of LCCP. This includes taking account of steps licensees have taken to ensure third party compliance with relevant requirements.

## New LCCP provisions (From 31 October 2018)

### **Social responsibility code provision 1.1.2 Responsibility for third parties – all licences All licences**

1. Licensees are responsible for the actions of third parties with whom they contract for the provision of any aspect of the licensee's business related to the licensed activities.

2. Licensees must ensure that the terms on which they contract with such third parties:
  - a require the third party to conduct themselves in so far as they carry out activities on behalf of the licensee as if they were bound by the same licence conditions and subject to the same codes of practice as the licensee
  - b oblige the third party to provide such information to the licensee as they may reasonably require in order to enable the licensee to comply with their information reporting and other obligations to the Commission
  - c enable the licensee, subject to compliance with any dispute resolution provisions of such contract, to terminate the third party's contract promptly if, in the licensee's reasonable opinion, the third party is in breach of contract (including in particular terms included pursuant to this code provision) or has otherwise acted in a manner which is inconsistent with the licensing objectives, including for affiliates where they have breached a relevant advertising code of practice.

**Social responsibility code provision 1.1.3**  
**Responsibility for third parties - remote**  
**Remote licences**

1. Remote licensees must ensure in particular:
  - a that third parties who provide user interfaces enabling customers to access their remote gambling facilities:
  - b include a term that any such user interface complies with the Commission's technical standards for remote gambling systems; and
  - c enable them, subject to compliance with any dispute resolution provisions of such contract, to terminate the third party's contract promptly if, in the licensee's reasonable opinion, the third party is in breach of that term.

## 4 Unfair terms and practices

- We will continue to work with the CMA to tackle concerns around unfair terms and misleading practices in the gambling industry.
- We are introducing changes that make it easier to take action where a licensee is not following the rules covering:
  - Consumer notices
  - Changes to customer contracts
  - Unfair commercial practices at any stage of a customer relationship.

### Consultation proposal: Inclusion of consumer notices

- 4.1** We consulted on amendments to licence condition 7.1.1 (1) to include consumer notices and on wording to clarify that we expect licensees to ensure they comply with the Consumer Rights Act 2015 (the CRA) and not just satisfy themselves that they have done so.

### Respondents' views

- 4.2** Respondents to this proposal included licence holders, consumer groups, trade bodies, and regulators. We also received several helpful responses from consumers who shared direct experiences of unfair and misleading treatment when gambling online.
- 4.3** A significant majority of respondents, including the CMA, agreed with the proposed inclusion of consumer notices. They thought this was a logical step because it highlights that existing CRA requirements do not just apply to terms and conditions, but to any form of communications with customers. To clarify, all forms of communications are covered only to the extent that they relate to the parties' rights or obligations, or otherwise exclude or restrict the operator's liability to the consumer. Some respondents suggested that, for the purposes of clarity, we provide examples of a 'consumer notice' within the condition.
- 4.4** One operator and one trade body representative raised concerns with the proposed change of wording in 7.1.1 (1) from 'satisfy themselves' to 'ensure' that terms are not unfair within the meaning of the CRA. They argued that it creates a requirement that licensees cannot meet in legal terms because there are subjective elements to a decision about whether a term is unfair, and this would ultimately be decided in the courts.

### Our position

- 4.5** The Consumer Rights Act 2015 (the CRA) applies to terms in contracts between licensees and consumers, and also expressly covers consumer notices, which licensees can use in connection with transactions. The inclusion of consumer notices in the CRA means they are treated in much the same way as contract terms and must also be fair and transparent.
- 4.6** We are pleased that most respondents agreed with the inclusion of consumer notices. We do not consider it necessary to include examples of consumer notices within the licence condition. As explained in the consultation document, a consumer notice is any notice that relates to the rights and obligations between a licensee and a consumer. It includes announcements or other communication, whether or not in writing, and whether or not expressed to apply to a consumer, as long as it is reasonable to assume that it is intended to be seen or heard by one. Some examples of notices are Frequently Asked Question on websites, information in promotional material, or signs in gambling premises.

**4.7** While we note concerns about the inclusion of the word ‘ensure’ we believe it is appropriate and necessary. Interaction with licensees has indicated that many of them have satisfied themselves of compliance by looking at practices within the rest of the industry rather than making efforts to fully understand and apply consumer law to their own business. A requirement solely for a licensee to “satisfy themselves” that they are compliant does not go far enough to achieve the outcome that consumers are treated fairly. The drafting change aims to make it clearer that licensees have a direct responsibility to comply with consumer law. That said, our approach to licensing, compliance and enforcement takes account of the steps a licensee has taken to ensure compliance when deciding what action (if any) to take. Where we take enforcement action, licensees are able to make representations and have the right of appeal. Therefore, we will proceed with the wording of the licence condition.

### **Consultation proposal: Transparent terms**

- 4.8** We consulted on minor changes to the wording of licence condition 7.1.1 (2) to ensure contractual terms and notices are transparent within the meaning of the CRA and terms are made available to consumers.
- 4.9** We also proposed an addition to 7.1.1 (3) requiring licensees to ensure that any changes to contract terms are also not unfair.

### **Respondents’ views**

- 4.10** One trade body representative sought clarity about expectations for non-remote licensees when requiring that terms must be ‘made available to consumers’ and suggested minimum standards of accessibility would be helpful.
- 4.11** Another trade body suggested that the Commission develop a standard template that licensees could modify to suit their business to help set minimum standards within the industry.
- 4.12** One regulator noted that, particularly in the online sector, consumer rights and obligations can be contained in various places within the operators’ websites (for example, there can be additional requirements set out in FAQ materials). So that consumers are fully aware of their rights and obligations when they choose to gamble online, all terms should be presented together, clearly signposted and easily accessible. Another suggestion was made to further amend 7.1.1 (3) to make clear that terms allowing variation of terms are only legally valid to the extent they meet the CRA requirements of fairness and transparency.

### **Our position**

- 4.13** We note the suggestions and will consider options to raise standards further in the industry to ensure that terms and conditions are transparent, easy to navigate, and accessible to customers, both within the remote and non-remote sector.
- 4.14** We expect operators to present relevant information in one place, and to be consistent across all terms, notices, and materials for consumers. We intend to proceed with the proposed changes to licence condition 7.1.1 (2). Given the feedback received, we will also include additional wording to clarify our expectations that all terms must be made available to consumers ‘in an easily accessible way’. The licence condition is applicable to both remote and non-remote licensees. We recognise that, in some circumstances, particularly in the non-remote environment, it would be more challenging to present terms and notices in one place. We will consider providing sector specific advice so that consumers are fully aware of their rights that apply when gambling.

**4.15** We take on board the suggestion in relation to part (3) to ensure any variations to contract terms also comply with consumer law. This would include the need to have a fair and transparent clause that allows for variations. Therefore, we have added wording to help clarify that variations ‘comply with the fairness and transparency requirements under the Consumer Rights Act 2015’.

### **Consultation proposal**

- 4.16** The Consumer Protection from Unfair Trading Regulations 2008 (the CPRs) require businesses to trade fairly. They provide consumers with a range of protections from unfair commercial practices that could distort their ability to make purchasing decisions. This legislation applies alongside the CRA, and together they provide protections to consumers at all stages of their dealing with businesses.
- 4.17** Currently, social responsibility code provision 5.1.7 (Marketing of offers) requires licensees to ensure that their marketing is not misleading within the meaning of the CPRs. This provision covers the beginning of the customer journey. However, we expect licensees to comply with the CPRs at all stages of their dealings with consumers to ensure they are treated fairly. Consequently, we sought views on including such requirements in the licence condition.
- 4.18** We continue to work with the CMA to tackle shared concerns on unfair terms and practices specifically in the remote gambling sector, and to ensure licensees comply with consumer protection legislation more broadly. Early this year, the CMA [published](#) the outcomes of its enforcement action against several remote licensees for suspected breaches of consumer protection laws in relation to their gaming promotion and some aspects of free bet offers. We support the findings of the CMA, and expect all licensees to review their own terms and practices and implement any changes required to ensure compliance with consumer protection law and relevant licence conditions.

### **Respondents’ views**

- 4.19** There was support across all groups for the proposed addition to the licence condition. Most agreed that the addition was necessary to protect customers.
- 4.20** Some industry respondents cautioned against paraphrasing existing legislation and called for more detailed licence conditions and social responsibility codes to highlight the standards we would expect operators to adhere to. Some respondents considered that advice would be more helpful so that licensees could better understand how to comply with the requirements. One respondent requested that all relevant advice or guidance should be easily accessible.
- 4.21** One trade body representative and one operator raised concerns about the requirement for licensees to ‘ensure’ compliance with the CPRs, particularly where some elements could be subjective.

### **Our position**

- 4.22** We note the support for the proposed requirement for licensees to ensure customers are treated fairly at all stages. We also note comments received in relation to the wording, particularly the requirement that licensees ‘must ensure’ compliance.

- 4.23** Given the widespread support for this provision, and the reasons given above for licensees to 'ensure' compliance, we intend to proceed with the proposal.
- 4.24** We note the call for guidance on how to comply with the rules and ensure consumers are treated fairly. The CMA and the Commission have published material setting out some of the terms and practices that remote licensees need to avoid to comply with consumer protection law and meet licence obligations. We are testing whether licensees have made changes. What we learn from that process will inform our future guidance.
- 4.25** The CMA continues to tackle concerns in the remote sector. In March 2018, it launched further enforcement action against a number of remote licensees in respect of practices that place unacceptable obstacles in the way of people withdrawing their money (whether as part of a promotion or not). The outcomes of this action will set out principles that the industry must adopt to demonstrate compliance with the licence condition. We plan to publish guidance once the CMA has completed its action in the sector. In the meantime, we will consider how to signpost all relevant published material to make it easier for operators to locate. We will also continue to engage with trade associations where appropriate.

### **Consultation question – What more can be done about unfair or misleading terms and practices?**

- 4.26** Over the past few years, we have acted, along with our regulatory partners, to ensure that contract terms and practices are fair and open. We sought views on what more could be done to ensure licensees' terms and practices are not unfair and do not mislead. We expect this to inform further areas of work.

### **Respondents' views**

- 4.26** We received a variety of responses from consumers that ranged from examples of their experience with remote licensees to terms and practices that may be unfair or misleading. The examples of potentially unfair terms and practices provided by consumers included:
- restrictions placed on winning customers
  - closure of accounts
  - terms/practices that restrict or delay withdrawals
  - terms that allow licensees to confiscate funds or charge for dormant gambling accounts.
- 4.27** Several industry respondents suggested the need for further advice with examples of good practice to assist the industry in complying with consumer law and regulatory obligations. Some suggested that the Commission build on existing published information by providing webinars, briefing sessions, and regular bulletins, so that any learnings can be shared with the industry more quickly. One trade body also offered assistance to share information and to develop guidelines that would help licensees in the remote industry to apply consistent and compliant approaches towards their terms and conditions.
- 4.28** One ADR provider commented that the Remote gambling and software technical standards (RTS) should be changed to tackle practices that are commonly raised in disputes to tackle instances where customers are treated unfairly. For example, this might include a requirement for betting licensees to employ software that alerts customers where bets placed have the potential to breach maximum pay-out limits.
- 4.29** One regulator suggested that licensees should be reminded that it is their responsibility to ensure their terms and practices comply with consumer protection law. Consumers should also be reminded of their rights to act where they have been unfairly treated or misled by a licensee.

## Our position

- 4.30** We welcome the feedback provided by respondents and suggestions on how to communicate with the industry.
- 4.31** Our website currently includes a dedicated section on all relevant information and advice published by the CMA and the Commission and sets out what licensees need to do to ensure compliance. This includes a suite of documents created by the CMA for licensees and a video for consumers on what to look out for when taking up gambling promotions. We will work closely with relevant stakeholders, including trade bodies, to explore how to provide information in a clear and easily accessible manner.
- 4.32** Once the CMA has completed its enforcement activity we plan to capture any lessons learned in advice documents for the industry and ADR providers. We will also provide information to consumers about their rights.
- 4.33** We note the suggestions for further amendments to the LCCP and RTS to tackle examples of unfair practices. We continue to undertake further work to make gambling for consumers fairer and safer. For example, we have set out key areas of action and further work in the [Review of Online Gambling](#).

**New LCCP provisions (From 31 October 2018)** – Changes to the consultation proposal shown in red

### Licence condition 7.1.1

#### Fair and transparent terms and practices

#### All operating licences except gaming machine technical and gambling software licences

- 1 Licensees must ensure that the terms on which gambling is offered, and any consumer notices relating to gambling activity, are not unfair within the meaning of the Consumer Rights Act 2015. Licensees must comply with those terms.
- 2 The contractual terms on which gambling is offered and any consumer notices relating to gambling activity must be transparent within the meaning of the Consumer Rights Act 2015. The contractual terms on which gambling is offered must be made available to **customers in an easily accessible way**.
- 3 Licensees must ensure that changes to customer **contract terms comply with the fairness and transparency requirements under the Consumer Rights Act 2015**. Customers must be notified of material changes to terms before they come into effect.
- 4 Licensees must ensure that they do not commit any unfair commercial practices within the meaning of the Consumer Protection from Unfair Trading Regulations 2008, at any stage of their interactions with consumers.

## 5 Consumer complaints

- We are making changes to LCCP to ensure licensees handle complaints in a fair, open, timely, transparent and effective manner.
- We will provide guidance to licensees to assist them in handling customer complaints, with some changes to:
  - make clearer the status of the note
  - provide some more information on ‘deadlock letters’
  - make other, minor clarifications.
- We will implement a new framework for alternative dispute resolution providers (ADRs).

### Consultation proposal: Complaints and disputes

- 5.1** We expect licensees to handle complaints in a fair, open and transparent manner. We proposed to amend social responsibility code provision 6.1.1 to reflect this position.
- 5.2** The proposed changes included:
- ensuring consumers can access information about how to complain by confirming that complaints policies and processes must be clear, fair, open, transparent and accessible
  - introducing an eight-week time limit for licensees to complete their complaints procedure
  - introducing, as part of our guidance, the use of deadlock letters to consumers for licensees to confirm that they have reached the end of their internal complaints process (or the eight-week limit) and the consumer may now escalate the complaint to an ADR provider
  - removing the definitions of ‘complaints’ and ‘disputes’ and providing a fuller explanation in our guidance to help clarify the complaints an ADR provider may consider
  - clarifying our reporting requirements
  - introducing a requirement to take into account any applicable learning or guidance that we produce
  - moving detail about the licensee’s arrangements with ADR providers, information that the licensee should provide to consumers and information that the licensee should provide to us into the new guidance, to make clearer our focus on the outcome that complaints are handled in a clear, fair, open, transparent, timely way.

### Respondents’ views

- 5.3** Respondents to this proposal included licence holders, trade associations, ADR providers and consumers. Broadly speaking, respondents agreed with the spirit of the proposals, but had some reservations about the application.
- 5.4** We stated in the consultation that we would be undertaking further work to develop our definitions of what is a ‘complaint’ and a ‘dispute’.<sup>2</sup> Some respondents were concerned that our proposed changes to SR code provision 6.1.1 were premature while this work continues. Some respondents expressed concern that the work would result in us delegating decisions on potential breaches of licence conditions to ADR providers.

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<sup>2</sup> In the consultation, we defined a ‘complaint’ as an expression of dissatisfaction about any aspect of the way the licensee conducts the licensed activities, and a ‘dispute’ as a complaint about the customer’s gambling transaction that has not been resolved at the first stage of the licence holder’s complaints procedure

- 5.5** A number of respondents thought that the SR code provision should also explicitly include:
- definitions of a complaint and a dispute
  - a requirement to have a written complaints policy
  - a requirement for licence holders to permit customers to use consumer support tools (such as Resolver.co.uk) to raise complaints
  - time limits for licensees to respond to enquiries from ADR providers.

These areas are all currently contained in the draft guidance.

- 5.6** Some respondents were concerned about the impact of the GDPR on the proposals, particularly where retention periods for information might impact on time limits to raise complaints.
- 5.7** Several respondents expressed concern that by being less specific about reporting requirements in the SR code provision and providing a fuller explanation in our guidance, we were preparing the ground to require additional complaints-related information from licensees.
- 5.8** One respondent noted some licensees are also regulated by the Fundraising Regulator. They asked us to ensure that our requirements are consistent with complaints-handling guidance that the Fundraising Regulator has recently developed.
- 5.9** Although supportive of the principle, respondents called for some flexibility around proposed time limits for complaints handling to take account of consumer-led delays. Several respondents suggested that an option to 'stop the clock' on a complaint when a customer stopped communicating would address this.
- 5.10** Generally, respondents did not think the proposals would be costly to implement. One consumer noted that the cost of a system that was fair was irrelevant.

## **Our position**

- 5.11** We have carefully considered the consultation responses and intend to proceed with the proposal to amend SR code provision 6.1.1, with some changes to allow more flexibility around time limits for complaints handling.
- 5.12** We are pleased that so many respondents were broadly in favour of the principles of our proposals. This confirms to us that both licensees and consumers agree a need for fair, open and transparent complaint handling processes.
- 5.13** We are continuing to develop our work on complaints handling, including in relation to complaints escalated to ADR. Where an ADR provider is unable to consider a complaint, the alternative means of consumer redress is through the courts, which can be a costly and time-consuming process. Our aim in further reviewing the definitions of complaints and disputes is to ensure that ADR providers can consider as many different types of complaints as possible. It is not our intention to make ADR providers responsible for determining whether a licensee has breached the conditions of its licence – this is properly a matter for us and for Licensing Authorities.
- 5.14** Although the work defining complaints and disputes is still developing, we consider that the principles upon which we have consulted, which are about handling complaints fairly and transparently, apply equally to different types of complaints. We therefore do not consider it necessary to delay our proposals until our work on ADR improvements is complete.

- 5.15** We are moving detail out of the SR code provision and into our guidance to focus on the outcome we require licensees to deliver. The amended SR code provision requires licensees, when developing complaints policies and procedures, to take into account any applicable learning or guidance that we publish.<sup>3</sup> We therefore expect licensees to take account of our guidance, a draft of which we shared in the consultation. This means that licensees must consider areas in the guidance that are not made explicit in the SR code provision. Where a licensee decides to depart from our guidance, they should be able to evidence how their alternative approach will nevertheless achieve the required outcomes for the consumer. For this reason, we do not think that it is necessary to prescribe approaches such as written complaints policies in the SR code provision.
- 5.16** We have published an information note on [Gambling Regulation and the General Data Protection Regulation \(GDPR\)](#). The proposals made in the consultation are consistent with the information we provided in this note.
- 5.17** We have made changes to the SR code provision regarding what we expect licensees to report to us, which point licensees to our guidance on complaints handling. The guidance clarifies our reporting requirements but does not otherwise change them. If we propose to change our reporting requirements in the future, we would consult on this in the usual manner.
- 5.18** We have spoken to colleagues at the Fundraising Regulator about our proposals. We are satisfied that our proposals are consistent with guidance on complaints provided by the Fundraising Regulator. The Fundraising Regulator also requires society lotteries (unless exempt) to register with the local authority or obtain a licence from the Commission as appropriate, and to follow criteria laid down by the Commission.<sup>4</sup>
- 5.19** We acknowledge the concerns expressed about delays in handling complaints where the consumer does not respond to requests for information in a timely manner. We agree that it would not be right for such complaints to be escalated to ADR after eight weeks without the licensee having had chance to resolve the complaint. We have therefore made changes to the proposed wording of SR code provision 6.1.1.2 to permit licensees to ‘stop the clock’ during the eight-week period. We have also made changes to our guidance on complaints handling to provide further information on this point.

**New LCCP provisions (From 31 October 2018)** – Changes to the consultation proposal shown in red

#### **Social responsibility code provision 6.1.1**

##### **Complaints and disputes**

##### **All licences (including ancillary remote licences) except gaming machine technical and gambling software licences**

- 1** Licensees must put into effect appropriate policies and procedures for accepting and handling customer complaints and disputes in a timely, fair, open and transparent manner.
- 2** Licensees must ensure that they have arrangements in place for customers to be able to refer any dispute to an ADR entity in a timely manner if not resolved to the customer’s satisfaction by use of their complaints procedure within eight weeks of receiving the complaint, **and where the customer cooperates with the complaints process in a timely manner.**

<sup>3</sup> In the consultation document, new SR Code provision 6.1.1.6 referred to ‘...applicable learning or guidelines...’ We have amended this to ‘...applicable learning or guidance...’ to clarify the strength of the link to guidance on complaints, a draft of which is included in this document.

<sup>4</sup> [Fundraising Regulator Code of Fundraising Practice](#)

- 3 The services of any such ADR entity must be free of charge to the customer.
- 4 Licensees must not use or introduce terms which restrict, or purport to restrict, the customer's right to bring proceedings against the licensee in any court of competent jurisdiction. Such terms may, however, provide for a resolution of a dispute agreed by the customer (arrived at with the assistance of the ADR entity) to be binding on both parties.
- 5 Licensees' complaints handling policies and procedures must include procedures to provide customers with clear and accessible information on how to make a complaint, the complaint procedures, timescales for responding, and escalation procedures.
- 6 Licensees must ensure that complaints policies and procedures are implemented effectively, kept under review and revised appropriately to ensure that they remain effective, and take into account any applicable learning or **guidelines guidance** published by the Gambling Commission from time to time.
- 7 Licensees should keep records of customer complaints and disputes in such manner as the Commission may from time to time specify in advice or guidance. They must provide information to the Commission about customer complaints, disputes, the outcomes of disputes referred to ADR, and court proceedings adverse to the licensee, also in such manner as the Commission may from time to time specify.

In this Code, 'ADR entity' means a person offering alternative dispute resolution services whose name appears on the list maintained by the Gambling Commission in accordance with *The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015*.

### **Consultation proposal: Introducing guidance on complaints and disputes, including reporting requirements**

- 5.20** We proposed to introduce a new guidance note on complaints handling to support the changes to SR Code provision 6.1.1. The note provides additional guidance to licensees about the requirements in the SR code provision and sets out our wider expectations on complaints handling.
- 5.21** The note includes:
- additional clarification on what constitutes a complaint and a dispute
  - information on how complaints should be handled, including complaints procedures, receiving complaints, time limits and escalation of complaints
  - information on ADR requirements
  - information that should be provided to consumers to help them understand how to make or escalate a complaint
  - information that must be provided to the Commission.

### **Respondents' views**

- 5.22** Respondents generally supported the proposal to introduce a guidance note. However, respondents were split between those who thought that it was too prescriptive and detailed, and those who thought that it should contain more detailed information.
- 5.23** Respondents wanted to understand more about the status of the note in terms of whether it was discretionary, and how it would be updated, for example, via consultation or informally. Questions were also asked about whether licensees would be given time to introduce changes, as they are with changes to LCCP.
- 5.24** Some respondents considered that language used in the note, particularly where words like 'must' were used rather than 'should', were inappropriate for guidance.

- 5.25** Some respondents asked for the note to contain more information on ‘deadlock letters’ and requested a template for such letters.

## **Our position**

- 5.26** We have carefully considered the consultation responses and intend to proceed with the proposal to provide guidance, with some changes to:
- make clearer the status of the guidance
  - provide more information on ‘deadlock letters’
  - make other, minor clarifications.
- 5.27** Under SR Code provision 6.1.1.6 (as amended by this consultation), licensees must ensure that they ‘take into account any applicable learning or guidance published by the Gambling Commission from time to time.’ This means that licensees must ensure that they take the guidance into account when developing their complaints handling processes.
- 5.28** As we explained in the consultation, we know that a ‘one-size-fits-all’ approach is not appropriate for either our licensees or their customers. There are times when licensees may be able to achieve the necessary outcomes – that complaints are handled in a fair, open, timely, and transparent way – in a manner that our guidance does not cover. The guidance permits this discretion in approaches, as well as helping to ensure that the focus of SR code provision 6.1.1 remains on the outcomes that we want to see.
- 5.29** As explained in paragraph 5.15 above, where a licensee decides, after consideration, to depart from the guidance, we expect that they will be able to demonstrate how the approach they have taken achieves the necessary outcomes. If a licensee is unable to explain how the outcomes are met, we may consider this to be a potential breach of the licence.
- 5.30** We do not intend to use the guidance to introduce additional requirements, but rather to allow the flexibility of approach as outlined above. We will consult informally for minor changes to guidance that are not driven by changes to LCCP and ensure that licensees have sufficient time to introduce any changes.
- 5.31** Throughout the guidance, we have intentionally used language such as ‘must’ when the information relates to a specific requirement in the LCCP (which is not discretionary) and ‘should’ when the guidance is discretionary. We have reviewed the document to ensure this language use is consistent.
- 5.32** We have revisited the information we have provided about ‘deadlock letters’ in the guidance to ensure that it is clear without being prescriptive. By ‘deadlock letter’, we mean the final letter to the consumer from the licensee, confirming that a final decision has been reached and that the customer may now escalate the case to ADR if they remain dissatisfied. We have also made other minor points of clarification in the document to address areas that respondents thought were less clear.
- 5.33** The revised guidance note is attached at appendix 1 of this document. We will also publish the guidance separately on our website: [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

## Consultation proposal: Future changes – improving ADR processes

- 5.34** We explained that we are working to develop a new framework of additional standards for ADR providers as part of our commitment to simplify and streamline complaints processes in gambling. Our aim is to develop the framework and implement it with ADR providers before the end of this financial year. The framework is likely to focus on areas such as:
- customer service for ADR providers
  - the range of cases ADR providers can consider, the decision remit, and grounds for refusal
  - transparency and independence of ADR providers
  - consistency and quality of ADR provider decisions
  - the role for ADR providers to observe and provide feedback on trends.

### Respondents' views

- 5.35** Generally, respondents from across all groups considered that the proposed direction of travel for ADR provision would be fairer and more transparent for consumers. Some ADR providers expressed agreement with the areas set out in the framework. One provider noted that working on the new standards had encouraged them to evaluate their own standards already, and that it was in favour of efforts to increase the effectiveness of all ADR providers. Another pointed out that ADR provision would always, by nature of being an alternative dispute resolution procedure, differ from the service provided by a court of competent jurisdiction. Other respondents provided information about procedures that had worked well for ADR in other industries.
- 5.36** Some respondents from the gambling industry reiterated concerns that ADR providers would be expected to make decisions on regulatory matters. This group also expressed some concern about resource implications if numbers of cases escalated to ADR increased and asked if any impact assessment had been made. One trade body asked to be involved in developing the framework
- 5.37** One ADR provider cautioned against a move to reduce numbers of ADR entities in the gambling industry on any grounds other than an inability to meet the required criteria, citing the different experience, expertise and knowledge required to make decisions on different types of gambling.

### Our position

- 5.38** We welcome the positive feedback on this proposal. We will continue to work with others to develop our plans and aim to implement the new framework before the end of this financial year.
- 5.39** Although we aim to ensure ADR providers can consider as wide a range of disputes as possible, this does not include any expectation that ADR providers will decide whether a licensee has breached the conditions of its licence.
- 5.40** We acknowledge that licensees may be concerned about the resource impact on ADR providers. As the costs of a dispute are met by the licensee (to keep the resource free to the consumer), increased numbers of disputes could lead to increased costs. However, we should reiterate that our focus is on complaints being handled in a swift, fair, transparent and open manner by licensees in the first instance. This focus, and the improvements we are making to our complaints handling requirements, should reduce the number of cases that need to be escalated to ADR.

- 5.41** The changes we are proposing in our work with ADR providers will clarify the cases that providers may consider within the current criteria, rather than changing the criteria entirely. Figures from ADR providers' annual reports show that, in 2017, providers received 457 disputes on regulatory issues that the provider had to refuse to handle.<sup>5</sup> In total, providers were able to make decisions on 4,268 disputes. This indicates that widening the criteria, which should enable a proportion of those 457 disputes to be considered by the ADR provider, should not have a significant impact on licensees.
- 5.42** The ADR service is intended to be an accessible alternative to the courts for the consumer. Although we welcome feedback from the industry on revised service standards for ADR provision in gambling, and will seek this at appropriate times, it would not be appropriate for industry bodies to take part in the groups developing the framework.
- 5.43** We note the cautionary advice around reducing numbers of ADR providers in the gambling industry. At this stage, our focus is on improving standards for ADR provision in gambling and ensuring those providers in the industry continue to meet those standards. We disagree, however, that each sector of gambling can only be represented by a specific, expert ADR provider. An ADR provider could recruit to obtain expertise in other areas of gambling, in much the same way that we, as one regulator, are able to regulate all areas of the gambling industry.

## **'Readability' of consumer information**

### **Consultation question: Views on the introduction of readability standards**

- 5.44** This section of the consultation did not propose any policy changes or amendments to the LCCP. Instead, it sought views on something we might do in future:
- What are your views on introducing a required readability standard for customer facing documents in future?
  - What might such a standard look like?
  - What would the impact of such a requirement be for licensees or for customers?
- 5.45** This question linked to a proposal made earlier in the consultation. Licence Condition 7.1.1 says that licensees' contractual terms (their terms and conditions) "must be made available to consumers and set out in plain and intelligible language." We proposed to change this so that terms and conditions and consumer notices "must be transparent within the meaning of the Consumer Rights Act 2015." A notice is transparent for the purposes of that Act if "it is expressed in plain and intelligible language and it is legible."

### **Respondents' views**

- 5.46** The responses we received to this question generally agreed that written material for consumers should be clearly written and easy to understand. However, opinions were divided on whether specific measures were needed. Some backed a specific standard, seeing it as important to reduce the amount of 'legalese' in terms and conditions. Others supported improved readability, but noted that gauging that is subjective. Several respondents thought that requirements for plain language in the LCCP and/or the Consumer Rights Act were sufficient.
- 5.47** We received few suggestions on what such a standard might look like, other than some noting the availability of online tools that analyse website text.

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<sup>5</sup> ADR Providers' annual reports are available on the website of each ADR provider.

- 5.48** Licensees raised a variety of concerns around the potential impact of such a standard:
- Some companies have a distinct ‘tone of voice’ which is linked to their brand, making a common standard more difficult to implement
  - Adopting a standard and simplifying wording could mean consumers are denied relevant information
  - Defining a standard would not be in line with our ‘outcomes focused’ approach to regulation
  - Practical concerns about how a standard would interact with requirements on the accessibility of information provided for customers (for example, different languages).

## **Our position**

- 5.49** Although the responses to this question were mixed, we consider that we should do more work on what such a standard might look like, and its scope. For example, it is unlikely that we would want to define how all licensees’ customer-facing material is written. Instead, we might decide that it is more important for the terms and conditions, as the legal basis for the contract between customer and licensee, to reach a defined standard. It is possible that clearer terms might reduce the number of disputes, if more customers could understand exactly what they were signing up for. There are several internet tools available that can assess the readability of website text, and word processing software that can perform similar checks on documents and ‘score’ the text against a standard scale.
- 5.50** The consultation noted that not all written information provided by licensees is easy to understand. This is particularly true of the terms and conditions provided on their websites. Despite views expressed by a small number of respondents, we cannot see any reason why simplifying language of these terms would lead to information being left out or affect their enforceability as terms of a contract.
- 5.51** We note the potential conflict between setting a defined standard and our outcomes-based regulatory approach. However, there are certain areas where prescription could be in consumers’ best interests if it means they can make more informed choices. In its recent green paper “Modernising Consumer Markets”, the Department for Business, Energy and Industrial Strategy asked the question: “Should terms and conditions in some sectors be required to reach a given level of comprehension, such as measured by online testing?” The paper cited work being done by the Behavioural Insights Team to produce a concise good practice guide for businesses on presenting terms and conditions. The approach we might take in future could be along the lines of defining good practice for licensees, adopting a standard, or both.
- 5.52** One respondent said that readability is always to be applauded and suggested that some of our documents could benefit from this approach. Any standards we introduce for licensees should apply equally to ourselves. We will consider how best to apply these to our future publications.

## Right to bet

### Respondents' views

- 5.53** A number of the responses received from consumers shared frustration with the practice of bookmakers choosing to restrict the bets they accept from certain customers on commercial grounds. We did not invite views on this subject as part of the consultation, but we recognise this is a matter of persistent concern as evidenced in our engagement with consumer advocacy groups, social media comment and the recent seminar on the topic hosted by the parliamentary all-party betting and gaming group.
- 5.54** Recurring themes from respondents included the discriminatory nature of restrictions towards profitable (or judged-to-be-profitable) customers, the inappropriateness of advertising prices that are not available to all customers, and the alleged misuse of cookie tracking software for commercial rather than fraud prevention purposes. The most common proposed solution to address concerns is the introduction of a statutory right to bet or minimum bet guarantees also known as lay to lose levels.

### Our position

- 5.55** We recognise the strength of feeling expressed by consumers on this issue both through this consultation and elsewhere.
- 5.56** Assessing the extent and impact of betting restrictions across the industry is problematic because business models and risk appetite will vary between companies. One major bookmaker commented publicly during the consultation period on the scale of the issue in its own operation. From an active player base of one million customers, circa 3% of its customers experienced a restriction during 2017 ranging from standard (limited to win £2,000 per event) to severe (limited to win £200 per event).
- 5.57** Whilst the Commission cannot mandate how individual businesses manage their commercial liabilities, the persistent focus on this issue demonstrates a failure on the part of the industry to explain the extent and purpose of restrictions. In our view, this risks having an ongoing and detrimental impact on the reputation of the industry. The justification for restricting profitable customers is undermined by examples of a lack of transparency in explaining decisions or resistance to consider legitimate customer queries in circumstances where decisions to restrict or close accounts may have been taken precipitously or solely via automated means.
- 5.58** In the short-term we think there is little prospect of Parliament introducing a statutory right to bet, the equivalent of a universal service obligation.
- 5.59** Those Australian states where mandatory minimum bet guarantees have been introduced provide valuable insight into the costs and benefits of such requirements. However, the regulatory and commercial arrangements in the UK are not directly equivalent to those states, so any proposal to mandate similar requirements in the UK would need to consider the practical and legal implications, as well as any impact of reduced margins and therefore available prices/offers for the wider unrestricted customer base.
- 5.60** In the absence of new legal or regulatory requirements, we consider the steps taken by some operators to adopt minimum bet guarantees on a voluntary basis is a sensible intermediate step. Such initiatives, where implemented in good faith, demonstrate a willingness to listen to and act on consumers' concerns. We will continue to facilitate engagement between operators and consumer groups whilst considering how we can factor such developments into our wider work on ensuring consumers are able to differentiate between operators on the basis of customer care and values.

**5.61** Operators are entitled to manage their commercial risk, but we expect to see equivalent priority and rigour directed towards identifying regulatory risk.

**5.62** The ICO regulates the use of cookie tracking software. If the ICO, as lead in this area, finds that the use of particular software is not compliant with the legislation it oversees then we would expect operators to respond appropriately. There is a clear expectation from the Commission that operators adhere to all applicable law/regulations. We manage the risk by liaising regularly with the ICO and by requiring operators to notify us of any legal or other regulatory investigations and breaches - and we have the ability to act on the back of such investigations.

**August 2018**

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**making gambling fairer and safer**

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# Complaints and disputes: procedural, information provision and reporting requirements

MONTH 2018

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## 1 Introduction

### 1.1 This note:

- sets out the minimum standards we expect from all licence holders (except gaming machine technical and gambling software licences) regarding effective handling of customer complaints.
- provides advice to licence holders on the implementation of social responsibility (SR) code provision 6.1.1 (Complaints and disputes) as set out in our *Licence conditions and codes of practice (LCCP)* [Month Year].
- summarises the reporting requirements that apply to all licence holders (except gaming machine technical and gambling software licences, as above).

1.2 The purpose of this note is to give guidance to licensees' policies, procedures and controls for handling customer complaints. This guidance aims to assist licensees with detail about how to comply with the LCCP and the wider legal requirements, and is intended to allow licensees flexibility as to how they comply. This guidance is not intended to be a substitute for legal advice and nothing in this document should be construed as such. Anyone requiring clarification on the regulatory issues contained in this document should seek their own independent legal advice.

1.3 In this guidance, the word 'must' denotes a legal obligation, while the word 'should' is a recommendation of good practice, and is the standard that the Commission expects operators to adopt and evidence. The Commission will expect operators to be able to explain the reasons for any departures from that standard.

1.4 The Gambling Commission (the Commission) has a duty to permit gambling as long as we think it is reasonably consistent with the three licensing objectives set out in the Gambling Act 2005 (the Act). These objectives are to:

- keep gambling free from crime and from being associated with crime
- ensure that gambling is fair and open
- protect children and vulnerable people from being harmed or exploited by gambling.

1.5 Effective, transparent and fair customer complaints handling is an important part of achieving the second licensing objective. Licence holders must have fair, transparent and accessible procedures (including escalation to alternative dispute resolution (ADR)) in order to meet this objective. Licence holders are also required to report to the Commission information about complaints received and escalated, and outcomes of those complaints referred to ADR.

1.6 This advice note comes into effect at the same time as the amendments to LCCP [month/year] The advice note is amended periodically to take account of what we learn

from licence holders, ADR providers and gambling consumers about emerging trends in complaints handling, or of changes to legislation. **Where proposed amendments are minor, we will consult informally, for example, through industry trade bodies and with consumer groups. For more substantial changes, we will consult more formally.**

## 2 Defining complaints and disputes

- 2.1 For the purposes of this advice note and for SR code provision 6.1.1, ‘complaint’ means an expression of dissatisfaction, whether spoken or written, about any aspect of the way the licensee conducts their licensed activities.<sup>6</sup> For example, a complaint:
- about the outcome of a gambling transaction
  - about the way a gambling transaction has been managed
  - that concerns the way the licence holder carries out its business in relation to the three licensing objectives.

Customers may also complain about commercial matters, such as the quality of the licence holder’s facilities. Where such complaints do not pose a risk to the three licensing objectives, they are not within the scope of what we oversee. The licence holder should decide how best to resolve such complaints.

- 2.2 ‘Disputes’ in this advice note and for the purposes of SR code provision 6.1.1 are those complaints that are about the customer’s gambling transaction (including management of the transaction) and have not been resolved at the first stage of the operator’s complaints procedure. Disputes may include, for example, those linked to the application of bonus offers or to other terms and conditions, account management, or the ability to access funds and winnings.

## 3 Complaints handling requirements

### Complaints procedures

- 3.1 Licence holders should put into effect a clear, written complaints process. This process should be in plain English, simple to understand and easy for customers to find and use, both in gambling premises and on operator websites. Licence holders should consider whether to present this information or a summary of the information in a variety of ways, for example, to take account of customers who do not speak English as a first language or might otherwise find a written document hard to understand. Where licence holders produce marketing materials in languages other than English, they should also ensure complaints processes are available in those languages.
- 3.2 The process should make clear how a complaint can be made, to whom it should be addressed, and what essential information a customer needs to provide. Information about the complaints policy should also be set out within the licence holder’s general terms and conditions, including a link or signposting to the full policy if appropriate.
- 3.3 Licence holders should handle all complaints, except for those that can be resolved very readily on initial contact with the customer,<sup>7</sup> in accordance with the complaints procedure.

### Receiving complaints

- 3.4 Licence holders should **ensure that they** accept customer complaints made in person, spoken or written, over the telephone or via email where facilities exist, or via third party intermediaries/support tools such as the Resolver web tool.

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<sup>6</sup> We are carrying out further work on the definitions of complaints and disputes, and this section may accordingly be subject to revision after this work is completed.

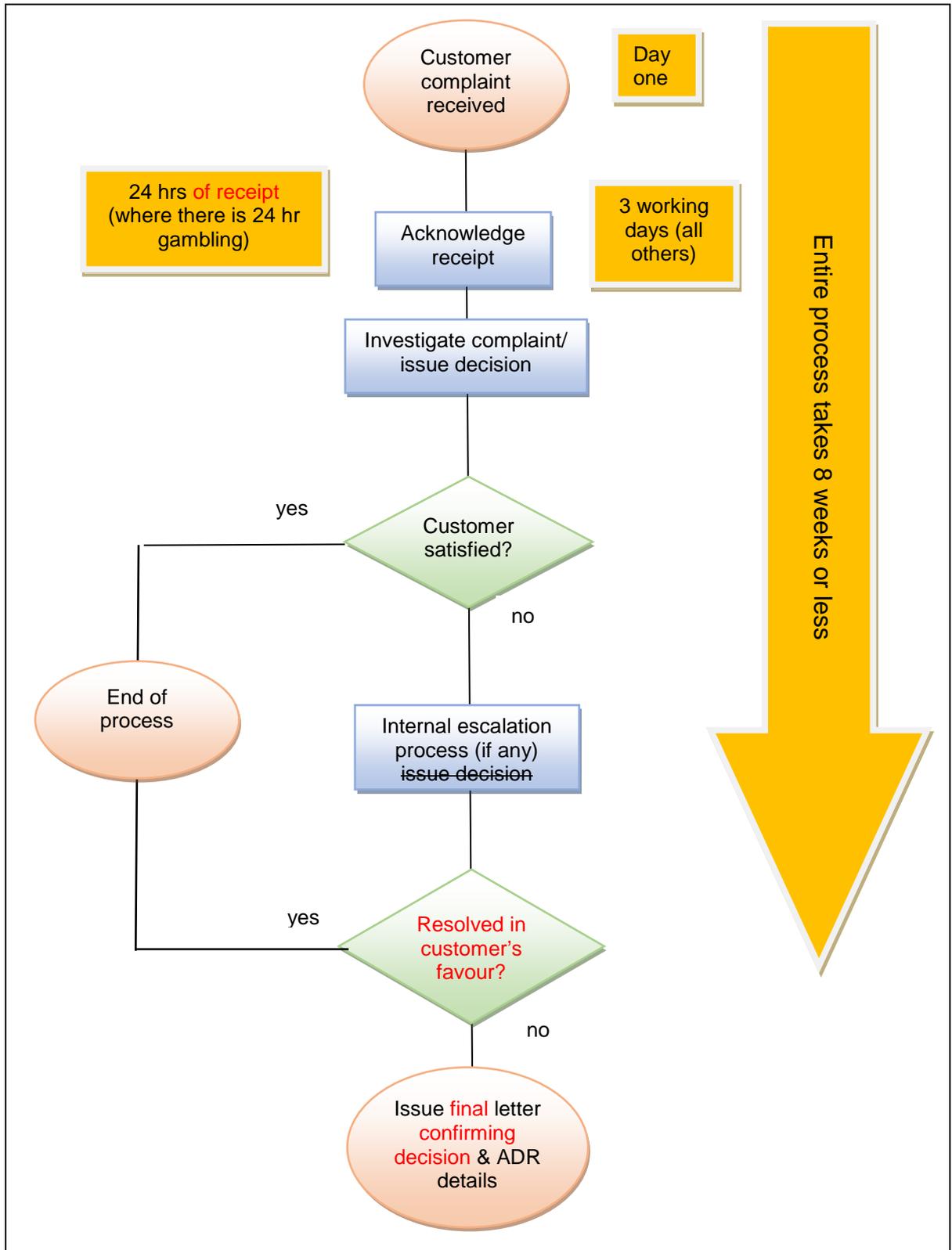
<sup>7</sup> For further information, see paragraph 6.1

- 3.5** Where licence holders offer systems such as ‘live chat’, chat operatives should be provided with sufficient training and information to be able to recognise where complaints raised in such a fashion should be redirected to a formal complaints procedure.
- 3.6** Customers may wish to raise complaints via social media platforms. It is for the licence holder to decide whether they are equipped to properly respond to complaints made by social media, or whether they should direct customers using such media to the formal complaints process. The complaints process should include information about whether customers may raise complaints via social media.
- 3.7** Although we wish to encourage operators to be open and transparent when handling complaints, we recognise that there may be occasions when licence holders may wish to ask customers not to share their complaint in public (eg, to the press or in online forums) before the licence holder has had opportunity to resolve the issue. For example, where there is an ongoing investigation, an operator may not wish information that may jeopardise the investigation to be made public. Licence holders should take care that any restrictions they impose do not prevent customers from seeking help or advice **where they need it**. ~~in relation to a gambling issue~~. Restrictions should only be put in place where the reasons for doing so are fair and transparent.

### Time limits and escalation of complaints

- 3.8** As required by CMA’s [Unfair contract terms guidance](#), licence holders must not unfairly restrict access to complaints procedures by imposing unreasonable time limits for customers to make complaints. Licence holders should allow customers to raise complaints for at least six months from the date of the incident. Licence holders may wish to encourage customers to make complaints as soon as possible, but may not do this by including terms that **prevent consumers from raising complaints at any point during** ~~do not allow complaints to be raised within~~ that six month period.
- 3.9** Licence holders should provide customers with an acknowledgement of the complaint. Where licence holders offer 24-hour gambling facilities, this should be within 24 hours of **the point when the licence holder receives** ~~receiving~~ the complaint. For other licence holders, this should be as soon as reasonably possible, but in any case within three working days of receiving the complaint.
- 3.10** Licence holders may choose to put in place procedures to escalate the complaint within the business, if the customer is not satisfied with the response they receive when they first make their complaint. **As required by SR code provision 6.1.1.2**, Licence holders must ensure that the entire complaints process, including any internal escalation, takes no longer than eight weeks from when they first received the customer’s complaint. **SR 6.1.1.2 does make provision for licence holders to depart from the eight-week time-limit if the customer fails to engage with the complaints process in a timely manner. For example, where a customer fails to respond to a reasonable request for information within seven days, it may be reasonable to ‘stop the clock’ until such time as the customer responds. When the customer has responded, the ‘clock’ should be restarted from the same point as it was stopped.**
- 3.11** ~~Where the licence holder is unable to resolve the complaint within eight weeks, or the licence holder’s complaints process reaches the end without resolution before eight weeks is up, then the parties have reached ‘deadlock’. The licence holder should then write to the customer to explain how to escalate their complaint to an independent ADR entity if they wish to do so.~~ **The licence holder’s complaints process ends if the customer’s complaint remains unresolved eight weeks (taking into account any times that the ‘clock’ on the time period may have been paused) after the licence holder received it, or the customer and the licence holder reach a deadlock or final position in less than eight weeks. The licence holder should then write to the customer with a final letter to explain:**
- the final decision
  - that this is the end of the operator’s complaints process, and
  - how to escalate their complaint to an independent ADR entity if they wish to do so.

# Flowchart: Complaint process timescales



## 4 ADR requirements

- 4.1 As explained in the previous section, **under SR code provision 6.1.1.2**, licence holders must ensure they have arrangements in place for customers to be able to refer any dispute to an approved ADR entity – that is, an ADR entity on the list of ADR providers approved by the Commission - if not resolved to the customer's satisfaction. The customer must be given this option if their complaint remains unresolved eight weeks (**taking into account any times that the 'clock' on the time period may have been paused**) after the licence holder received it, though the option may be offered sooner if the customer and the licence holder reach a deadlock **or final** position in less than eight weeks.
- 4.2 The services of any such ADR entity must be free of charge to the customer, **as required by the SR code provision**.
- 4.3 Licence holders must not subject ADR services to any terms that are intended to remove or restrict the customer's right to bring proceedings against the licence holder in court. Licence holders may include terms that allow resolution of a dispute, if agreed by the customer, to be binding on both parties, **as also required by SR code provision 6.1.1.4**
- 4.4 ADR entities may have terms that enable them to reject complaints that are frivolous or vexatious, in line with the requirements of [The Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015](#) (the ADR Regulations), but licence holders **should** ~~may~~ not refuse to refer disputes on such grounds.
- 4.5 Licence holders should ensure that they respond to requests for information about disputes from ADR entities in full and within ten working days. Licence holders should not unnecessarily delay providing the information that the ADR entity requires to look at the dispute.
- 4.6 ADR entities are able to consider disputes, that is, unresolved complaints that relate to the outcome of a customer's gambling transaction. This can include disputes about, for example, account management or the ability to access funds. ADR providers may consider whether a resolution should include compensation for customers, either for expenses incurred in pursuing the complaint or as a good will gesture for inconvenience or difficulty incurred.
- 4.7 As part of their considerations, we expect ADR entities to also consider the licence holder's terms and conditions that are relevant to the complaint, and to consider whether to apply relevant consumer protection legislation in making their decision.

## 5 Information to customers

- 5.1 Licence holders should ensure that the information they provide to customers includes information on how to make a complaint, and relevant contact details for doing so. It should also include information about how the complaint process works, and expected timescales for resolution.
- 5.2 Information on complaints processes should also include the identity (with contact details, which can be by way of a link from the licence holder's website) of the approved ADR entity to whom disputes can normally be referred, and where necessary, details of any limitation on the nature or subject matter that an entity can deal with, for example, if an entity only deals with a particular sector of gambling. This information should be provided to the customer if the complaint cannot be resolved by the licence holder.

- 5.3 Exceptionally, customers may request to use an ADR provider other than the one that is named by the licence holder. Licence holders may agree to use an alternative provider. However, if the alternative ADR provider is not on the list of providers approved by the Commission, Licence holders must inform the customer of the associated risks in using the alternative provider to allow the customer to make an informed choice.
- 5.4 For example, unapproved providers are not bound by the requirements of the ADR regulations, which require providers to be fair, transparent and open. Licence holders should also inform such customers that they may use the licence holder's named, approved ADR provider for the dispute even if they have already used an unapproved ADR entity.
- 5.5 Licence holders should provide a copy of the complaints policy to a customer on request, or when the customer makes a complaint.

## 6 Information required by the Commission

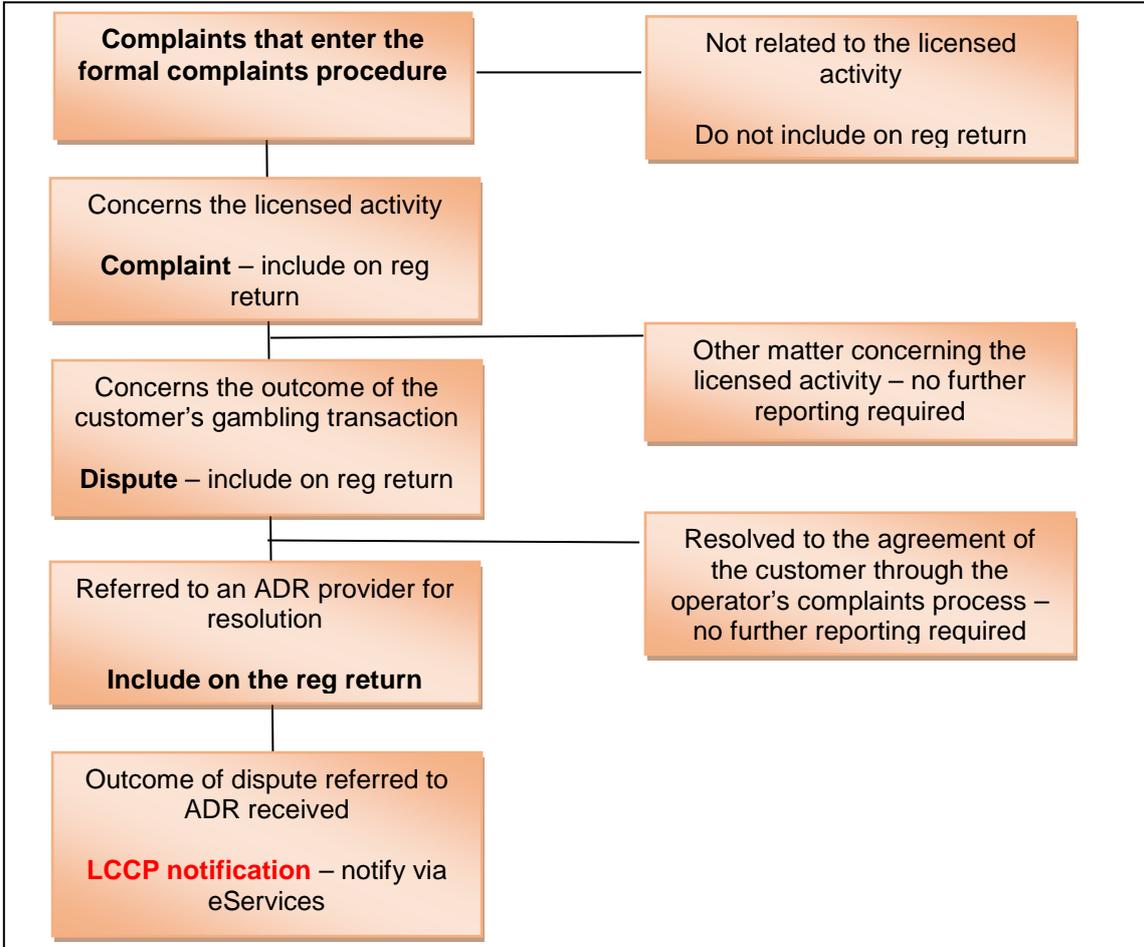
- 6.1 SR code provision 6.1.1.7 requires licensees to keep records of customer complaints and disputes in such manner as the Commission may from time to time specify in advice or guidance. They must provide information to the Commission about customer complaints, disputes, the outcome of disputes referred to ADR, and court proceedings adverse to the licensee, also in such manner as the Commission may from time to time specify in advice and guidance. The information requirements contained in this section are therefore not discretionary for licence holders.
- 6.1 Licence holders must keep a record of all complaints that enter the formal complaints procedure. The licence holder does not need to report to us those complaints that are resolved very easily, for example, quickly via live chat, or at first contact in the premises, though the licence holder should still record these for their own purposes.
- 6.2 Licence holders must report the numbers of formal complaints they receive, and the number that are not resolved at the first stage of the complaints procedures (that is, those that become disputes) to the Commission. Licence holders must also report the number of disputes that they are aware have been referred to an ADR entity. This is part of the Regulatory Return reporting requirements, under Licence Condition 15.3.1.
- 6.3 Licence holders must arrange for a copy of the decision, or a note of the outcome of each dispute referred to an ADR entity to be provided to the Commission, either by the ADR entity or by the licence holder. It is the licence holder's responsibility to either provide this or ensure that it is being provided to us. This information should be provided by through our eServices portal as follows:
  - **Type:** LCCP reporting notifications
  - ~~Subtype:~~ Operator LCCP reporting
  - **LCCP Question:** ADR disputes<sup>8</sup>
- 6.4 Licence holders must notify us of any change in the identity of the ADR entity they use, including where they temporarily use an ADR entity other than the one named in their complaints policies, as required by Licence condition 15.1 (Reporting key events). This information must also be provided via eServices, using the following selections:
  - **Type:** Key event
  - **Subtype:** Operator Key EVENT
  - **LCCP Question:** ADR entity

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<sup>8</sup> The facility to upload supporting documents, such as the outcome of ADR disputes, will be available by the time this note comes into force on **31 October 2018**

**6.5** Licence holders must also arrange to notify to the Commission, as a key event, of any outcome adverse to the operator (in whatever jurisdiction) of any proceedings taken against the licence holder by a customer in relation to a gambling transaction, but excluding proceedings allocated to the County Court small claims track or equivalent in jurisdictions outside England and Wales.

**Flowchart: Complaints and disputes regulatory return requirements**



**Month Year**

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## APPENDIX 2

### Consultation respondents

51 Community Interest Companies and the Health Lottery  
Advertising Standards Authority  
Association of British Bookmakers  
BACTA  
BetVictor  
Betway Ltd  
Bingo Association  
CARE  
Competition and Markets Authority  
Co-Gaming Limited  
Enfield Borough Council  
Financial Ombudsman Services  
Gala Leisure  
Geoff Banks  
Graeme Wilson  
Great Ormond Street Hospital Children's Charity  
Greentube  
GVC Holdings  
Horseracing Bettors Forum  
Hospice Lotteries Association  
Ian Brodie  
IBAS  
Information Commissioner's Office  
James Griffiths  
James Jones  
Jeff Davis  
Justice for Punters  
Leeds City Council  
Lotteries Council  
Macmillan Cancer Support  
National Casino Forum  
Novomatic UK  
People's Postcode Lottery  
Promediate  
Quaker Action on Alcohol and Drugs  
Racecourse Promoters Association  
Rank Group  
ResPublica  
Remote Gambling Association  
Sky Betting and Gaming  
SMP Partners Ltd  
Sterling Management Centre Ltd  
Steven Dent  
Tattersalls Committee  
William Hill

In addition to those noted above a further 80 responses were received from individual consumers.