

Customer funds: segregation, disclosure to customers and reporting requirements

Insolvency ratings system and advice note for operators March 2019*

1 Introduction

1.1 This note:

- sets out the Gambling Commission's customer funds insolvency rating system. All operators licensed by the Commission who hold customer funds must include their ratings category in information provided to customers about the extent to which their funds are protected in the event of insolvency.
- provides advice to operators on the implementation of licence condition 4.1.1 (segregation of customer funds) and 4.2.1 (disclosure to customers) as set out in the Commission's *Licence conditions and codes of practice (LCCP)*.
- summarises the reporting requirements which apply to non-remote and remote operators.

1.2 The ratings system and advice in this note are relevant for **remote and non-remote gambling operators** who hold customer funds held to the credit of customers (as defined in LCCP). This most often applies to remote gambling operators whose customers hold funds 'on account' with an operator for future gambling. A summary table of all the requirements in relation to customer funds is provided at the end of this document.

1.3 Information about an operator's arrangements for protection of customer funds (including the relevant rating) must be made available by operators who hold customer funds in their terms and conditions. This information must also be made available at the point of depositing money with a gambling operator, in a manner which requires the customer to actively acknowledge receipt of the information and which does not permit the customer to utilise the funds for gambling until they have done so. Any further changes to the arrangements for the protection of customer funds must be disclosed to the customer prior to implementation in terms and conditions, and at any subsequent deposit of monies by the customer (and acknowledged by the customer).

1.4 This advice note is amended periodically to take account of our experience of assessing compliance with customer funds requirements. We have included at paragraph 3.11 some commonly occurring errors that have arisen during our compliance activity, and advice for operators to ensure they are compliant.

* This note was first published in November 2014. It was updated in December 2014 to clarify some issues for non-remote operators, and again in January 2015 to clarify the implementation deadline for the requirement to notify existing customers of the ratings information at the point of deposit.

2 Assessing whether you hold customer funds

- 2.1** Operators must comply with licence conditions 4.1.1 (remote operators only) and 4.2.1 (remote and non-remote operators) if they hold customer funds **to the credit of customers**. This includes, without limitation:
- a** cleared funds deposited with the licensee by customers to provide stakes in, or to meet participation fees in respect of, future gambling,
 - b** winnings or prizes which the customer has chosen to leave on deposit with the licensee or for which the licensee has yet to account to the customer, and
 - c** any crystallised but as yet unpaid loyalty or other bonuses, in each case irrespective of whether the licensee is a party to the gambling contract.'
- 2.2** For example, a betting operator who allows customers to deposit money into an account and keep those funds until they are ready to gamble or withdraw the money **would be** holding customer funds.
- 2.3** Similarly, any bonuses which the customer has earned, and which are not subject to any further terms before the customer can redeem the bonus would also be considered customer funds.

Examples of situations where funds would **not** be considered customer funds

- 2.4** There are a number of situations where customers may have an entitlement to funds, but where the operator need not meet the requirements of licence conditions 4.1.1 and 4.2.1 because the funds are not 'held to the credit of customers'. Examples of these situations where monies are **not** considered customer funds are:
- A non-remote casino where customers can retain chips for their next visit but the chips are not held in a specific account for that customer
 - A gaming machine business which uses tickets which may be held by the customer and 'cashed in' at a future date
 - A betting slip held by a customer which may be redeemed at a later date
 - Fees or charges which have been withdrawn from a customer account, in line with the operator's terms and conditions and so long as the fees or charges are fair and open
 - Lottery proceeds: where a customer pays for a lottery subscription in advance, the funds are considered customer funds until they are committed to a particular lottery and are therefore no longer held for future gambling - at this point they become lottery proceeds and are subject to the separate requirements for lottery proceeds. The point at which monies cease to be customer funds and fall to be proceeds will vary from scheme to scheme depending on how and when the monies are applied to the purchase of a ticket for a particular lottery. This may, but by no means need be, at the point the monies are received by the lottery operator.
 - Unallocated lottery subscriptions: should a lottery operator receive funds that they are unable to allocate to a customer's account (for example, funds received by standing order which does not identify the customer) the operator should clearly set out in their terms and conditions how these funds are dealt with (for example if the funds will be treated as a donation after a certain period of time) and ensure that this is applied to any such funds.

3 Advice on implementing licence condition 4.2.1 (disclosure to customers)

- 3.1** Licence condition 4.2.1 (set out below) applies to **both** remote and non-remote operators who hold customer funds. It contains at paragraph 1 the requirement that information must be set out in operator terms and conditions about whether customer funds are protected in the event of insolvency, the level of such protection and the method by which this is achieved.
- 3.2** At paragraph 2 of the same condition, we specify that:
- a** information must be available on the first occasion on which customers deposit funds (and on each occasion when the arrangements for the protection of customer funds change)
 - b** the customer must be required to actively acknowledge receipt of this information about customer funds before being permitted to gamble.
- 3.3** Paragraph 2 also specifies that such information (the information in both terms and conditions and prior to deposit) must be set according to any rating system specified by the Commission and in such form the Commission may from time to time specify. We set out the format that this ratings system **must** take in this section.

Licence condition 4.2.1 Disclosure to customers

All operating licences, except gaming machine technical, gambling software, ancillary remote bingo, ancillary remote casino licences

- 1** Licensees who hold customer funds must set out clearly in the terms and conditions under which they provide facilities for gambling information about whether customer funds are protected in the event of insolvency, the level of such protection and the method by which this is achieved.
- 2** Such information must be according to such rating system and in such form the Commission may from time to time specify. It must be provided in writing to each customer, in a manner which requires the customer to acknowledge receipt of the information and does not permit the customer to utilise the funds for gambling until they have done so, both on the first occasion on which the customer deposits funds and on the occasion of any subsequent deposit which is the first since a change in the licensee's terms in relation to protection of such funds.
- 3** In this condition 'customer funds' means the aggregate value of funds held to the credit of customers including, without limitation:
 - a** cleared funds deposited with the licensee by customers to provide stakes in, or to meet participation fees in respect of, future gambling,
 - b** winnings or prizes which the customer has chosen to leave on deposit with the licensee or for which the licensee has yet to account to the customer, and
 - c** any crystallised but as yet unpaid loyalty or other bonuses, in each case irrespective of whether the licensee is a party to the gambling contract.

The customer funds insolvency ratings system

- 3.4** The ratings system **must** be applied by gambling operators who hold customer funds. If you hold customer funds, you must assess your arrangements for those funds, identify the category which applies to you and include the relevant category in information you supply to customers in terms and conditions and at the point at which a customer deposits money.
- 3.5** The ratings system which **must** be applied is set out in the shaded box below.

Customer funds insolvency ratings categories – must be used by operators to identify their category

Not protected	No segregation (permitted for non-remote and ancillary remote operators only)	No protection in the event of insolvency.
Not protected	Segregation of customer funds (this is the minimum requirement for all remote operators who hold customer funds).	Customer funds are kept in accounts separate from business accounts but they would form part of the assets of the business in the event of insolvency. These accounts may include bank accounts, investment accounts and other accounts. No protection in the event of insolvency.
Medium protection	Quistclose or equivalent	Customer funds are kept in accounts separate from business accounts; and arrangements have been made to ensure assets in the customer accounts are distributed to customers in the event of insolvency. The arrangements falling in the medium category include Quistclose accounts and insurance arrangements.
High protection	Independent trust account	Customer funds are held in a formal trust account which is legally and in practice separate from the affairs of the company; and is verified by and subject to controls by an independent trustee or external auditor.

What constitutes an independent trust account?

- 3.6 We have not provided a definition of independent trust for the high category rating. However the factors which we consider relevant to an assessment of whether arrangements for the protection of customer funds fall into the high category include:
- The existence and implementation of a formal trust deed with clear identification of the trustees, the beneficiaries of the trust and the duties of the trustees
 - Legal and practical separation of the trust from the affairs of the company
 - A degree of independent oversight – from an independent trustee or regular external audits.

Applying the customer funds insolvency rating system – disclosing to customers

- 3.7 The ratings category must be used and explained to customers if the operator holds customer funds, and a link must be provided (where the information is online) to the Gambling Commission's [webpage which explains the rating system](#). Operators may draft statements to explain the rating system to customers in a manner which meets the particular circumstances of the business; we have not (at this stage) specified the exact wording which must be used.
- 3.8 On the next page, we set out some **example statements** that might be used in terms and conditions for each of the ratings categories. We expect that experience over time will help operators and the Commission identify the statements which best explain the system to consumers; and that best practice or standard wording may emerge over time as a result.
- 3.9 Operators must take care not to imply that the Commission has approved the customer funds insolvency rating level – it must be made clear that the ratings system is applied by **the operator**.
- 3.10 We undertake compliance activity on how operators are complying with the customer funds requirements. As part of this activity, we may ask operators to provide evidence of how they segregate or protect customer funds. Set out below is a summary of how the information to be included in disclosure statements and some commonly occurring errors that have arisen during our compliance checks.

Summary of information to be included in disclosure statements

- Explain what happens to funds in the event of insolvency
- State a ratings category which matches the arrangements in place
- Provide details about the type of account used to achieve the ratings category
- Include a working link to the Protection of Customer Funds information page on the Commission's website
- Include a mechanism for the customer to acknowledge receipt of the information:
 - at the first point of deposit
 - on any subsequent deposits following a change to the arrangements

Common errors

- A link to the Commission's webpage which explains the ratings system has not been included in the statement, or the link is broken
- Insufficient information is provided about the method (account) used to segregate or protect funds
- Statements do not specifically mention what happens to funds in insolvency
- Terminology is misleading, for example using the term 'protect' when only segregation is in place
- Acknowledgement of the statement is assumed from the click of a 'general' continue button rather than a separate acknowledgement tick box or button on the deposit page.

Example statements

Not protected: (non-remote and ancillary remote operators only)
Customer funds are not protected in insolvency.

Not protected : (minimum requirement for all remote operators who hold customer funds) We are required by our licence to inform customers about what happens to funds which we hold on account for you in the event of insolvency www.gamblingcommission.gov.uk/consumers/protection_of_customer_funds.aspx

We hold* customer funds separate from company funds in [a mixture of bank accounts/ investment accounts/ in reserve funds which we hold with our payment processors]. These funds are not protected in the event of insolvency: not protected segregation.

* It is inappropriate to describe funds as being 'protected' in a statement under this category as this would be misleading to consumers.

Medium protection: We are required by our licence to inform customers about what happens to funds which we hold on account for you, and the extent to which funds are protected in the event of insolvency www.gamblingcommission.gov.uk/consumers/protection_of_customer_funds.aspx

We hold customer funds separate from company funds in [the operator must set out further information here about the details of the arrangements for customer funds]*. This means that steps have been taken to protect customer funds but that there is no absolute guarantee that all funds will be repaid. This meets the Gambling Commission's requirements for the segregation of customer funds at the level: medium protection.

*We have not used the term 'Quistclose account' in this example statement as it is a technical term which may not assist customer understanding. However operators must take care not to imply that an arrangement whereby customer funds have only been segregated into a separate account, with no additional protection equivalent to a Quistclose arrangement, is categorised as 'medium protection'.

High protection: We are required by our licence to inform customers about what happens to funds which we hold on account for you, and the extent to which funds are protected in the event of insolvency www.gamblingcommission.gov.uk/consumers/protection_of_customer_funds.aspx

Customer funds: segregation, disclosure to customers and reporting requirements

We hold customer funds separate from company funds in an independent trust account; the operator must set out details about how funds are protected. This means that steps have been taken to ensure that customer funds are repaid to customers in the event of insolvency. This meets the Gambling Commission's requirements for the segregation of customer funds at the level: high protection.

- 3.11** Operators may supply or make available additional information to customers if they wish to highlight other aspects of financial management which they consider relevant. These aspects may include information on, for example, audited accounts, successful track record, public listing, and group company support. However, these aspects do not affect the overall rating to be disclosed to customers; they are instead additional facts which may be explained to customers.
- 3.12** Operators are only permitted to produce shorter references to customer funds protection at the point of deposit, for example because of limited space on restricted display devices. However, the ratings category, and a link to either the Gambling Commission's webpage on customer funds ratings or a link to the relevant section of the operator's terms and conditions on customer funds (from which the link to the Commission's website will also be available), must still be provided, even on restricted display devices.

Single wallets across remote and non-remote products

- 3.13** Operators who offer to customers a single wallet across both remote and non-remote products must take care to ensure that any statements they provide to customers meet the overall requirements for disclosure to customers and that the statements are accurate for funds held in relation to both the remote and non-remote activity.

4 Advice on implementing licence condition 4.1.1 (segregation of customer funds)

- 4.1** Licence condition 4.1.1 (set out below) requires most **remote operators** holding customer funds to segregate customer funds.
- 4.2** This licence condition on segregation applies to most remote gambling operators, including remote telephone betting operating licensees. However, it does not apply to business to business (B2B) operators or ancillary remote bingo or casino licences.

Licence condition 4.1.1

Segregation of funds

All remote operating licences, except gaming machine technical, gambling software, ancillary remote bingo and ancillary remote casino licences

- 1** Licensees who hold customer funds must ensure that these are held in a separate client bank account or accounts.
- 2** In this condition 'customer funds' means the aggregate value of funds held to the credit of customers including, without limitation:
 - a** cleared funds deposited with the licensee by customers to provide stakes in, or to meet participation fees in respect of, future gambling,
 - b** winnings or prizes which the customer has chosen to leave on deposit with the licensee or for which the licensee has yet to account to the customer, and
 - c** any crystallised but as yet unpaid loyalty or other bonuses, in each case irrespective of whether the licensee is a party to the gambling contract.

Types of segregation

- 4.3** Customer funds may currently be segregated into:
- bank accounts, either in Britain or overseas
 - investment accounts, where a cautious approach to choice and spread of investment accounts is taken
 - other accounts: payment processor merchant reserve accounts which would be payable to the operator/its creditors in the event of insolvency.
- 4.4** All accounts used by the operator to hold customer funds must enable the operator to comply with key event reporting requirements connected to protection of customer funds and should provide access to funds sufficient to cover day to day liabilities. Further information on reporting requirements in relation to customer funds is provided at Section 6.1 (key event reporting) of this document.

Overseas accounts

- 4.5** Operators may locate customer funds in bank accounts which are based overseas. The operator must ensure that the funds would be payable to the operator/its creditors in the event of insolvency.

Operators regulated in more than one jurisdiction

- 4.6** Customer funds relating to activity under a Commission licence may be held in accounts which also hold funds relating to activity under an overseas licence. However, the operator must be able to demonstrate to the Commission (as part of future customer funds reporting arrangements) that there are sufficient funds to meet the British liabilities to customers, as well as other customer funds liabilities. This may mean that the operator would have to provide additional information to the Commission about non-British activity in order to be able to demonstrate that there are sufficient funds to cover all customer funds liabilities.

Investment accounts

- 4.7** Customer funds may be held in investment accounts which are separate from business investments. Interest or other earnings can be removed from segregated customer accounts so long as the total customer funds will meet the total customer liabilities. The Commission considers a cautious choice and spread of investment accounts is considered prudent, and it is expected that operators will ensure that they have sufficient liquid assets to meet day to day customer payouts.

Payment processor accounts

- 4.8** Operators must not exclude funds in transit to the consumer from the calculation of their customer funds liabilities. Until the customer has received the funds to be paid to them, they remain 'caught' by the customer funds definition, and must be kept in a segregated account.
- 4.9** Operators must not use payment processor accounts which would not be payable to the operator/its creditors in the event of insolvency, for example a merchant account from which payment processing fees or chargeback fees could still be deducted.
- 4.10** However, some operators do hold significant reserves with one or more payment processors. These reserve accounts have already had fees and chargeback reserves deducted, and they remain with the payment processor even after the chargeback period has expired or a reconciliation of the merchant accounts has been conducted. In this circumstance, the operator may consider funds held with the payment processor as counting towards the requirement to segregate customer funds.

4.11 We would caution any operator considering using a payment processor merchant reserve account as a means of meeting the segregation of accounts requirement to consider carefully the following points:

- the reserve must be payable to the operator/its creditors in the event of insolvency
- the operator must be able to demonstrate to the Commission that sufficient funds are available to meet the liabilities connected with the British licence. For an operator based overseas, this will normally mean that only sterling reserve accounts may be used as a means of meeting the segregated accounts requirement.
- the Commission will keep under review the use of payment processor merchant accounts and may prohibit or restrict this practice in the future if we consider that such arrangements are not sufficiently transparent to enable the operator or the Commission to determine that the operator holds sufficient customer funds to meet liabilities.

4.12 Examples of situations where the Commission might consider the use of payment processing merchant accounts inappropriate as a means of meeting the segregation requirements are:

- the sole use of payment processing merchant accounts with no monies being held in a bank account for day to day access
- lack of knowledge or oversight by the operator on the payment processing merchant accounts
- reporting requirements could not be met because there was not a separation of sterling merchant accounts to meet the British liability.

Operator-specific requirements

4.13 Operators may be asked at application stage to set out the nature of segregation of customer accounts (location, account type and amounts held in each account).

4.14 As a result, the Commission may put in place arrangements for a specific operator relating to the location or type of segregation that must be applied. These restrictions could be applied via an individual licence condition on the operator's licence or as part of undertakings agreed with the operator as part of the licensing process.

5 Other points

Fees and charges, for example dormant accounts

5.1 Operators may deduct fees or other charges from customer accounts, so long as the fees or charges are in line with the operator's terms and conditions and are fair and open to the consumer. Fees and charges deducted in this way are **not considered to be customer funds once they have been deducted. For example, some operators apply fees to accounts that are dormant according to the operator's terms and conditions (such as after a period of 12 months of inactivity). Fees and charges on dormant accounts can bring a customer's balance to zero.**

5.2 An operator must apply any fees and charges and show the deductions in the customer's account - in other words, an operator may not give the impression to the consumer that the funds are still available to them unless the funds remain in the operator's segregated customer accounts.

Weekly reconciliation

- 5.3** We expect remote gambling operators to carry out reconciliations on their customer funds and liabilities on a weekly basis.

6 Key event reporting to the Commission

- 6.1** Any deficit on reconciliation of a segregated customer funds account, and any changes to an operator's arrangements for the protection of customer funds, must be reported as Key Events to the Commission through [eServices](#), under licence condition 15.2.2:
- Any change in the licensee's arrangements for the protection of customer funds in accordance with the general licence condition 4 relating to the protection of customer funds (where applicable) (Key Event 15)
 - Where the licensee holds customer funds in a separate bank account, any deficit on reconciliation of such bank account (Key Event 16).

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Summary of all customer funds requirements	
Requirement	Applies to
Segregation of customer funds (LC 4.1.1)	Remote gambling operators except B2B and ancillary remote bingo or ancillary remote casino licences
Weekly reconciliation of customer funds (reporting as a key event any deficit)	Remote gambling operators except B2B and ancillary remote bingo or ancillary remote casino licences
Key Event reporting (LC 15.2.2) -Any deficit on reconciliation of accounts that hold customer funds (KE 15) -Any change in an operator’s arrangements for the protection of customer funds (KE 16)	All operators who hold customer funds
Disclosure to customers in terms and conditions (LC 4.2.1)	All operators who hold customer funds
Applying the customer funds rating system to information in terms and conditions (LC 4.2.1)	All operators who hold customer funds
Disclosure to customers at the point of deposit (LC 4.2.1) according to the customer funds rating system AND requiring acknowledgement by the customer before proceeding	All operators who hold customer funds
Disclosure to customers when changing the level of protection (LC 4.2.1) - terms and conditions changes notified to customers -requiring acknowledgement by the customer at next deposit before proceeding	All operators who hold customer funds