Changes to the licence conditions and codes of practice on High Value Customers

Consultation response

September 2020

Contents

1 Executive Summary

1.1 Our role is to make gambling safer and strengthening controls on how licensees incentivise High Value Customers (HVCs), also referred to as 'VIPs', is a priority for us as we have seen repeated instances of HVC schemes being operated in a way that results in gambling related harm.

1.2 Our compliance and enforcement work has found too many examples where licensees have assumed a customer to have a high disposable income or time to spend on gambling without licensees taking the necessary action to confirm whether that is the case. We have found too many instances where HVCs have been identified by reference to their commercial value to a licensee, and those customers being provided with enhanced customer service based only on the amount they spend. HVC schemes often have a dedicated team of staff responsible for managing these customers and it is common for them to be offered benefits, including personalised incentives, gifts, hospitality, and preferential service, due to their high spend.

1.3 The Commission is only prepared to allow HVC schemes to continue provided they are offered in a manner which is demonstrably consistent with the licensing objectives. Where licensees cannot apply effective controls including effective due diligence, senior oversight, clear accountability, and a culture of responsibility around these schemes, they should not be operating them.

1.4 Earlier this year, the Betting and Gaming Council published a new industry code, which included a number of actions and related guidance specific to HVCs. We proposed formalising elements of that code to ensure these minimum requirements are enforceable across the whole industry.

1.5 We have considered the responses to the consultation proposals and made some amendments to provide greater clarity to licensees of our expectations. We intend to evaluate the effectiveness of these measures from 31 October 2020, when the changes come into force. Unless significant improvements are made, it is likely that the Commission will have no choice but to ban such schemes.

2 Introduction

The Gambling Commission

2.1 We license and regulate commercial gambling within Great Britain, including the National Lottery, with the exception of spread betting which is regulated by the Financial Conduct Authority (FCA).

2.2 Our functions under the Act include:

- licensing operators and individuals
- monitoring compliance with licence conditions and the law
- investigation and enforcement, both in relation to licensees and illegal (unlicensed) gambling
- providing advice to central and local government on the incidence, manner, effects, and regulation of gambling.

2.3 We have a statutory duty to aim to permit gambling provided that it is reasonably consistent with the licensing objectives.

Consultation proposals and background

2.4 The management and incentivisation of HVCs poses two key regulatory challenges:

1. HVCs are more heavily engaged gamblers in terms of their gambling spend, the frequency with which they gamble, or both. Heavily engaged gamblers are at greater risk of gambling-related harm.
2. The disproportionate financial value of HVCs to licensees means regulatory compliance can conflict with short-term commercial objectives.

2.5 We are concerned that these regulatory challenges have not been consistently met by licensees. We have undertaken regulatory action to address repeated instances of gambling-related harm and, in some instances, failure to prevent criminal proceeds being spent on gambling.

2.6 On 19 June 2020, we launched a consultation on proposals to amend social responsibility code provision 5.1.1 and introduce new guidance setting out the minimum standards we expected to be met to ensure HVC schemes are offered in a responsible manner. The consultation ran for 8 weeks and closed on 14 August 2020. We received 81 written responses from the following categories of respondents:

- 38 from licence holders
- 3 from trade associations
- 8 from professional bodies
- 4 from charitable organisations, non-profit or academic organisation
- 14 from members of the public
- 14 from others

2.7 There was a notable split between respondents who felt that the draft guidance was too restrictive, and those calling for a ban on HVC schemes. Some respondents observed that *rewards and heightened service levels are a normal part of market offering,* and considered the guidance more restrictive than the industry's voluntary code. Others queried whether the commercial incentives underpinning HVC schemes could reasonably coexist with the licensing objective to protect vulnerable customers from gambling harm. We identified several other key themes, notably:

- Calls to draw a clearer distinction between HVC schemes and low value incentives offered to 'regular' staking customers, such as free bets or a higher value prize offered as part of a free customer prize draw.
- Queries into the appropriateness of carrying out source of funds checks on HVCs, particularly where spend has fallen below the legal threshold for conducting AML checks.
- Concern with the proposal to ban individuals that had previously been a member of a multi-operator self-exclusion scheme, given the varied reasons consumers may have opted to register with such a scheme.

2.8 Our final position on each of these areas is provided in the boxes titled *our position* under the relevant section of this response.

Stakeholder engagement

2.9 The interim Experts by Experience (EBE) group considered the risk of harm associated with HVC schemes too great and strongly favoured a blanket ban on HVC schemes to all GB consumers. We understand the nature of the panel's concerns, based in part on personal experiences. We share the concerns of EBE about the risks of HVC schemes but, consistent with the principle of proportionate regulation, consider those risks can be mitigated by new stringent safeguards. Reflecting the level of our concern, we have concluded a shorter implementation period for those safeguards is necessary. We have also made it clear to licensees that, if they cannot put in place the necessary safeguards, they should not run HVC schemes. Should a business be found to have misapplied the guidance, or use HVC schemes to exploit vulnerable consumers, they will be subject to regulatory action. This may include, but not be limited to, restrictions placed on individual licenses that will prohibit the offering of HVC schemes. Other regulatory considerations, including fines or licence revocation (for example, PML holders or operating licences), will be applied on a case by case basis in accordance with our published enforcement processes.

Next steps

2.10 The changes to LCCP and new guidance will come into effect on 31 October 2020 and will apply to all licensees, except gaming machine technical and gambling software licences.

3 Summary of responses

Changes to social responsibility code provision 5.1.1 – Rewards and bonuses

3.1 We proposed the following addition (shown in italics) to existing social responsibility code provision 5.1.1 – Rewards and bonuses:

Social responsibility code provision 5.1.1

Rewards and bonuses – SR code

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

2 *If a licensee makes available incentives or reward schemes for customers, designated by the licensee as 'high value', 'VIP' or equivalent, they must be offered in a manner which is consistent with the licensing objectives.*

Licensees must take into account the Commission's guidance on high value customer incentives.

Consultation questions

Q5. Do you agree with the proposed new wording of the social responsibility code 5.1.1?

Q6. Do you agree that concerns regarding the management of HVCs can be addressed with the proposed additions to social responsibility code 5.1.1 and associated guidance?

Q7. Do you agree with the proposed use of guidance to help explain the new LCCP requirements?

Respondents' views

3.2 There was broad support for the proposed changes to SR 5.1.1 (2). Overall, respondents considered the wording to be clear whilst, critically, reinforcing the need for licensees to act in accordance with the licence objectives when managing *High Value Customers*. Some respondents sought further clarification on whether *High Value Customers* included those individuals that received lower value incentives such as a £5 cash match. It was suggested that, given the broad scope of SR 5.1.1, the accompanying guidance could draw clearer distinctions between different environments (e.g. online and gambling premises) and sectors (e.g. high-end casinos, arcade and bingo regulars), particularly those land-based sectors where HVC schemes are less prominent.

3.3 In a similar vein, it was suggested that a distinction be made between high value *incentives* and high value *customers* as it was possible for certain low cost products, such as customer free prize draws, to offer high value prizes, such as racecourse hospitality. It was proposed that the SR code provision 5.1.1 clarify that the guidance be applied in instances where a licensee makes available *enhanced* incentives or reward schemes for customers designated by the licensee as 'high value' by virtue of their spend or anticipated spend. An alternative approach could be to focus on *rewards, bonuses, benefits and invitations to hospitality which are over and above routine promotional activities* to ensure a clear distinction with low level, ad hoc incentives.

3.4 Conversely, it was suggested that licensees might misapply the guidance and offer enhanced incentives to non-HVC members during periods of high-spend, especially where such individuals had not experienced significant losses. It was suggested that SR code provision 5.1.1 explicitly require licensees *not to harm* the customer, and that this be used as the threshold for automatic sanctions at an *order of magnitude greater than the HVC losses*.

3.5 Others responded positively to the recognition that HVC schemes and customers were likely to vary between licensees and considered the guidance provided a clear account of our expectations. Some commented that the guidance provided practical advice on implementing the revised code provision and, if implemented effectively, would help raise standards, improve player protection, and facilitate the detection of criminal activity. Respondents noted our commitment to consult publicly for substantive changes to the guidance and highlighted the importance of allowing stakeholders to properly consider and comment on minor amendments.

3.6 Respondents felt that the use of *must* and *should* within the SR code and guidance respectively, created a *level of ambiguity which some licensees could use… to continue potentially harmful practises*. Alternative wording for the code provision was proposed to the effect of: *Licensees must be able to demonstrate the extent to which they have put the Commission's guidance on High Value Customers into practice, how they have done so and, where appropriate, the reasons why specific measures have not been implemented*. A similar observation was made in relation to the term *we expect*, which it was proposed created further ambiguity as to the status of the guidance. We have summarised our response to these concerns and others related to the status of the guidance in the 'other issues' section of this response.

3.7 Whilst not proposed during the consultation, several responses expressed concern that a blanket ban on incentives would negatively affect both recreational and professional poker players, whose margins often rely on 'high volume' rewards. Respondents pointed to key differences between poker and other online games and suggested that the former be exempt from an outright ban.

Our position

It would not be practical to provide a 'one size fit all' definition as to what constitutes an HVC. However, we can confirm that the guidance applies to those schemes that offer tailored or personalised incentives linked to high value spend and/or frequency of play. This excludes ad hoc, non-personalised bonus offers that are generally made available to large numbers of consumers. High value prizes linked to promotions such as customer free prize draws are generally not tailored towards a specific individual consumer and would not therefore be in scope. Whilst we note that HVC schemes appear more prominently in certain sectors, it would not be appropriate to exempt specific licence types given potential for such schemes to be adopted more widely at any given time.

We consider our description of *tailored or personalised incentives* to sufficiently capture the type of schemes and consumers that are in scope of the revised SR code provision. We noted the proposal to distinguish HVC incentives from *routine promotional activities* but concluded that this distinction is clearly made in reference to *tailored or personalised incentives linked to high value spend and/or frequency of play.* Similarly, this description applies to instances in which licensees offer enhanced incentives to customers during periods of high spend, on the basis that such offers will be specifically linked to high spend and/or frequency and tailored to a specific customer at a specific time. The individual will be offered such incentives on account of being deemed a VIP, High Value Customer or equivalent. It is important to note that SR code 5.1.1 applies to both rewards schemes *and* incentives. This guidance is not intended to cover general customer reward programmes. We will be vigilant where licensees seek to circumvent the intention of this guidance and where necessary that will prompt further prescriptive requirements for specific licensees.

The requirement for licensees to reduce the risk of gambling related harm is implicit in the need for licensees to offer incentive or reward schemes in a *manner which is consistent with the licensing objectives.* Failure to meet this requirement will result in regulatory action, the severity of which will be determined by the seriousness and scale of failings on the part of the licensee.

We consider the wording of the guidance to be consistent with an outcome-based approach and avoids a prescriptive 'one size fits all' regulatory requirement. The effectiveness of this approach relies upon licensees taking responsibility for ensuring they operate their businesses to comply with both the letter and the spirit of the requirement. Licensees are on notice that where this approach fails to deliver the outcomes required, we will propose more prescriptive requirements either for specific licensees or through additional general licence conditions.

We note the concern expressed on the impact that a blanket ban on incentives could have on online poker. We have not proposed a blanket ban on incentives, but we do expect amended SR code provision to be applied in a consistent manner to all players deemed eligible for high value reward schemes or incentives, irrespective of the gambling activity they are participating in.

Know your customer - assessing and mitigating risk

3.8 Licensees need to ensure that their interaction with high value customers is based on robust 'know your customer' and due diligence checks. Our casework has shown that this has often not been the case, with common themes including:

- Failure to undertake appropriate checks on HVCs and whether they can afford their gambling spend, initially and ongoing.
- Accepting limited or questionable source of funds evidence in a tick-box fashion.
- On numerous occasions the above has resulted in a customer deemed to be wealthy, and incentivised as such, found to be funding their gambling from problem debt and/or the proceeds of crime.

3.9 The draft guidance proposes a number of enhanced checks we would expect a licensee to undertake before offering any customer access to an HVC scheme and details the action that should be taken in the event that a prospective or existing HVC fails such checks.

Consultation question

Q8. Do you agree with the proposed guidance on what know your customer checks should be undertaken on HVCs?

Q9. Do you agree that where a customer has previously been part of a multi-operator self-exclusion scheme (e.g. Gamstop or SENSE), they should be prohibited from HVC schemes?

Q10. Are there additional safeguards or good practice which should be included in the guidance relating to customer checks and the assessment and mitigation of risk?

Respondents' views

Know your customer checks

3.10 Respondents generally agreed with the principle that HVCs posed a higher risk due to their levels of engagement by frequency and/or spend and should therefore undergo more enhanced checks. A number of respondents confirmed that they actively assess the financial background of those consumers deemed to be of higher risk, with follow-up action designed to reduce the likelihood that such consumers are exposed to harm.

3.11 Respondents noted that the draft guidance went further than the industry's voluntary code and responses were generally split as to the appropriateness and effectiveness of source of funds checks for all HVC consumers. There was concern that the requirement would place a disproportionate burden on consumers who would be reluctant to supply information that is typically handled by banks and other financial institutions. It was suggested that relying on source of fund checks for admittance to HVC schemes risked alienating customers whose spending fell *significantly below the AML threshold* and would not ordinarily have prompted AML concerns. There was concern that this added layer of friction in the customer-licensee relationship will mean that customers become less *exposed to the same degree of ongoing monitoring, risk assessment and close management than an HVC necessarily would*. Some highlighted the risk of consumers migrating to the unregulated market and/or opening multiple accounts to circumvent source of funds checks.

3.12 It was suggested that source of funds checks placed an overreliance on open source information, in determining an individual's affordability at the expense of other considerations such as player behaviour and markers of harm. One respondent commented on the difficulty in identifying personal vulnerabilities and suggested that the guidance be redrafted to require that the safer gambling assessment take account of those vulnerabilities that licensees *become aware of.* Other respondents commented that introducing a mandatory requirement for licensees to request source of funds documentation from consumers was incongruent with a *risk-based approach* and potentially in breach of data protection principles. Clarification was sought on the extent to which licensees should seek to verify potentially sensitive information, such as employment history.

3.13 One respondent queried whether such checks could be imposed on *regular staking* bettors, which may reduce player incentives and have a negative impact on customer experience. Another commented that the requirement for licensees to *apply player protection controls, affordability checks, and due diligence to all customers* implied that *all gambling by all customers requires an affordability check*. The question was posed as to whether such drafting unlawfully pre-determined the outcome of the forthcoming consultation on customer interaction guidance and pre-empted the outputs of ongoing industry trials to *define parameters around affordability more clearly*. It was further proposed that the term *affordability* be replaced with *sustainability* (as referenced in the industry's voluntary code) until such a time as the industry's trials into affordability have been properly evaluated.

3.14 There were a number of comments concerning the proposal to suspend a player's HVC status in the event that an HVC fails the necessary checks. Some respondents suggested that HVC status should be retained *to ensure [customers] continue to be subject to enhanced monitoring and relationship management*. It was proposed that HVC status only be suspended once it is confirmed that the risk to consumers cannot be appropriately addressed via other mechanisms. Some queried the need for an *appropriate separation between those with responsibility for customer checks and those managing the day-to-day relationships and incentivisation of HVCs.* Concern was expressed on the basis that customers are more likely to cooperate with the customer checks process if they know the person requesting the information; which in most cases will be the person managing the day-to-day relationship of the HVC. Nevertheless, it was agreed that there should be a separation between those responsible for *deciding* a customer's eligibility and those relationship managers tasked with *conducting* the checks.

3.15 Some respondents queried the implication of the proposal that licensees *consider the regulatory risk posed by continuing the customer relationship* in the event that a customer is unable or unwilling to supply the information required. It was considered disproportionate to exclude such customers from *regular play or non-HVC offers.* Another respondent queried the need to refer to elements of the customer interaction guidance in section 2.10 of the HVC guidance, on the basis that the guidance applies to all consumers not just HVCs.

Prohibiting prospective HVCs that have previously registered with a multi-operator self exclusion scheme

3.16 The majority of respondents supported the proposal to exclude customers that had previously been part of a multi-operator self-exclusion scheme from HVC membership. Some respondents preferred existing practices in which, for example, former Gamstop registrants must have their entry into an HVC scheme signed-off by a holder of a Personal Management Licence together with written explanation as to how *including this customer in this group helps to mitigate a business or customer risk*. An example was given whereby a high net-worth individual would continue to receive *enhanced account management* but would not be offered individualised bonus offers. One respondent observed that individuals self-exclude for *multiple reasons* and it would be disproportionate to apply a lifetime ban, particularly if enhanced checks provide the necessary assurances. It was noted that ordinary code provisions 3.5.2 and 3.5.4 require licensees to *make available sufficient information about what the consequence of self-exclusion are* and that the prospect of a lifetime ban from HVC schemes could deter consumers from joining a multi-operator self-exclusion scheme (or use other gambling management tools). A suspension from HVC status for a period of around 2 years was considered more proportionate (subject to an individual's adherence to self-exclusion scheme and necessary background checks).

3.17 Data protection and the requirement to only share data *when there is a lawful purpose of doing so* was cited as a potential barrier, for example, where consumers choose to exclude from specific licensees (or 'verticals') but not others. For example, online licensees might not have access to whether a customer has self-excluded via SENSE as data protection prevents such information being shared outside the land-based casino sector. Others cited GambleAware research, which found that the majority of self-excluded respondents did not identify as a problem gambler and queried the extent to which self-exclusion could be considered a reliable proxy for harm. It was noted that some consumers choose to self-exclude in order to avoid specific verticals or gambling products and greater flexibility was needed, for example, giving PML holders discretion to sign-off entry into a vertical from which a prospective HVC had previously self-excluded. A number of licensees expressed a preference for the industry's voluntary code in which registration of previously self-excluded players into an HVC scheme would entail PML sign-off and the imposition of mandatory deposit/spend limits.

Additional safeguards and good practice

3.18 Respondents commented on the means through which affordability checks could be combined with other technologies, protections or guidance to enhance player safety. There was a suggestion for checks to be conducted using open banking or Single Sign On (SSO) technology to determine an individual's income and gambling transactions. There were calls for the development of an *affordability checklist* (to include verification of income via payslips, HMRC tax returns etc) and a monthly limit on net deposits (for example, on all online casino products), above which additional limits could be set at a percentage of a player monthly provable income. Some commented that affordability checks would be well served by a single customer view or an industry wide 'risk register' to provide licensees with a holistic view of players spending behaviour. Other suggestions related to additional safeguards and good practice included:

- Greater restrictions to customers aged under 25. Respondents referred to the industry voluntary code, which identified the under 25 demographics as being at elevated risk to gambling related harm. Concern was expressed that broadening the at-risk demographic to under 35s was disproportionate and likely to undermine the efforts to protect younger consumers.

- The introduction of specific time limits on how soon newly registered customers can be offered HVC membership to allow sufficient time to monitor gambling behaviour, sustainability and undertake necessary checks.
- The inclusion of bank or credit card gambling blocks within the criteria of factors that would prevent membership to an HVC scheme register.

Our position

The proposed guidance seeks to address the regulatory challenge posed by the disproportionate financial value of HVCs, which has evidently led to a conflict between regulatory compliance and short-term commercial objectives. Failure to ensure a clear separation of responsibilities between HVC schemes and responsible gambling functions has fostered environments in which commercial considerations take precedence over regulatory risk. We disagree strongly with the proposition that at-risk consumers should be offered HVC membership in order that they receive closer monitoring and interaction with staff. This consultation was driven, in part, by concerns that licensees placed HVCs outside standard processes for interaction, based either on commercial imperatives or a false notion that wealthy customers (or assumed wealthy customers) are insulated from gambling-related harm.

We are concerned by the implication that enhanced levels of support are contingent on access to programmes that have been designed to incentivise player spending. We understand the view that, in some cases, customers will respond more positively to requests for information undertaken by the account manager, but do not consider the proposed guidance prevents a situation in which the customer is referred to another team having received assurances from their account manager as to the purpose of these checks. We are therefore not persuaded that the checks themselves have to be directly undertaken by the account manager.

We note the concern that source of funds, ordinarily prompted by AML concerns, may currently be conducted at a higher threshold than is typically required to qualify for HVC incentives. However, we consider these checks justifiable given the unique arrangements made to incentivise HVCs to spend at significantly higher levels than the wider customer base. HVCs present a heightened risk due to their high levels of engagement by frequency, spend, or both. Undertaking source of funds checks on this group is therefore consistent with a risk-based approach. Source of funds checks should provide clarification over the actual source of the funds used to gamble rather than an open source assessment of potential income/wealth. Consumers that are unwilling or unable to provide the necessary information should not be considered eligible for HVC incentives. Licensees are expected to exercise their judgement as to whether to continue their relationship with such customers.

We agree that a customer's eligibility to an HVC scheme should not be solely determined by successful completion of a source of funds check. This decision is likely to be informed by a range of factors but ultimately consideration for tailored or personalised incentives is contingent on a customer's ability to supply up-to-date evidence relating to identity, occupation and source of funds all of which should be considered in conjunction with the licensee's own risk assessment, as detailed in our customer interaction guidance.

We agree that *player protections, affordability checks, and due diligence* applied to *all customers* could be refined to recognise that these controls will be applied in specific circumstances.
We therefore propose to amend this section to require that such actions are deployed consistently To all customers at the appropriate stage of the customer relationship or in response to specific concerns. It's important to note that the consultation concerns eligibility for HVC incentives and does not amend any existing requirements, including those related to non-HVCs.

We intend to retain the term *affordability check,* which applies to the principle that licensees obtain sufficient assurance that a consumer's income, outgoings and circumstances are consistent with their level of spend. We expect the effectiveness and robustness of these checks to evolve in response to ongoing industry trials and any outputs from the forthcoming consultation on our customer interaction guidance.

We expect licensees to be proactively monitoring all account activity for markers of harm and changes in patterns of play. However, given the high levels of spend and frequency associated with HVCs we consider it important to set a minimum amount of time for licensees to undertake a review of a customer's account. We consider such reviews should be carried out on at least a quarterly basis, with the overriding principle that the frequency of such checks be determined by the assessment of risk from ongoing monitoring of the customer's activity, behaviour and circumstances.

We have considered the risk that a lifetime ban from HVC incentives could potentially dissuade consumers from registering with multi-operator self-exclusion schemes. Evidence to support this assertion is limited but we are aware that some consumers have reported excluding for reasons unrelated to gambling harm, such as a desire not to be inconvenienced by marketing material. Such examples should not override the serious red flag a previous self-exclusion should represent in a licensee's assessment of risk. We would expect a licensee to take note of any customer returning to gambling following a period of self-exclusion whether they were a HVC or not. In this context, we are not just talking about whether to allow a customer to gamble again, but the appropriateness or otherwise of actively incentivising that highly engaged customer's gambling following a period of self-exclusion. The circumstances in which we think that would be appropriate are limited.

Where consumers have been identified as having previously self-excluded, we will expect the accountable PML holder or equivalent to review the associated risk and sign-off on any decision to provide future access to HVC schemes or incentives. A clear audit trail should include the steps taken by the licensee to mitigate the risk of harm which as a minimum should include the imposition of mandatory deposit/spend limits.

We note existing limitations whereby licensees would be unable to check whether an individual has previously self-excluded from a scheme operated in another sector. We expect licensees to act upon information reasonably available to them.

We welcome the proposals for additional safeguards and good practice. Some of the examples highlighted, such as the single customer view, are subject to ongoing exploratory work between ourselves and industry. We do not consider it appropriate to mandate a specific timeframe after which new customers can be offered HVC incentives on the basis that some licensees have the means to determine player behaviour and affordability over a shorter period than others

The guidance references 18-34-year olds as an example of the demographic group that over-index for at risk or problem gambling rates. This observation should not deter licensees from tailoring restrictions to a subset of individuals within this age band (for example, stricter controls on under 25s) where concerns arise. We continue to monitor other sectors (for example, banking) for innovations that could support the delivery of the licensing objectives.

We note the request for an *affordability checklist* and *monthly spend limits*. Further details of our evolving approach to the issue of affordability will be provided in the forthcoming customer interaction consultation.

Oversight and accountability for HVC teams

3.19 A number of licensees have created dedicated teams to manage HVCs. Given the regulatory risks these teams are directly involved in managing, their operation and performance should be subject to proper oversight and scrutiny by the licensee's senior management and Board. However, in a number of cases the focus of such teams has been orientated too heavily towards the delivery of commercial performance, resulting in:

- HVC teams operating in isolation from safer gambling, compliance, or AML teams
- A lack of appropriate oversight and senior accountability for HVC teams
- An absence of appropriate records and audit trails for decisions taken within HVC teams or at Executive level
- Tailored approaches to safer gambling or AML processes being undertaken by HVC teams or Senior Executives with commercial considerations taking precedence over regulatory risk
- Breaching internal polices for HVCs.

3.20 The draft guidance reinforced the need for licensees to have implemented effective policies and procedures for the operation and governance of their HVC schemes. It notes the disproportionate revenue provided by HVCs, relative to the wider customer base, and proposes a number of measures to mitigate the risk of commercial motivations conflicting with regulatory compliance.

Consultation question

Q11. Do you agree with the proposed guidance on oversight and accountability for HVC schemes?

Q12. Do you agree with the proposed guidance on maintaining an audit trail for HVC schemes?

Q13. Are there additional safeguards or good practice which should be included in the guidance relating to oversight and accountability?

Respondents' views

3.21 A majority of respondents were in support of the proposed guidance relating to oversight and accountability. On audit trails for HVCs, some respondents expressed their agreement with the proposals insofar that audits are subject to *regular quality-review* processes. Other respondents emphasised that audit trails should be reviewed externally, with one respondent proposing that audit trails and other customer data be monitored by an ombudsman to address any conflict between *commercial motivations and regulatory compliance*. Audit trails were largely welcomed as a means of facilitating compliance and enforcement action. Some respondents expressed their support on the condition that equal attention be given to preventative measures, including enhanced know your customer checks and sustainability of spend.

3.22 Several respondents noted that whilst in agreement with the proposals on audit trails, some of the wording could go further to strengthen the guidance. It was suggested that a change in the use of 'should' to 'must' would satisfy this. Respondents also asked for further clarification on what exact material the *record of decisions* should include. Others suggested that not all customer contact, particularly unsuccessful attempts at contact, should be considered *notable*.

3.23 Some noted that the proposed guidance was clearly set out and placed due emphasis on *customer welfare*. Several respondents suggested that enhanced know your customer checks would reduce the risk of customer harm, with one response noting that light-touch or inaccurate checks – often as small as an address mismatch – are a barrier to Gamstop working effectively. Further responses suggested that Gamstop, or a similar external platform, should be employed to track customer spending patterns across multiple licensees.

3.24 Some respondents were of the view that the proposals relating to oversight and accountability had gone *too far* and infringe on licensees' livelihoods. One response predicted a large revenue loss resulting from additional internal auditing, suggesting that the *cost of implementation will outweigh the commercial benefits*. A small number of responses suggested that 'customer autonomy' should be further considered in the guidance.

Our position

The proposed guidance addresses the need for licensees to maintain records detailing how a HVC relationship has been managed and to have clear oversight arrangements for how HVC schemes operate. Properly implemented, such measures should instil clearer accountabilities to prevent adverse outcomes. Where adverse outcomes do occur, these controls will help effective and efficient investigation to establish whether all reasonable steps have been taken by the licensee.

We note that many respondents were in favour of these proposals and agree that proper audit trails enable the Commission to hold licensees to account. They also provide a licensee and their staff with the ability to demonstrate the steps they have taken to prevent adverse outcomes. We further agree that regular reviews and quality-checks of internal procedure should be routinely actioned to monitor the efficacy of such trails.

We intend to retain the term *record of decisions*, which refers to any decision made around an HVC's status and incentives offered. In line with the guidance, we are in favour of an outcomes-focused approach, particularly as a licensee's decisions are situational and based on known information specific to that individual customer.

We further recognise that the proposed changes may incur a cost for implementation, which we have considered in paragraph 3.35. Much of what we are proposing will not represent a significant additional burden to compliant licensees as it draws together pre-existing requirements and how they should be applied to HVCs. This consultation was driven by the concern that licensees have unsustainably or, in some cases, irresponsibly offered incentives to HVCs. We consider the cost of maintaining appropriate records, audit trails and oversight a prerequisite for a licensee to demonstrate how they are operating HVC schemes responsibly. Where a licensee is unable to apply these minimum standards, they should not be operating HVC schemes.

Relationship management

3.25 Licensees need to ensure HVC staff and Executives are incentivised to strike the correct balance between commercial targets and the licensing objectives. Some licensees have failed to ensure relationships between staff and HVCs remain professional and demonstrably consistent with the licensing objectives. The draft guidance provides a non-exhaustive list of the steps licensees should consider to ensure staff are equipped and motivated to manage HVCs effectively.

Consultation question

Q14. Do you agree with the proposed guidance on relationship management for HVC schemes?

Q15. Are there additional safeguards or good practice which should be included in the guidance relating to relationship management?

Respondents' views

3.26 Respondents largely supported the additional guidance around relationship management between staff and HVCs. Many responded positively to additional steps proposed in relation to relationship management, with one respondent noting that the proposals offer *suitable and effective controls.* Whilst agreeing with the content, some respondents suggested that the draft guidance should include additional *hard requirements* for HVC managers. It was suggested that requiring staff to fix spend limits based on a customer's *affordability* would be a suitable requirement. Another respondent commented that the proposed measures were *critical*, and that the draft guidance should go further to reflect this. One suggestion noted that the phrase *licensees should consider what additional steps are required* could be amended to clearly state that licensees are required to *implement all measures.*

3.27 The proposal to rotate colleagues who manage HVCs drew a range of responses. There was a clear split between those who favoured the proposal, and those who believed the requirement may damage staff-customer relationships. It was suggested that account managers responsible for single customers were more likely to be able to *spot changes in [a customer's] appearance, speech and behaviour* in order to identify potential harms. It was also noted that customers would be more comfortable sharing information with a familiar account manager. One respondent added that rotation could result in *less equipped* staff managing customer relationships. Several respondents acknowledged both sides of the discussion around staff rotation, with one noting that whilst some HVCs may benefit from working directly with one colleague, rotation *should be encouraged* to avoid difficulties. As an alternative to rotating account managers, one respondent suggested that all staff in contact with HVCs should be subject to additional *peer reviews*, *quality checks* and further governance. Additionally, the respondent proposed that HVC accounts are frequently reviewed by the Head of Compliance.

Our position

The proposed guidance addresses the tension around HVC schemes between meeting commercial objectives and customer safety. Failure to document instances of customer interaction, irresponsible offering of incentives, and unprofessional relationships between staff and customers has jeopardised some licensees' ability to safely offer incentives and, on occasion, led to exploitative behaviour. This consultation addresses the absence of objectivity within assessments of regulatory risk during recorded customer interactions. We consider the proposed controls for staff working with HVCs will address this and provide a framework for offering incentives consistent with the licensing objectives. We also acknowledge the calls for *hard requirements* for staff working with HVCs. However, we are not convinced that a highly prescriptive approach would resolve the issue of staff conducting customer interactions in a tick-box fashion, without situational objectivity. Our intention is to clearly define the required outcome and support licensees on how this may be achieved through the accompanying guidance.

We are retaining the guidance to rotate staff managing HVCs where possible. We note the concern that in some instances, customers could be more willing to share information with staff they are familiar with. However, a lack of objectivity by HVC staff managing designated customer accounts has been a recurring theme of our casework and is a risk that needs to be addressed. The guidance makes clear our expectation that licensees must establish a more complete profile of an HVCs *behaviour* and spending habits and maintain a full audit trail and record of decisions – consequently, staff rotation should pose less of a concern.

Use of incentives

3.28 Feedback collected from former HVCs suggested that incentives have been used to accelerate spend, cross-sell to other gambling products, encourage a return to gambling after a period of inactivity, or to placate them following heavy losses. In several cases resulting in a customer experiencing gambling-related harm, the licensee has failed to demonstrate how they considered the appropriateness of incentives they offered to the HVC. In some instances, this has resulted in incentives exacerbating at-risk behaviour.

3.29 The timing, nature, and persistence of offers or incentives in circumstances where markers of harm are evident are a serious cause of concern. We have identified a number of incidences in which licensees have failed to evidence what steps they have taken to ensure the risks associated with common issues have been considered and mitigated. The draft guidance includes a non-exhaustive list of key considerations to ensure incentives are not used to exploit vulnerable customers or to encourage problematic behaviour.

Consultation question

Q16. Do you agree with the proposed guidance on the use of incentives within HVC schemes?

Q17. Are there any additional safeguards or good practice which should be included in the guidance relating to the use of incentives?

Respondents' views

3.30 Most respondents supported the proposals on the use of incentives within HVC schemes. Some respondents suggested that the draft guidance would benefit from amendment to reflect that some information may be withheld by the customer. One respondent noted that changes to a customer's personal circumstances can only be *considered where* licensees *are made aware of or have reason to believe* they have taken place. Another respondent echoed this opinion and suggested that an acknowledgement of the licensee's remit, as in earlier sections of the guidance, could be included.

3.31 Respondents also used this section to request further guidance on incentives to non-HVCs. It was observed that any staff-customer engagement regarding incentives encourages further play, regardless of the timing. Another respondent commented that delaying incentives – in this example, bonuses based on recent activity – would not achieve the desired outcome and that it would be more problematic to tie bonuses to *future deposits or losses*.

3.32 Some respondents sought further definitions on the language used in this section and the types of incentives that could be offered. One respondent suggested that further clarification of terminology would prevent decisions being left *open to judgement by individual managers*. For example, there was a risk that the use of the term *significant losses* could be interpreted without proper consideration of the customer's relative affordability. This respondent proposed amending the wording to read *significant losses in relation to net-worth* and/or *affordability*.

Our position

We consider the draft guidance to sufficiently reflect our expectations of how licensees can safely offer incentives. We recognise that in some instances, customers may choose to withhold knowledge that could otherwise inform a licensee's decision to offer incentives. We accept that licensees can only be held to account for information they hold or could have reasonably obtained prior to making commercial decisions and have updated the guidance to take account of this.

The guidance supplements the existing LCCP requirements regarding rewards and bonuses and offers additional support on the incentivisation of HVCs.

Any interaction between HVC staff and customers must be handled responsibly and should not be used to encourage additional gambling beyond what a customer can safely afford in time or money. We have highlighted the need to consider the *timing* of when incentives are offered as a particular type of engagement which has been shown in some circumstances to be problematic. Our casework findings have suggested that the timing (and persistence) of offering incentives encouraged additional spend where a customer was more susceptible to taking risk, for example, having experienced heavy losses or used all their account balance. The guidance maintains that this example, and other *situational* vulnerabilities, should be taken into consideration before offering any incentive.

Incentivising valued customers is an established commercial practice in the gambling industry and is expected by some consumers. However commercial motivations or consumer expectations cannot override the licensing objectives. We expect licensees to pause any customer incentivisation should any indicators of potential harm require investigation and consideration.

We agree that the use of the term *significant losses* is subjective to the individual customer's spending and affordability and will reflect this in the guidance. However, more stringent definitions around types of incentives may undermine a licensee's responsibility to make situational decisions in the interest of an individual customer's case. Where evidence emerges around particular types of incentives or the way they are offered are leading to harm, we will apply specific restrictions to individual licensees or more generally.

Further consultation questions

3.33 Respondents were invited to consider potential implementation costs and whether an implementation period of four weeks provided sufficient time to meet the minimum standards.

Consultation question

Q18. Are there any aspects of the LCCP requirement and associated guidance which would require an implementation period longer than four weeks (for example, should your current approach to HVCs not meet the minimum proposed standards)?

Q19. Are you able to provide an estimate of the costs that might be incurred by your business in implementing the proposed requirements?

Respondents' views

3.34 Most respondents expressed uncertainty around providing an exact time frame for meeting the new guidance. However, many suggested that a four-week implementation period would not be sufficient. Some respondents noted that the necessary changes needed to meet the requirements – including software updates, staff training, and source of funds checks – could take up to twelve weeks to implement. Several respondents expressed support for a three-month implementation period in line with the Commission's *standard period for regulatory requirements*. One respondent noted that some source of funds checks can take a minimum of four weeks. Another suggested that four weeks would suffice for the planning period only, particularly as many workforces remain based at home with reduced capacity. Many respondents noted that additional time would be needed for conducting checks on existing HVCs, as well as reviewing new onboarding procedures.

3.35 Some respondents anticipated that additional provisions around offering HVC schemes could impact operating costs and revenue. Several respondents noted that implementing the proposed changes would incur additional costs, particularly around staff training and recruitment. Other respondents commented on the need to allocated further capacity and funding to information technology in order to conduct additional checks and store relevant customer information. Some respondents provided implementation cost estimates ranging from £50k to £1.3m. A number of responses suggested the proposed changes would incur no additional cost to licensees.

3.36 It was noted that tighter restrictions on HVC schemes could have an indirect impact on related leisure and hospitality industries. The primary example was the racing industry, which it was claimed could see a sharp reduction in corporate hospitality events linked to race sponsorship. It was estimated that the restrictions could result in a reduction in income to racecourses. It was claimed that if implemented, the proposals would affect investment in race sponsorship and exacerbate the serious and unexpected impact on racing's finances, which are already under strain due to the Covid-19 restrictions.

Our position

As HVCs are a subset of the wider customer base, licensees should already be applying regulatory controls concerning customer protection, due diligence, and the prevention of criminal proceeds being used to fund gambling. The need to introduce additional specific guidance around HVC schemes is due to a failure on the part of licensees to collectively raise standards despite the Commission highlighting common failings in this area. The Commission signalled its clear intent to see rapid improvements in how HVC schemes are operated in October 2019. A large proportion of the industry has already committed to apply the voluntary code announced by industry representatives in May 2020. For those licensees, this guidance represents additional adjustments in a few targeted areas.

Those licensees who have chosen not to apply the voluntary undertakings or applied controls of their own, will now need to make the necessary adjustments to apply the new guidance at pace or suspend their HVC schemes until such time as they can demonstrate the guidance has been applied.

We note that more stringent checks will likely impact the number of customers that qualify for HVC incentives, and may indeed deter consumers from joining an HVC scheme. However, we are clear that responsibility lies with a licensee to ensure that their decision to treat someone as having a high disposable income which can fund higher gambling spend (and incentivise them as such), is based on robust 'know your customer' and due diligence checks. We cannot allow concerns regarding the potential knock on impact on hospitality and sponsorship arrangements to temper the need for appropriate controls to ensure HVCs are gambling safely and within their lawfully acquired means.

The changes to SR code provision 5.1.1 will come into effect on 31 October 2020.

Other issues

3.37 We noted several recurring observations within the responses concerning a number of wider issues. The responses to each of these topics and our final position are summarised below.

Risk of consumers migrating to unlicensed licensees

3.38 There was concern that elements of the guidance, notably the requirement for source of funds checks for all prospective HVCs, would have the unintended outcome of driving higher spending customers towards unlicensed gambling businesses. It was suggested that we adopt the approach set out in the industry voluntary code, which committed to *enhanced know your customer and sustainability of spend* checks or that we introduce IP blocking software to reduce the risk of consumers accessing unlicensed licensees online.

Our position

This consultation is concerned with raising the standards of consumer protection offered by Gambling Commission licence holders. Consumer protection is not helped in our view by suppressing standards in the licensed market because of an unsubstantiated risk that consumers will seek out illegal operators. The response to that risk is to tackle unlicensed operators alongside improving standards in the legal market.

Where unlicensed licensees are identified and found to be targeting British consumers, we will act to ensure they cease these activities.

Status of guidance

3.39 Respondents generally agreed that the proposed guidance provided helpful direction to licensees whilst retaining the flexibility associated with outcome-based regulation. In some instances, however, concerns were raised around the effectiveness of guidance over more formal regulatory requirements. The absence of a *clear distinction between what is required under regulation* and efforts to drive standards beyond minimum requirements was considered *at odds with established public law principles of clarity*, *precision and consistency*. Several respondents referred to the use of the term *should* as potentially limiting the guidance's enforceability or – based on how the term has been defined – placing the guidance on equal footing with a mandatory requirement, which could result in the imposition of new *onerous requirements* without sufficient industry engagement.

3.40 It was suggested that the Commission publish a *checklist* of measures that needed to be implemented, with guidance used to inform the development of good practice and staff training. Some respondents called for greater transparency in the sanctions that would be imposed for specific breaches such as a *clear reference table of financial liability for non-conformity* with sanctions to include *refund of losses and a penalty in order of magnitude greater than the losses*. It was further suggested that the nature of sanctions be guided by a *sliding scale* of enforcement action based on the severity of a breach.

Our position

We consider the wording of the guidance to be consistent with an outcome-based approach and avoids a prescriptive 'one size fits all' regulatory requirement. Business models and approaches vary across different sectors of the gambling industry but the guidance makes clear the minimum standards we consider are necessary to minimise the risks that are inherent with incentivising highly engaged gamblers. We consider that the provision of a checklist or prescriptive set of procedures intended to cover all scenarios and business models would be counterproductive. We also acknowledge that a number of respondents favoured an outright ban of HVC schemes given the manner in which they have been found to operate in the past.

The effectiveness of the approach we are taking relies upon licensees taking responsibility for ensuring they operate their businesses to comply with both the letter and the spirit of the requirement. Licensees are on notice that where this approach fails to deliver the outcomes required, we will propose more prescriptive requirements either for specific licensees or through additional general licence conditions. Further details on the criteria used to assess the severity of regulatory actions is set out in our statement of principles for determining financial penalties.

Clarification of terms

3.41 There were calls to further define several other terms included in the guidance to ensure behaviours align with our expectations, specifically:

- Reference to *additional specific controls* relating to customer checks, noting that failure to meet this expectation would put the operating and personal licence at risk
- Expanding on what type of vulnerabilities are covered within *behavioural vulnerability*
- The term *notable events* in the oversight and accountability section and whether, in the interest of proportionality, such events should cover customers that have not been contactable over a *prolonged period of time*
- Clarification as to what the *reasonable steps* needed to verify information and conduct ongoing checks would entail, given the likelihood that customer would be unwilling to divulge sensitive information
- Clarification as to what proportion of a gambler's disposable income can reasonably constitute "affordable" losses
- Requests to further define the need for *up-to-date* information in order to *ensure consistency and a level playing field in the application of this requirement*.

Our position

The nature of the controls applied in any given instance will depend on the outcome of a customer's risk assessment. However, where there are concerns that a consumer's circumstances have changed a licensee will need to review the appropriateness of their HVC membership and ensure necessary protections and safeguards are put in place (for example, limiting customer spend, suspending further incentives and/or terminating the HVC membership).

Behavioural vulnerability is used to describe individuals with a higher than standard level of trust or high appetite for risk. These qualities could make someone more susceptible to the influence of third parties or likely to make decisions that could result in more serious consequences. The guidance is seeking to prevent scenarios where such vulnerability is exploited by licensees to encourage unaffordable gambling. Our upcoming consultation on customer interaction is likely to explore consumer vulnerabilities in more depth and we will reflect any additional guidance that arises from that process to further support licensees.

We consider it important, for audit purposes, that licensees maintain a record of instances where a customer has not responded to an attempt by the licensee to make contact.

In relation to the term *reasonable steps*, licensees must be able to evidence that they have made a conscious effort to verify the information provided to them is accurate and conducted additional checks where there is doubt. We see regular evidence of such checks being undertaken for commercial purposes and would expect the same rigour to be applied to regulatory checks.

It is not possible to provide a single figure as to the amount of disposable income individuals are able to spend on gambling or what would constitute an 'affordable loss'. By their nature HVCs are often spending atypical sums on gambling which would be unaffordable for most of the wider customer base. Given licensees are seeking to derive the commercial benefit from these customers it is incumbent on them to ensure the amounts customers are spending are affordable and are not as we have seen in several cases, sustained through problem debt and/or the proceeds of crime.

The Commission will shortly be exploring themes including 'affordability' more extensively in a consultation on customer interaction. Any changes to requirements which apply to all customers will also apply to HVCs as a subset of the wider customer base.

Licensees should review the evidence it holds on a customer is updated to reflect any changes in personal circumstance. In the absence of any change in the risk assessment, licensees should, at a minimum, undertake a review of an HVC's account at least quarterly. The purpose of this guidance is to avoid scenarios where a significant change in a customer's circumstances, such as bankruptcy, conviction, or recorded markers of harm, goes undetected and unactioned for an extended period.

Evaluation

3.42 There were requests for the Gambling Commission to provide a clear overview of our approach to measuring the effectiveness of any new measures implemented by industry, as described in our industry challenge progress report. One respondent expressed concern that gambling related crime be used as an indication of the effectiveness of certain controls when an increase in affordability and KYC checks could lead to an uplift in detection and prosecution of criminal activity. Such an outcome, should it transpire, could give the false impression that the situation has worsened.

3.43 It was noted that even full compliance with LCCP would not resolve the likelihood of certain individuals experiencing gambling-related harm. A similar observation was made in relation to preventing gambling related crime. One respondent highlighted the challenges of measuring impact where the requirements have not been applied consistently, further highlighting the need for a *clear measurable policy objective*.

Our position

Once the new requirements are in place, we will measure their effectiveness through compliance assessments and by monitoring the volume of enforcement casework related to HVCs from the point at which the requirements take effect. We will also explore what data can be collected to monitor any changes in the number of HVCs, their contribution to licensees gross gambling yield (GGY) and how many customers are subject to and fail to meet the new due diligence criteria.

We consider the proposed code and guidance gives us a clearer basis to raise standards and we will monitor the effectiveness of the guidance through our ongoing compliance and enforcement work. If this approach fails to deliver the outcomes required, we will revisit the need to impose more prescriptive requirements for specific licensees or general requirements.

5 Annex A: Amended social responsibility code provision

The change to social responsibility code provision 5.1.1 is shown in italics.

Social responsibility code provision 5.1.1

Rewards and bonuses – SR code

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

1 If a licensee makes available to any customer or potential customer any incentive or reward scheme or other arrangement under which the customer may receive money, goods, services or any other advantage (including the discharge in whole or in part of any liability of his) ('the benefit') the scheme must be designed to operate, and be operated, in such a way that:

a. the circumstances in which, and conditions subject to which, the benefit is available are clearly set out and readily accessible to the customers to whom it is offered;
b. neither the receipt nor the value or amount of the benefit is:
    i. dependent on the customer gambling for a pre-determined length of time or with a pre-determined frequency; or
    ii. altered or increased if the qualifying activity or spend is reached within a shorter time than the whole period over which the benefit is offered.
c. if the value of the benefit increases with the amount the customer spends it does so at a rate no greater than that at which the amount spent increases; and further that:
d. if the benefit comprises free or subsidised travel or accommodation which facilitates the customer's attendance at particular licensed premises the terms on which it is offered are not directly related to the level of the customer's prospective gambling.

2 *If a licensee makes available incentives or reward schemes for customers, designated by the licensee as 'high value', 'VIP' or equivalent, they must be offered in a manner which is consistent with the licensing objectives.*

Licensees must take into account the Commission's guidance on high value customer incentives.