

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

**Consultation**

**January 2018**

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## Executive summary

We exist to safeguard consumers and the wider public by ensuring that gambling is fair and safe. We are focusing on a number of strategic priorities to achieve this, set out in our *Strategy 2018-2021*. The proposals in this consultation relate to some of the work we are taking forward around:

- protecting the interests of consumers
- raising standards in the gambling market
- improving the way we regulate.

We are proposing some changes to our Licence conditions and codes of practice (LCCP) in three main areas, summarised in the boxes below. These proposals flow from the second licensing objective: to keep gambling fair.

### Marketing and advertising

We work with partners like the Advertising Standards Authority (ASA) and the Committees of Advertising Practice (CAP and BCAP) to make sure that marketing communications for gambling are fair, don't mislead, and aren't targeted at vulnerable people. We are proposing changes to our licence conditions to:

- ensure that licensees adhere to the UK Advertising Codes
- make our current requirements about misleading advertising clearer to licensees
- introduce a new requirement to prevent consumers from receiving 'spam' marketing by email or SMS
- make clear to licensees that they are responsible for the actions of any third party organisations that they use, if the third party does not stick to any of these requirements.

### Unfair Terms

We have been working with the Competition and Markets Authority (CMA) to look at whether the terms, conditions and practices that licensees use are fair and transparent, especially around bonus offers. This work flows from UK consumer protection legislation, which licensees must obey.

We are proposing changes to our licence conditions to make clear to licensees that they must obey relevant consumer protection legislation at all stages of dealing with consumers, and not only when designing marketing materials.

We are also proposing some changes to make it easier for us to take action if we think a licensee is not following the relevant rules.

### Complaints and disputes

We want licensees to handle complaints in a fair, open, timely, transparent and effective manner. We are proposing changes to LCCP to make this outcome clearer to licensees. This includes introducing an eight week time limit for licensees to deal with gambling-related complaints and disputes.

Alongside this change to LCCP, we propose to introduce advice to licensees on handling complaints, and we will expect licensees to take this advice into account when they handle complaints. The advice covers areas such as:

- Defining complaints and disputes, and clarifying where possible the disputes an ADR provider can consider
- Complaints procedure requirements
- Receiving complaints from different sources
- Time limits for complaints handling and escalation
- Requirements for escalating disputes to ADR providers
- Standards for providing information to customers
- Information required by the Commission.

In this consultation, we also outline the work we are taking forward with Alternative Dispute Resolution (ADR) providers, to develop an additional framework of service standards for ADR provision, in addition to the requirements of the ADR Regulations. We are currently developing the additional framework of standards with input from ADR providers and consumers, and seek views on this work and its implementation process in this consultation.

## General

We have looked at a large amount of material from licensees in the course of our work. Not all of the information that licensees prepare for consumers is easy to understand. We are seeking views on whether we should introduce a standard of readability that all licensees must meet when preparing consumer-facing material to make sure that such materials are clear and transparent. We are interested also in views on what such a standard might look like.

We are asking for responses to this consultation by **5pm on Sunday 22 April 2018**. Respondents are welcome to comment on any or all of the sections in the consultation. Information about how to respond is contained in Chapter 6.

# 1 Introduction/background

- 1.1 In 2017, we published [Fairer and safer gambling](#), our three-year strategy showing how we will work with our partners to deliver a gambling market that works better for consumers. Our vision is for a market where consumers are:
- empowered to make informed choices about gambling
  - fully informed of, and able to make use of, their rights
  - free to enjoy gambling and to feel confident that they will be treated fairly
  - aware of the risks, and clear about when and how to seek help or redress
  - able to differentiate, and choose between operators in a competitive market on the basis of customer care and values.
- 1.2 This consultation relates to a group of proposed changes to help support that strategy, each of which is an important step to protect the interests of consumers. The three main themes of this document are that gambling businesses need to offer fair choices to consumers, to ensure that consumers have access to swift, fair and effective dispute resolution and minimise the risk of gambling-related harm from advertising.
- 1.3 The proposals are based on a range of indicators of the need for action – these include evidence of potential consumer harm, concerns about lack of compliance with consumer protection legislation, declining public trust in gambling and concerns about the impact of advertising on children, and young and vulnerable people.
- 1.4 However, the changes proposed here are just one part of the much wider work programme which will need regulators, industry and partners to work together to deliver. There will be further changes to our requirements during the course of delivering our three-year strategy.
- 1.5 Our work here is closely linked to the Government's [Consultation on proposals for changes to Gaming Machines and Social Responsibility Measures](#) in relation to advertising, our work with ADR (Alternative Dispute Resolution) providers to improve the way in which consumers have access to redress, and our joint programme of work with the Competition and Markets Authority to tackle potential breaches of consumer protection legislation. As work in each of these areas progress, we will review whether further changes to our requirements are necessary to protect the interests of consumers.
- 1.5 As well as raising standards by setting minimum requirements, we will also continue to support industry to put consumers first through guidance, advice and supporting the sharing of industry best practice. As set out in our strategy, we want a focus on 'what works' and we will drive and develop across the gambling landscape a culture of trialling and evaluating interventions.
- 1.6 This consultation sets out proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission.
- 1.7 Following this consultation, and taking into account the responses received, we expect to amend the relevant LCCP provisions. The amended provisions are expected to come into effect before December 2018.
- 1.8 We have a duty to permit gambling as long as we think it is reasonably consistent with the three licensing objectives set out in the Gambling Act 2005 (the Act). These objectives are:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
  - ensuring that gambling is conducted in a fair and open way
  - protecting children and other vulnerable persons from being harmed or exploited by gambling.

- 1.9** We also have a duty to provide advice to the Secretary of State about the incidence of gambling, the manner in which gambling is carried on, the effects of gambling and the regulation of gambling. We also regulate the National Lottery, and have a duty to aim to maximise returns from the National Lottery to good causes.
- 1.10** Our LCCP, together with the Act and associated regulations, statutory guidance to licensing authorities, and the Commission's formal statement of principles, form a central framework for regulating commercial gambling. The LCCP comprises licence conditions, which are mandatory obligations on the holders of gambling operating licences. It also includes two types of code of practice provision – social responsibility provisions, which have the force of licence conditions, and ordinary code provisions, which, although not mandatory, set out good practice that we expect responsible operators to follow. In areas covered by ordinary code provision, licensees should adopt alternative approaches only where they can demonstrate that to do so would be equally effective in achieving the desired objective.
- 1.11** The LCCP is based on the principle that licensees are responsible for delivering the licensing objectives within the framework outlined above. The LCCP requires licensees to put in place effective policies and procedures for managing a range of risks to the licensing objectives, and to assure themselves that what they are doing is actually working. In most cases, the LCCP does not prescribe detailed rules, but describes the outcomes that we expect licensees to achieve within the framework. We consider that licensees themselves are best placed to decide how to secure those outcomes cost-effectively within their own particular circumstances with the minimum of regulatory prescription. This makes the LCCP more proportionate and less burdensome for licensees.
- 1.12** Where we are proposing changes to licence conditions and codes of practice, we show additions to the licence condition/ code of practice in **red text**. Deletions are shown struck through ~~like so~~.
- 1.13** We are also using this opportunity to consult on new advice to licensees for handling gambling related complaints (attached at Appendix 1), and to seek views and stimulate debate on our direction of travel for improving alternate dispute resolution processes. We also invite views on requiring licensees to achieve particular standards of reading level (or 'readability') in consumer-facing documents.
- 1.14** The proposed amendments in this paper will be of interest to **all gambling operators**, and to gambling customers and to bodies or individuals with an interest in the regulation of gambling. We are seeking responses to this consultation by **5pm on Sunday 22 April 2018**. Details of how to respond are included in Chapter 6 of this document.

## 2 Marketing and advertising

- 2.1** On 31 October 2017, the government published its ‘Consultation on proposals for changes to Gaming Machines and Social Responsibility Measures’. In this, the government stressed that more should be done on gambling advertising to minimise the risks to vulnerable people, and outlined a package of measures proposed by industry and regulators. These measures included our commitment to consult on making compliance with the UK Advertising Codes (CAP and BCAP Codes) a Social responsibility (SR) requirement of Licence conditions and codes of practice (LCCP).
- 2.2** In this chapter we set out our proposals which are to:
- Elevate compliance with the UK Advertising Codes from an Ordinary code provision to an SR code provision
  - Sharpen and simplify the existing SR code provision 5.1.7 (Marketing of offers)
  - Introduce a new SR code provision requiring operators not to contact consumers with direct e-marketing without their informed and specific consent
  - Further clarify our position on responsibility for third parties

### Compliance with the UK Advertising Codes

- 2.3** We are consulting on elevating compliance with the UK Advertising Codes from an Ordinary code provision (as presently reflected in OC 5.1.6) to a new SR code provision. This would mean that any licensee that breached the Codes in future could be subject to the full range of our regulatory powers.
- 2.4** The UK Advertising Codes are written by the Committees of Advertising Practice (CAP) and enforced by the Advertising Standards Authority (ASA). The Codes contain rules applicable to all advertising and specific rules relevant to gambling, which aim to ensure that adverts are consistent with the objective to ensure marketing communications for gambling are socially responsible. They give particular regard to the need to protect children, young persons under 18 and other vulnerable persons from being harmed or exploited.
- 2.5** The ASA resolves complaints and undertakes enforcement work to tackle irresponsible advertising. It regulates through a system of self-regulation in the non-broadcast advertising (for example, printed media, billboards, online) and co-regulates with Ofcom in broadcast advertising. Ofcom regulates long-form advertising (including gambling versions of teleshopping) and retains overall responsibility, under the Communication Act 2013, for maintaining standards in broadcast advertising. The ASA has a range of sanctions available to it, including the withdrawal of media space for non-compliant advertisements. Although the power to fine is not one of these sanctions, the ASA can refer persistent or flagrant breaches of the Codes to appropriate sectoral regulators, including the Commission.
- 2.6** The UK Advertising Codes apply to marketing communications in the UK or targeted at UK consumers. In today’s interconnected world, consumers may see advertising in foreign media and receive direct marketing which originates from outside the UK. The ASA takes action to tackle problems with advertising that originates from outside the UK – often through international cooperation – but its ability to enforce standards directly is sometimes limited. Content broadcast on Ofcom-licensed services is subject to regulation by the ASA, even where it is aimed at audiences outside the UK (under the Country of Origin principle).
- 2.7** In recent times we, and the ASA, have had to take action against misleading marketing practices, deeply irresponsible advertisements published by affiliates, and the proliferation, on operators’ websites, of freely accessible game tiles (advertisements) of particular appeal to under 18s. This situation is not acceptable and is damaging trust and confidence in the gambling industry.

- 2.8** We think that our proposal will reinforce the importance of the UK Advertising Codes and help raise standards. It does not alter the overarching framework for advertising regulation. The ASA remains the responsible lead regulator and the body towards which people should direct complaints about advertising standards. We will continue to regulate in a risk-based and proportionate fashion. If we consider that licensees, or affiliates acting on their behalf, are in serious or repeated breach of the rules, we will not hesitate to apply the full range of our regulatory powers, which includes financial penalties.
- 2.9** We will continue to work very closely with CAP and the ASA to ensure a joined-up and consistent approach to interpreting and enforcing the Codes. We will seek to raise standards by hosting awareness-raising events, and by providing training and advice notes.
- 2.10** In practical terms this proposal will mean that we will:
- Create two new SR code provisions – broadly mirroring the existing OC conditions (5.1.6 and 5.1.9) - which will require that marketing communications *must* be socially responsible and that operators *must* comply with the UK Advertising Codes.
  - Retain an OC provision to comply with appropriate industry codes of practice on advertising.
  - Remove existing OC provisions relating to CAP/BCAP guidance and references to the remote element of the under 25s exemption.<sup>1</sup> We do not consider it necessary to refer to the former and the latter is already set out in the UK Advertising Codes.
  - Retain the extension of the under 25s exemption to non-remote point of sale advertising (not within remit of ASA/CAP) which elevates from the existing OC provision to the new SR code provision.

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**Social responsibility Ordinary-code provision 5.1.6**  
**Compliance with advertising codes**  
**All licences, except lottery licences**

1 All **marketing** advertising of gambling products and services ~~should~~ **must** be undertaken in a socially responsible manner.

2. In particular, licensees ~~should~~ **must** comply with the advertising codes of practice issued by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) which ~~apply to the form and media in which they advertise their gambling facilities or services as applicable.~~ For media not explicitly covered, licensees should **have regard to** apply the principles included in these codes of practice as if they were explicitly covered. Licensees ~~should also follow any relevant industry code of practice on advertising, notably the Gambling Industry Code for Socially Responsible Advertising.~~

2 Licensees ~~should also have regard to the CAP and BCAP 'Guidance on the rules for gambling advertisements' which contains a specific section on 'Misleadingness': 'free bets', or any equivalent guidance that either body may issue in future.~~

3 ~~Marketing communications must not include a child or young person. No one who is, or seems to be under 25 years old may be featured gambling. No one may behave in an adolescent, juvenile or loutish way. However, the restriction on allowing people who are, or seem to be, under 25 years old (ie: those in the 18-24 age bracket) to appear in marketing communications need not be applied: a in the case of non-remote point of sale advertising material, provided that the images used depict the sporting or other activity that may be gambled on and not the activity of gambling itself and do not breach any other aspect of the advertising codes.~~

<sup>1</sup> Following a consultation in 2013, CAP relaxed its rule on under 25s featuring in ads when applied to websites or similar media where a bet can be placed directly. More information: <https://www.asa.org.uk/advice-online/betting-and-gaming-featuring-under-25s.html>



~~b In the case of remote gambling, provided that the images ‘appear in a place where a bet can be placed directly through a transactional facility, for instance, a gambling operator’s own website. The individual may only be used to illustrate specific betting selections where the individual is the subject of the bet offered. The image or other depiction used must show them in the context of the bet and not in a gambling context’ (as provided in the Gambling section of the CAP code)<sup>4</sup>.~~

~~<sup>4</sup>This is currently set out in CAP code rule 16.3.14.~~

**Ordinary code provision (xxx – new)**  
**Compliance with industry advertising codes**  
**All licences**

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

**Social responsibility Ordinary code provision 5.1.9**  
**Compliance with advertising codes (lotteries)**  
**All lottery licences**

1 All **marketing** advertising of gambling products and services **must** ~~should~~ be undertaken in a socially responsible manner.

~~2 In particular, licensees **must** ~~should~~ comply with the advertising codes of practice issued by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) **as applicable**, which apply to the form and media in which they advertise their gambling facilities or services. For media not explicitly covered, licensees should **have regard to** apply the principles included in these codes of practice as if they were explicitly covered. Licensees should also follow any relevant industry code of practice on advertising, notably the Gambling Industry Code for Socially Responsible Advertising.~~

~~2 Licensees should also have regard to any guidance that CAP and BCAP may issue about advertising lotteries.~~

~~3 No one who is, or seems to be under 25 years old may be featured gambling.~~

## Consultation questions

Q1. What are your views on elevating compliance with the UK Advertising Codes from an Ordinary code provision to a Social responsibility code provision?

Q2. Are there any particular aspects of the UK Advertising Codes which would benefit from additional advice or guidance?

## Marketing of offers

**2.11** We propose to redraft the existing SR code provision (5.1.7 – Marketing of offers) to simplify it and focus on the desired outcome. The purpose of the provision – to ensure that marketing is transparent - does not change.

**2.12** SR code provision 5.1.7 draws on different elements of the UK Advertising Codes, including a requirement for promotional marketing material to include any significant conditions. Conditions are considered significant if they are likely to affect a consumer’s understanding of the promotion and their decision on whether or not to participate. Our associated compliance and enforcement activity has resulted in a marked improvement in standards although operators still need to do more to ensure that their marketing communications are transparent and do not mislead.

- 2.13** Although the requirements contained within 5.1.7 are reflected in the UK Advertising Codes we think it is necessary for this to remain a standalone licence code provision. It gives prominence to our expectations in an area which has been particularly problematic. This has been reinforced by the Competition & Market Authority's (CMA) investigation. The CMA has found that, in its view, many online gambling operators could be breaking consumer protection law when advertisements of gaming deposit-match bonus promotions fail to include prominently significant conditions and when related terms and conditions are unclear.
- 2.14** We have contributed to new CAP-led guidance on the marketing of free bets and bonuses. This will offer further clarity for operators, and CAP is due to publish the guidance early in 2018.

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**Social responsibility code provision 5.1.7**  
**Other Marketing requirements of offers**  
**All licences**

**1** Licensees must ~~satisfy themselves~~ **ensure** that their marketing communications, advertisements, and invitations to purchase (within the meaning of the Consumer Protection from Unfair Trading Regulations 2008), ~~including 'free bet' offers,~~ do not amount to or involve misleading actions or misleading omissions within the meaning of those Regulations.

**2** ~~Licensees must abide by any relevant provision of the CAP or BCAP code, as the case may be, which relates to 'free bet', 'bonus' or similar offers and in that regard follow the CAP and BCAP 'Guidance on the rules for gambling advertisements'.~~

In particular that:

**a** ~~Marketing communications (which include advertisements) must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.~~

**b** ~~Marketing communications that include a promotion and are significantly limited by time or space must include as much information about significant conditions as practicable and must direct consumers clearly to an easily accessible alternative source where all the significant conditions of the promotion are prominently stated. Participants should be able to retain those conditions or easily access them throughout the promotion.~~

**c** ~~Terms and conditions relating to consumers' understanding of a 'free bet' offer and of the commitments that they have to make in order to take advantage of such an offer should generally be stated in the advertisement itself. Where the advertisement is limited by time or space (for example a banner advertisement), significant conditions likely to affect a consumer's decision to participate in promotions should be displayed no further than one click away from the advertisement itself. If the significant conditions are not displayed with sufficient prominence, the advertisement will be seen as misleading.~~

**2** Licensees must ensure that all significant conditions which apply to marketing incentives are provided transparently and prominently to consumers. Licensees must present the significant conditions at the point of sale for any promotion, and on any advertising of any medium for that marketing incentive except where, in relation to the latter, limitations of space make this impossible. In such a case, information about the significant conditions must be included to the extent that it is possible to do so, the advertising must clearly indicate that significant conditions apply and where the advertisement is online, the significant conditions must be displayed in full no further than one click away.

**3** The terms and conditions of each marketing incentive must be made available for the full duration of the promotion.

## Consultation question

Q3. What are your views on the re-drafting of SR code provision 5.1.7?

### Electronic marketing consent

- 2.15** We are consulting on introducing a new SR code provision relating to electronic marketing consent. It would require operators to ensure that they do not send marketing e-communications without the specific, informed and withdrawable consent of the recipient. It permits, in line with the existing regulations, a ‘soft opt-in’<sup>2</sup> for existing customers.
- 2.16** This proposed new provision reflects the relevant requirements of the Privacy & Electronic Communication Regulations (PECR), which are enforced by the Information Commissioner’s Office (ICO), and those expected to be contained within PECR’s successor, the e-Privacy Regulation.
- 2.17** Each month the ICO publishes a ‘Direct Marketing Threat Assessment’ which identifies and tracks complaint trends, by sector. The gambling sector is routinely identified as being in the top three most complained about sectors for sending spam text messages to UK consumers. In October and November 2017 ‘Gambling’ was the highest reported category for concerns, ahead of ‘PPI’ and ‘Accident Claims’ We also know from our own complaints data that consumers are reporting being spammed by email.
- 2.18** Despite warnings from the ICO, which has presented at sector events and at our conferences, the remote industry, in particular, continues to break the law by sending unsolicited direct e-marketing to UK consumers. We know that this is often sent by affiliates and can originate from overseas. The ICO has been very clear that the “sender” and the “instigator” of unsolicited e-marketing can be held accountable under PECR. For the gambling sector this is a position that is reinforced by our SR code provision on responsibility for third parties.
- 2.19** At present the ICO’s jurisdictional reach is limited mostly to the UK. The ICO can, and does work closely with its international partners and equivalents to take appropriate action. If the “sender” and “instigator” of unsolicited e-marketing are based outside the UK, however, the ICO’s ability to enforce the law directly is constrained.
- 2.20** The e-Privacy Regulation, when enacted into UK law, will grant the ICO additional powers. But we think that a specific LCCP code provision relating to e-marketing consent is needed to help drive up standards.
- 2.21** The overarching framework for regulation in this area does not change as a result of this proposal. The ICO will remain the responsible lead regulator and public complaints should be directed to them. As with our other proposals, we will continue to regulate in a risk-based and proportionate fashion but, if necessary, we will not hesitate to apply the full range of our regulatory powers, which includes financial penalties.
- 2.22** We will continue to work very closely with the ICO to ensure a joined-up and consistent approach when enforcing the rules.

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<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2003/2426/regulation/22/made>

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**Social Responsibility code provision (XXX – new)**  
**Electronic marketing consent**  
**All licences**

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

### Consultation questions

- Q4. What are your views on the proposal to introduce a new SR code provision regarding direct e-marketing consent?
- Q5. What are your views on broadening the proposed provision beyond direct e-marketing to include all forms of direct marketing?

### Responsibility for third parties

- 2.23** We are consulting on changes to clarify the obligations in SR code provisions 1.1.2 (Responsibility for third parties – all licences) and 1.1.3 (Responsibility for third parties - remote).
- 2.24** We can and will hold operators responsible for the actions and behaviours of third parties, including marketing affiliates - an approach which is also applied by the ASA and the ICO. We have been clear to industry that affiliates must adhere to the standards required by LCCP and if they fail to do so we will consider regulatory action against the licensee. This position has been reflected in high profile public statements and in financial penalties and regulatory settlements. The proposed re-draft clarifies that position and reduces some duplication of existing requirements.
- 2.25** In conjunction with the other marketing proposals, we expect this proposal to have the effect of raising advertising standards across the gambling industry.

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

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

2 Licensees ~~and must~~ ensure that the terms on which they contract with such third parties:

**a** require the third party to conduct themselves in so far as they carry out activities on behalf of the licensee as if they were bound by the same licence conditions and subject to the same codes of practice as the licensee

**b** oblige the third party to provide such information to the licensee as they may reasonably require in order to enable the licensee to comply with their information reporting and other obligations to the Commission

c enable the licensee, subject to compliance with any dispute resolution provisions of such contract, to terminate the third party's contract promptly if, in the licensee's reasonable opinion, the third party is in breach of contract (including in particular terms included pursuant to this code provision) or has otherwise acted in a manner which is inconsistent with the licensing objectives, **including for affiliates where they have breached a relevant advertising code of practice.**

### **Social responsibility code provision 1.1.3**

#### **Responsibility for third parties - remote**

##### **Remote licences**

1 Remote licensees must ensure in particular:

a that third parties who provide user interfaces enabling customers to access their remote gambling facilities:

i include a term that any such user interface complies with the Commission's technical standards for remote gambling systems; and

ii enable them, subject to compliance with any dispute resolution provisions of such contract, to terminate the third party's contract promptly if, in the licensee's reasonable opinion, the third party is in breach of that term.

~~b that the terms on which they contract with their affiliates (that is those who are given a right to advertise, or provide a hyperlink to, a licensee's gambling website) enable them to terminate, subject to compliance with any dispute resolution provisions of such contract, the affiliate's rights promptly if, in the licensee's reasonable opinion, the affiliate is in breach of a relevant advertising code of practice.~~

### **Consultation question**

Q6. What are your views on the proposed amendments to SR code provisions 1.1.2 and 1.1.3 (Responsibility for third parties) which reduce duplication between provisions and further clarify our position that operators are responsible for third parties with whom they contract, such as affiliates?

## 3 Unfair terms

- 3.1** This chapter of the consultation sets out proposals to clarify requirements on licensed operators to ensure that contractual terms and commercial practices are fair and open.
- 3.2** In our [Strengthening social responsibility review \(2014-15\)](#), we consulted on changes to Licence Condition 7 (Compliance with terms). These strengthened requirements that licensees must comply with the terms on which they offer gambling, and emphasised the importance of transparency to consumers. We also consulted on whether to make further changes to requirements in order to prevent unfair practices and to promote greater transparency. At that time, the responses to the consultation indicated that the gambling industry was satisfied that it could prevent unfair terms.
- 3.3** However, customer complaints and concerns raised with licensees, Alternative Dispute Resolution (ADR) providers and the Commission frequently relate to terms customers consider to be unfair. The evidence indicates that unfair terms and practices are an industry-wide issue and we continue to be concerned that licensees are not treating consumers fairly. In early 2016, we made public calls to the industry to ensure that terms and practices, particularly of promotional offers, are not unfair or overly complex.
- 3.4** As a result of our concerns, we implemented a programme of work to raise standards in the gambling industry and to ensure compliance with consumer law. We began working jointly with the Competition and Markets Authority (CMA) to tackle shared concerns on unfair terms and misleading or otherwise unfair practices specifically in the remote gambling sector and to ensure licensees comply with consumer protection legislation more broadly. The CMA is the UK's primary competition and consumer agency, having powers to enforce consumer protection legislation with a leadership role on regulation of unfair contract terms. In June 2017, the CMA opened a number of enforcement cases against remote licensees for suspected breaches of consumer protection laws in relation to their gaming promotions and some aspects of their free bet offers.
- 3.5** At our Raising Standards Conference, on 21 November 2017, the CMA presented the key legal concerns that were the focus of its enforcement cases, and the requirements it considered operators have to meet in order to address these legal concerns and ensure compliance. This presentation clearly set out the changes that both the CMA and the Commission expect to see from the industry in order to improve compliance with consumer protection law. The CMA will publish full details of any undertakings that operators provide, which should give further information on how operators should make changes to bring their behaviour into line with the principles the CMA has set.
- 3.6** We expect licensees to adhere to the principles set out by the CMA. They must do so in order to demonstrate that they are complying with LCCP licence condition 7.1 and to ensure that gambling is provided fairly, in line with the second licensing objective.
- 3.7** The CMA is continuing with other lines of inquiry into the gambling sector, including issues around terms and practices in respect of customer withdrawals. The outcome of the CMA's enforcement activity into gaming promotional offers, and any future work, will help the Commission to set clear principles to guide what terms and practices are unfair and misleading in the gambling industry. We will continue to work very closely with the CMA and will host awareness-raising events and publish advice to assist licensees to meet their responsibilities in this area.
- 3.8** The paragraphs that follow describe our proposals to clarify the requirements on licensees to ensure that their contractual terms are fair and open, and that customers are treated fairly at all stages of their gambling journey.

## Consumer notices

- 3.9** The Consumer Rights Act 2015 (the CRA) applies to terms in contracts between licensees and consumers, and also expressly covers *consumer notices*, which licensees can use in connection with transactions. A consumer notice is any notice that relates to the rights or obligations between a licensee and a consumer, or which appears to exclude or restrict a licensee's liability to a consumer. It includes announcements or other communication, whether or not in writing, and whether or not expressed to apply to a consumer, as long as it is reasonable to assume that it is intended to be seen or heard by one. For example a notice about commercial liability in a gambling premises would be a consumer notice.
- 3.10** The inclusion of consumer notices in the CRA means they are treated in much the same way as contract terms. Therefore, licensees will need to be conscious of the content which is included in notices and ensure that this complies with the requirements set out in the CRA to be fair and transparent. On this basis, we propose to make an amendment to the current licence condition to include consumer notices.

## Fair and transparent terms and practices

- 3.11** The CRA led the CMA to produce a [suite of documents](#) designed to advise businesses on unfair contract terms, including the Unfair Contract Terms Guidance (July 2015). Our proposed changes reflect both this advice and the knowledge we have built through our joint work with the CMA.
- 3.12** The current licence condition requires licensees to satisfy themselves that their terms are not unfair under the CRA. However, we expect licensees to ensure that they *comply* with the law, and not just assure themselves that they have. The proposed changes clarify that this is our expectation.
- 3.13** It is important to note that other legislation applies alongside the CRA, the most relevant being The Consumer Protection from Unfair Trading Regulations 2008 (the CPRs). The CPRs require businesses to trade fairly and provide consumers with a range of protections from unfair commercial practices that could distort the consumer's ability to make decisions on their purchase. The CPRs and the CRA between them provide protections to consumers at *all stages* of their dealing with businesses. The CPRs cover marketing and practices that have an impact on consumers both before and at the time of their agreement to any contract terms, and with their treatment following any purchases they agree to make. The unfair terms provisions of the CRA deal with the fairness of the contracts they enter, and therefore need to be seen alongside relevant provision in the CPRs.
- 3.14** Unfair wording can often distort consumers' purchasing decisions, for instance by misleading them about the risks they may face, omitting key information or providing unclear information. The CPRs' provisions are therefore related to the requirement that written terms or notices are complete and transparent. For instance, a term which is potentially difficult for a consumer to meet but is hidden away or buried in the small print is unlikely to meet the requirement of transparency and is at higher risk of being deemed unfair as well as being a breach of the CPRs. We also propose to delete the reference to providing an accurate summary of the contractual terms in plain and intelligible language because the required outcome is addressed by the specific transparency requirements set out in the CRA and CPRs.
- 3.15** Social responsibility (SR) code provision 5.1.7 (Marketing of offers) currently requires licensees to ensure that their marketing is not misleading within the meaning of the CPRs, which covers the beginning of the consumer journey. However, we expect licensees to comply with the CPRs at all stages of their dealings with consumers to ensure that they are treated fairly. The proposed amendments to the licence condition seek to clarify the requirements in this area.

## Efficiency of the process for imposing regulatory sanctions

- 3.16** We have the tools that we need to ensure industry-wide compliance with the requirements that the CMA has identified as a result of its investigation. Failure to comply with the current drafting of the licence condition would bring into question a licensee's suitability to hold a licence, the sanctions for which include suspension or revocation of a licence. We also have the option to add conditions to individual operators' licences, opening up a broader range of possible sanctions. The proposed changes allow us greater flexibility to apply a broad range of sanctions through a less onerous process that does not rely on adding conditions to individual licences.

### **SHOWN WITH PROPOSED CHANGES MARKED - additions in red, deletions struck through** **Proposed amendments to licence condition 7.1.1**

#### **Compliance with terms ~~Fair and transparent terms and practices~~**

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

- 1** Licensees must **ensure** ~~satisfy themselves that none of the~~ that the terms on which gambling is offered, **and any consumer notices relating to gambling activity**, are **not** unfair ~~terms~~ within the meaning of the Consumer Rights Act 2015. **Licensees** must comply with those terms.
- 2** ~~An accurate summary of the contractual terms on which gambling is offered must be made available to customers and set out in plain and intelligible language.~~ The contractual terms on which gambling is offered and any consumer notices relating to gambling activity must be transparent within the meaning of the Consumer Rights Act 2015. The contractual terms on which gambling is offered must be made available to customers.
- 3** **Licensees must ensure that changes to customer contracts are not unfair and** customers must be notified of material changes to terms before they come into effect.
- 4** **Licensees must ensure that they do not commit any unfair commercial practices within the meaning of the Consumer Protection from Unfair Trading Regulations 2008, at any stage of their interactions with consumers.**

### Consultation questions

- Q7. Do you have any comments on the inclusion of consumer notices to licence condition 7.1.1?
- Q8. What are your views on the proposal to include a requirement to ensure compliance with the Consumer Protection from Unfair Trading Regulations 2008, at all stages of the consumer journey?
- Q9. What more could be done to ensure licensees' terms and practices are not unfair and do not mislead? Please give examples.



## 4 Consumer complaints

- 4.1 In March 2017, we published our [review of complaints processes in the gambling industry](#). In the review, we identified that existing complaints processes are not working as well as they should for gambling consumers. We proposed a number of actions for licensees, for Alternative Dispute Resolution (ADR) providers, and for us to improve the arrangements.
- 4.2 Since then, we have worked with ADR providers, licensees and gambling industry trade bodies to develop our proposals. We have sought the views of gambling consumers through a group of 'expert' consumers who are experienced in various types of gambling, and in raising and progressing complaints.
- 4.3 We have also researched consumer complaints and alternative dispute resolution schemes in other industries, including statutory ombudsman schemes, to find out what works best in meeting consumer need, and in making sure that complaints processes are fair, transparent and accessible.
- 4.4 The proposals in this consultation are part of the work we are doing to improve complaints processes in the gambling industry. With ADR providers, we are developing a framework of additional standards for handling cases escalated to ADR, and one of our proposals here also relates to that. As part of our work, we are considering how we might achieve more simplified and streamlined arrangements for dispute resolution and redress. We are also improving the information we provide to consumers about our role in the complaints handling process, and about how to make a complaint in general.

### **Our focus on outcomes**

- 4.5 Our regulation is focused on the three licensing objectives, as explained in the introduction to this document. We target our licensing requirements on the outcomes that we want to see, in line with these objectives. This means that in LCCP, we set out what we expect licensees to achieve, rather than the specific steps that they must take to achieve it.
- 4.6 Linking directly to the second licensing objective (fair and open), we expect licensees to handle complaints in a fair, open, timely and transparent manner. We are proposing changes to SR code provision 6.1.1 (complaints and disputes) to reflect this position.
- 4.7 Licensees may identify different ways to achieve the outcome we want to see, depending on the size and set-up of their organisation, or how their customer base is made up. Our proposed approach allows licensees to design the processes that work best in their specific circumstances, within the parameters that we have defined. We therefore propose to simplify the existing SR code provision 6.1.1 to make the required outcome clear, and make it easier to understand. We also propose to provide additional separate advice that licensees should have regard to when developing their complaints handling processes. This guidance will provide greater clarity in particular areas of complaints handling.
- 4.8 Our proposed changes are described in more detail in the next paragraphs. Our focus with these proposals is on complaints about any aspect of the way the licensee conducts their licensed activities, rather than on complaints about commercial matters (such as the quality of the décor).

## Access to clear information about how to complain

- 4.9** We conducted some desk (website) research on a sample of licensee complaints policies across all different gambling sectors, where websites were available.<sup>3</sup> We found that the majority of complaints policies were contained in lengthy terms and conditions documents, rather than being easy to find on the website. Some policies did not contain key information, such as the timescale within which the complainant could expect their complaint to be resolved. While all policies named an ADR provider to whom unresolved complaints could be escalated, few explained the independent role of the ADR provider, or that the service was free to the consumer.
- 4.10** We are therefore proposing amendments to SR code 6.1.1 to confirm that complaints policies and processes must be clear, fair, open, transparent and accessible. These changes remove the focus on written policies, requiring instead that the complaints handling procedure itself must be fair and open. Our accompanying advice (a draft of which is attached at Appendix 1 as part of this consultation) will include further advice about what this means in practice.

## Timeliness of complaints handling

- 4.11** Licensees have told us that they deal with many of the complaints they receive in a short space of time, for example, within a week. However, complaints we have received via our Contact Centre and direct feedback from consumers and ADR providers confirms that some complaints take significantly longer for licensees to resolve. We have also received feedback from ADR providers indicating that some licensees do not provide necessary information requested by the provider in a complete or timely manner. We therefore propose to amend SR code 6.1.1 to include that complaints must be handled in a timely manner.
- 4.12** The gambling industry is one of the few regulated industries in the UK that does not specify a time limit for businesses to resolve complaints. Most significant consumer-facing industries, for example, the financial, legal, energy and telecoms sectors, operate to an eight-week standard, from a business receiving a complaint, to final resolution. We therefore propose to similarly require licensees to complete their complaints procedure in full, and either resolve the complaint or agree that they are at a stalemate, or 'deadlock' with the customer, within eight weeks of receiving the complaint. We propose to provide further advice about providing required information to ADR providers and acknowledging complaints within particular timescales in our accompanying advice.

## Minimising confusion about when a complaint may be escalated to an ADR provider

- 4.13** Annual reports from ADR providers show that in the last twelve months, just over 10% of all cases they received had not exhausted the licensee's complaints procedures, and so were correctly refused by the ADR provider as required by [The Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015](#) (the ADR Regulations). Providers recommended improving the clarity of complaints processes, and particularly the end of those processes, to reduce this problem. Consumers also told us that on occasion they had been directed straight to ADR by licensees' employees, which suggests that sometimes, employees may also be unclear about when it is appropriate to escalate a complaint.

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<sup>3</sup> This desk-based research is explained in more detail in chapter 4 of our [review of complaints processes in gambling](#). We looked at a sample of complaints policies across betting, casinos, lottery, bingo, Adult Gaming Centres/Family Entertainment Centres, and online gambling. We did not include visits to premises, and so obtained no evidence on the availability of premise-based complaints procedures, particularly where a licensee had no web presence.

- 4.14** In conjunction with the proposal to introduce an eight-week time-limit for handling gambling related complaints and/or disputes, we propose to introduce 'deadlock' letters as part of our advice. These letters are used widely in other sectors, and allow the licensee to confirm to the customer that they have reached the end of the process or the eight-week limit, are still at impasse, and that the customer can now escalate their dispute to the ADR provider.

#### **Clarifying as far as possible what complaints an ADR provider may consider**

- 4.15** In previous versions of LCCP, we confirmed that ADR providers may only consider disputes. We defined disputes as complaints that are not resolved by the first stage of the licensee's complaints process, and relate only to the outcome of a gambling transaction. In our response to our 2013 consultation on changes to LCCP, we provided further explanation on what we mean by gambling transactions. We consider transactions to include, for example, account management issues, ability to withdraw funds, etc.
- 4.16** In our complaints review of 2017, we expressed concern that our definition limits too far the types of complaints that ADR providers can look at. We are carrying out some further work on this, but in the meantime we propose to remove the definition of complaints and disputes itself from SR code provision 6.1.1 as it does not impact on the outcome we expect to see. We are including further explanation of what we mean by a dispute, including our position from the 2013 consultation response, within our attached advice, and will provide further updates when our additional work is complete. We can confirm that we do not expect that consumers will be able to escalate disputes about non-gambling related matters (for example, the quality of food, or the types of products on offer) to ADR at the licensee's expense. Paragraph 4.18 explains how licensees will be expected to have regard to our advice.

#### **Clarifying our reporting requirements**

- 4.17** We require licensees to report to us various data about gambling-related complaints and disputes that they receive as part of the general information we request. We also require licensees to provide some specific information about the outcomes of ADR disputes, and using an ADR provider other than the one they have named as part of SR Code Provision 6.1.1. Our 2017 complaints review identified that the data we receive appears inconsistent and inaccurate and we undertook to make our requirements clearer to licensees. We therefore propose to retain the current reporting requirement within SR code provision 6.1.1, but to better explain what licensees need to report across all complaints-reporting requirements within our new advice. More generally, we have recently provided updated information about Regulatory Returns requirements on our website. We may update the complaints and disputes section of the Regulatory Returns information, depending on the outcomes of this consultation.

#### **Complying with our advice**

- 4.18** In paragraph 2.7, we explained that we propose to include a new requirement within the SR code provision 6.1.1 that licensees must have regard to our advice when designing their complaints policies and procedures. This recognises that a one-size fits all approach is not appropriate for our licensees or their customers, and there may be occasions where licensees can achieve the outcome we require in a way that is not covered by our advice. Where licensees decide, after consideration, to depart from our advice, we expect to see evidence of how the procedure they have put in place achieves the outcomes we specify in SR code provision 6.1.1. If licence holders cannot adequately explain how their approach meets the required outcome, we may consider this a potential breach of the licence and take action as necessary.

## Other proposed changes to SR code provision 6.1.1/advice note

- 4.19** We propose to further simplify SR code provision 6.1.1 by moving detail about how the licensee could best meet the outcomes into the advice, including:
- detail about the licensee's arrangements with ADR provider(s)
  - information that licensees should provide to customers within complaints handling procedures
  - detail about reporting complaints and disputes data and information to us.
- 4.20** The draft text of our advice is attached at Appendix one. The advice contains the following:
- Defining complaints and disputes, and clarifying which cases an ADR provider can consider
  - Complaints procedure requirements
  - Receiving complaints from different sources
  - Time limits for complaints handling and escalation
  - Requirements for escalating complaints to ADR providers
  - Standards for providing information to customers
  - Information required by the Commission.

### **SHOWN WITH PROPOSED CHANGES MARKED - additions in red, deletions struck through** **Social responsibility code provision 6.1.1**

#### **Complaints and disputes**

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

**1** Licensees must put into effect **appropriate policies and procedures for accepting and a written procedure for handling customer complaints and disputes in a timely, fair, open and transparent manner.**

**2** Licensees must ~~also~~ ensure that they have arrangements in place for customers to be able to refer any dispute to an ADR entity **in a timely manner** if not resolved to the customer's satisfaction by use of their complaints procedure **within eight weeks of receiving the complaint.** ~~It is permissible for licensees to have arrangements with more than one ADR entity and for customers to be directed to different ADR entities depending on the nature and subject matter of the dispute.~~

~~**3** It is permissible for any such ADR entity to have terms enabling it to reject complaints referred for dispute resolution on the basis they are frivolous or vexatious but licensees may not refuse to refer disputes on that ground.~~

**4** ~~The services of any such ADR entity must be free of charge to the customer~~

**4** Licensees ~~and~~ must not **use or introduce** ~~be subject to~~ terms which restrict, or purport to restrict, the customer's right to bring proceedings against the licensee in any court of competent jurisdiction. Such terms may, however, provide for an ~~agreed~~ resolution of a dispute **agreed by the customer** (arrived at with the assistance of the ADR entity) to be binding on both parties.

**5** Licensees' **complaints handling policies and procedures must include procedures to provide customers with clear and accessible information on how to make a complaint, the complaint procedure, timescales for responding, and escalation procedures.** ~~In this code a 'complaint' means a complaint about any aspect of the licensee's conduct of the licensed activities, and a 'dispute' is any complaint which:~~

~~**a** relates to the outcome of the complainant's gambling transaction; and~~

~~**b** is not resolved at the first stage of the licensee's complaints procedure.~~

**6** Licensees must ~~ensure that:~~ **complaints policies and procedures are implemented effectively, kept under review and revised appropriately to ensure that they remain effective, and take into account any applicable learning or guidelines published by the Gambling Commission from time to time.**

~~**a** information about their complaints procedure is set out in their terms and conditions;~~

~~**b** such information is also readily accessible on the gambling premises or website as the case may be;~~

~~**c** such information includes details of how to make a complaint to the licensee and the relevant contact details;~~

- ~~d~~ such information includes the identity (with contact details, which can be by way of a link from the licensee's website) of the ADR entity or entities to whom disputes can normally be referred and, where necessary, details of any limitation on the nature and subject matter of disputes with which a particular ADR entity deals
- ~~e~~ customers are given a copy of the complaints procedure on request or on making a complaint; and
- ~~f~~ all complaints are handled in accordance with the procedure.

~~7 Licensees should keep records of customer complaints and disputes in such manner as the Commission may from time to time specify in advice or guidance. They must provide information to the Commission about customer complaints, disputes, the outcomes of disputes referred to ADR, and court proceedings adverse to the licensee, also in such manner as the Commission may from time to time specify in advice and guidance. Should licensees refer a dispute to an ADR entity other than one in respect of which contact details were given in accordance with 6 above they must, at the same time as making the reference, inform the Commission of the reference and reason for selection of the ADR entity concerned.~~

~~8 Licensees must keep a record of all complaints that are not resolved at the first stage of the complaints procedure.~~

~~9 Licensees must arrange for a copy of the decision on, or a note of the outcome of, each dispute referred to an ADR entity to be provided to the Commission, either by the ADR entity or by the licensee. This information should be provided in such format and within such timescale as the Commission may from time to time specify.~~

~~10 Licensees must also arrange for any outcome adverse to the licensee of any proceedings taken against the licensee (in whatever jurisdiction) by a customer in relation to a gambling transaction to be notified to the Commission as a key event; but excluding proceedings allocated to the County Court small claims track or equivalent in jurisdictions outside England and Wales.~~

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

## **SHOWN AS IT WOULD APPEAR IN LCCP IF PROPOSALS ACCEPTED**

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

#### **Complaints and disputes**

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

**1** Licensees must put into effect appropriate policies and procedures for accepting and handling customer complaints and disputes in a timely, fair, open and transparent manner.

**2** Licensees must ensure that they have arrangements in place for customers to be able to refer any dispute to an ADR entity in a timely manner if not resolved to the customer's satisfaction by use of their complaints procedure within eight weeks of receiving the complaint.

**3** The services of any such ADR entity must be free of charge to the customer

**4** Licensees must not use or introduce terms which restrict, or purport to restrict, the customer's right to bring proceedings against the licensee in any court of competent jurisdiction. Such terms may, however, provide for a resolution of a dispute agreed by the customer (arrived at with the assistance of the ADR entity) to be binding on both parties.

**5** Licensees' complaints handling policies and procedures must include procedures to provide customers with clear and accessible information on how to make a complaint, the complaint procedure, timescales for responding, and escalation procedures.

**6** Licensees must ensure that complaints policies and procedures are implemented effectively, kept under review and revised appropriately to ensure that they remain effective, and take into account any applicable learning or guidelines published by the Gambling Commission from time to time.

**7** Licensees should keep records of customer complaints and disputes in such manner as the Commission may from time to time specify in advice or guidance. They must provide information to the Commission about customer complaints, disputes, the outcomes of disputes referred to ADR, and court proceedings adverse to the licensee, also in such manner as the Commission may from time to time specify in advice and guidance.

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

## Consultation questions

- Q10. Do the changes to SR code provision 6.1.1 make it clear that our focus is on complaints and disputes being handled in a fair, open, transparent, accessible and timely manner, in line with the licensing objectives? If not, how could we improve this?
- Q11. Do the changes to SR code provision 6.1.1 make the general requirements for reporting information to the Commission easier to understand and follow? If not, what would improve this?
- Q12. Please provide any feedback on the new requirement to have regard to the Commission's advice/guidance when designing complaints policies and procedures. Can you see any problems with this approach?
- Q13. Please provide any feedback on the proposals to introduce time limits for complaints and disputes handling, and a requirement to provide a 'deadlock letter' as part of the advice. Do you agree with the proposed approach? If not, please explain why?
- Q14. Do you have any further comments or feedback on the proposed changes to SR code 6.1.1? What would be the impact of such proposals in terms of resource or cost?
- Q15. Do you have any further comments or feedback on the content of the proposed advice? What would be the impact of the proposals in terms of resource or cost?

## Future changes – improving the ADR processes

- 4.21** In paragraph 4.4, we explained that we are working to develop a new framework of additional standards for approved ADR providers in the gambling industry. We are working with ADR providers, and sought feedback from consumers, other Regulators and other complaints bodies to develop the outline for this framework, which will supplement the existing requirements of the ADR Regulations. We have also spoken to trade bodies and some licensees about our approach.
- 4.21** This work is part of our approach to simplify and streamline complaints processes in gambling, alongside the proposals for licensees discussed earlier in this consultation.
- 4.23** The framework is likely to focus on the following key areas:
- Customer service for ADR providers – including published customer service standards, communicating with customers and managing expectations, taking into account the needs of vulnerable customers, and a clear complaints policy to deal with complaints made against the provider
  - Decision remit – including definitions of cases that ADR providers can help with, grounds for refusal, considerations of redress, and clear policy on when an ADR provider might reconsider a decision

- Transparency/ Independence – including ensuring that customers have full opportunity to comment on evidence, published decisions, and consideration of the ‘balance of power’ between operator and customer
- Consistency and quality of decisions – including the possibility of regular decision audits, and increased opportunities for feedback or discussion on Commission findings
- Identifying emerging trends – the ADR providers are well placed to become aware of particular issues or trends emerging in the gambling sector, and we aim to develop better mechanisms for providers to feedback to us.

**4.24** We aim to develop the framework and implement it with ADR providers in the next financial year. We will continue to consult informally with affected parties as we develop the framework. We are outlining this direction of travel in this consultation to allow interested parties the opportunity to comment at this stage.

**4.25** Once the framework is in place, it is likely that we will require via LCCP that licensees must only name an approved ADR provider to work with that is also signed up to the framework of additional standards. This change would require a further LCCP consultation.

### Consultation question

Q16. Do you have any views on the outlined content of the future framework of standards for ADR providers, or our direction of travel in this area?

## 5 General – ‘readability’ of consumer information

- 5.1 In the course of our work, we have looked at large amounts of information aimed at customers. Not all the written information provided by licensees is easy for customers to understand.
- 5.2 Studies such as the [International survey of adult skills 2012](#) indicate that almost 20% of adults in England have a literacy level of Level 1 (equivalent to GCSE grades D-G) or below. There are free online tools available to help businesses and other writers test the level of literacy a reader would need to have to understand the business’s documents.
- 5.3 In our [2018 – 2021 Strategy](#), we stated our commitment to taking a different and more dynamic approach to vulnerability, placing a greater focus on vulnerable people who can be especially susceptible to harm. Reports such as the Financial Conduct Authority (FCA)’s [Consumer Vulnerability](#) report include low levels of literacy and numeracy as indicators of vulnerability, along with other factors such as mental illness that could also have an impact on how well a customer is able to understand information.
- 5.4 Linked to the second licensing objective (‘Fair and open’), we currently require licensees to use clear, plain English in documents aimed at customers. We do not specify any particular standards of readability that we expect licensees to meet. We would be interested in your views on introducing such a requirement in the future.
- 5.5 This proposal links to a proposal we make earlier in this document, under LC 7.1.1. This proposal, which is to clarify that the contractual terms on which gambling is offered, and any consumer notices provided must be transparent within the meaning of the Consumer Rights Act 2015, is discussed at paragraphs 3.11-3.15.
- 5.6 As part of any such requirement, we could ask licensees to consider the demographics of their customers, including any particular language needs or other requirements. This would ensure that licensees take account of customer needs as far as possible.

### Consultation question

Q17. What are your views on introducing a required readability standard for customer facing documents in the future? What might such a standard look like? What would the impact of such a requirement be for licensees or for customers?



## 6 How to respond to this consultation

- 6.1** We are committed to consulting fully and openly. We welcome comments on any part of this consultation. A response template will be available on our website. We would prefer respondents to complete the response template and send it by email to: [consultation@gamblingcommission.gov.uk](mailto:consultation@gamblingcommission.gov.uk)
- 6.2** Alternatively, responses can be sent by post to:  
Proposals linked to 'Fair and Open' consultation  
Gambling Commission  
Victoria Square House  
Victoria Square  
Birmingham  
B2 4BP
- 6.3** The deadline for responses to this consultation is **5pm on Sunday 22 April 2018**.
- 6.4** In your response, please state whether you are responding as an individual or representing the views of an organisation. If responding as an individual, please mention your interest.
- 6.5** Please note that responses may be made public or published in a summary of responses to the consultation. If you do not want your response made public, please state clearly that you wish your response and/or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, we will assume that you have given consent for your response to be made public (overriding any confidentiality disclaimer that is generated by your organisation's IT system) unless you specifically include a request to the contrary in the main text of your submission.
- 6.6** Any information or material sent to us and which we record may be subject to the Freedom of Information Act 2000 (FOIA). Our policy on release of information is available on request or can be found on our website at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk). We will treat information marked confidential accordingly and will only disclose that information to people outside the Commission where it is necessary to do so in order to carry out our functions or where we are required by law to disclose the information. As a public authority the Commission must comply with the requirements of FOIA and must consider requests for information made under the Act on a case-by-case basis. Therefore when providing information, if you think that certain information may be exempt from disclosure under FOIA, please state this in the main body of your response so that we may take your comments into account.
- 6.7** We will process all information provided to us will be processed in accordance with the Data Protection Act 1998. However, we may disclose information to government departments or agencies, licensing authorities and other bodies when it is necessary to do so in order to carry out our functions, and where we are legally required to.
- 6.8** We are conducting this consultation in line with the Cabinet Office consultation principles published in January 2016. The criteria are listed on [www.gov.uk](http://www.gov.uk) and on our website, together with details of who to contact with any comments on the consultation procedure or complaints about the way it is being conducted.

## 7 Summary of consultation questions

7.1 The following summarises the consultation questions:

### Consultation questions

- Q1. What are your views on elevating compliance with the UK Advertising Codes from an Ordinary code provision to a Social responsibility code provision?
- Q2. Are there any particular aspects of the UK Advertising Codes which would benefit from additional advice or guidance?
- Q3. What are your views on the re-drafting of SR code provision 5.1.7?
- Q4. What are your views on the proposal to introduce a new SR code provision regarding direct e-marketing consent?
- Q5. What are your views on broadening the proposed provision beyond direct e-marketing to include all forms of direct marketing?
- Q6. What are your views on the proposed amendments to SR code provisions 1.1.2 and 1.1.3 (Responsibility for third parties) which reduce duplication between provisions and further clarify our position that operators are responsible for third parties with whom they contract, such as affiliates?
- Q7. Do you have any comments on the inclusion of consumer notices to licence condition 7.1.1?
- Q8. What are your views on the proposal to include requirement to ensure compliance with the Consumer Protection from Unfair Trading Regulations 2008, at all stages of the consumer journey?
- Q9. What more could be done to ensure licensees' terms and practices are not unfair and do not mislead? Please give examples.
- Q10. Do the changes to SR code provision 6.1.1 make it clear that our focus is on complaints and disputes being handled in a fair, open, transparent, accessible and timely manner, in line with the licensing objectives? If not, how could we improve this?
- Q11. Do the changes to SR code provision 6.1.1 make the general requirements for reporting information to the Commission easier to understand and follow? If not, what would improve this?
- Q12. Please provide any feedback on the new requirement to have regard to the Commission's advice/guidance when designing complaints policies and procedures. Can you see any problems with this approach?
- Q13. Please provide any feedback on the proposals to introduce time limits for complaints and disputes handling, and a requirement to provide a 'deadlock letter' as part of the advice. Do you agree with the proposed approach? If not, please explain why?
- Q14. Do you have any further comments or feedback on the proposed changes to SR code 6.1.1? What would be the impact of such proposals in terms of resource or cost?
- Q15. Do you have any further comments or feedback on the content of the proposed advice? What would be the impact of the proposals in terms of resource or cost?
- Q16. Do you have any views on the outlined content of the future framework of standards for ADR providers, or our direction of travel in this area?

Q17. What are your views on introducing a required readability standard for customer facing documents in the future? What might such a standard look like? What would the impact of such a requirement be for licensees or for customers?

January 2018

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making gambling fairer and safer

[www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

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

MONTH 2018

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## 1 Introduction

### 1.1 This note:

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

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

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

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

### 1.4 This advice note is amended periodically to take account of what we learn from licence holders, ADR providers and gambling consumers about emerging trends in complaints handling, or of changes to legislation.

## 2 Defining complaints and disputes

**2.1** For the purposes of this advice note and for SR code provision 6.1.1, 'complaint' means an expression of dissatisfaction, whether spoken or written, about any aspect of the way the licensee conducts their licensed activities.<sup>4</sup> For example, a complaint:

- about the outcome of a gambling transaction
- about the way a gambling transaction has been managed
- that concerns the way the licence holder carries out its business in relation to the three licensing objectives.

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

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

## 3 Complaints handling requirements

### Complaints procedures

**3.1** Licence holders should put into effect a clear, written complaints process. This process should be in plain English, simple to understand and easy for customers to find and use, both in gambling premises and on operator websites. Licence holders should consider whether to present this information or a summary of the information in a variety of ways, for example, to take account of customers who do not speak English as a first language, or might otherwise find a written document hard to understand. Where licence holders produce marketing materials in languages other than English, they should also ensure complaints processes are available in those languages.

**3.2** The process should make clear how a complaint can be made, to whom it should be addressed, and what essential information a customer needs to provide. Information about the complaints policy should also be set out within the licence holder's general terms and conditions, including a link or signposting to the full policy if appropriate.

**3.3** Licence holders should handle all complaints, except for those that can be resolved very readily on initial contact with the customer,<sup>5</sup> in accordance with the complaints procedure.

### Receiving complaints

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

**3.5** Where licence holders offer systems such as 'live chat', chat operatives should be provided with sufficient training and information to be able to recognise where complaints raised in such a fashion should be redirected to a formal complaints procedure.

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<sup>4</sup> We are carrying out further work on the definitions of complaints and disputes, and this section may accordingly be subject to revision after this work is completed.

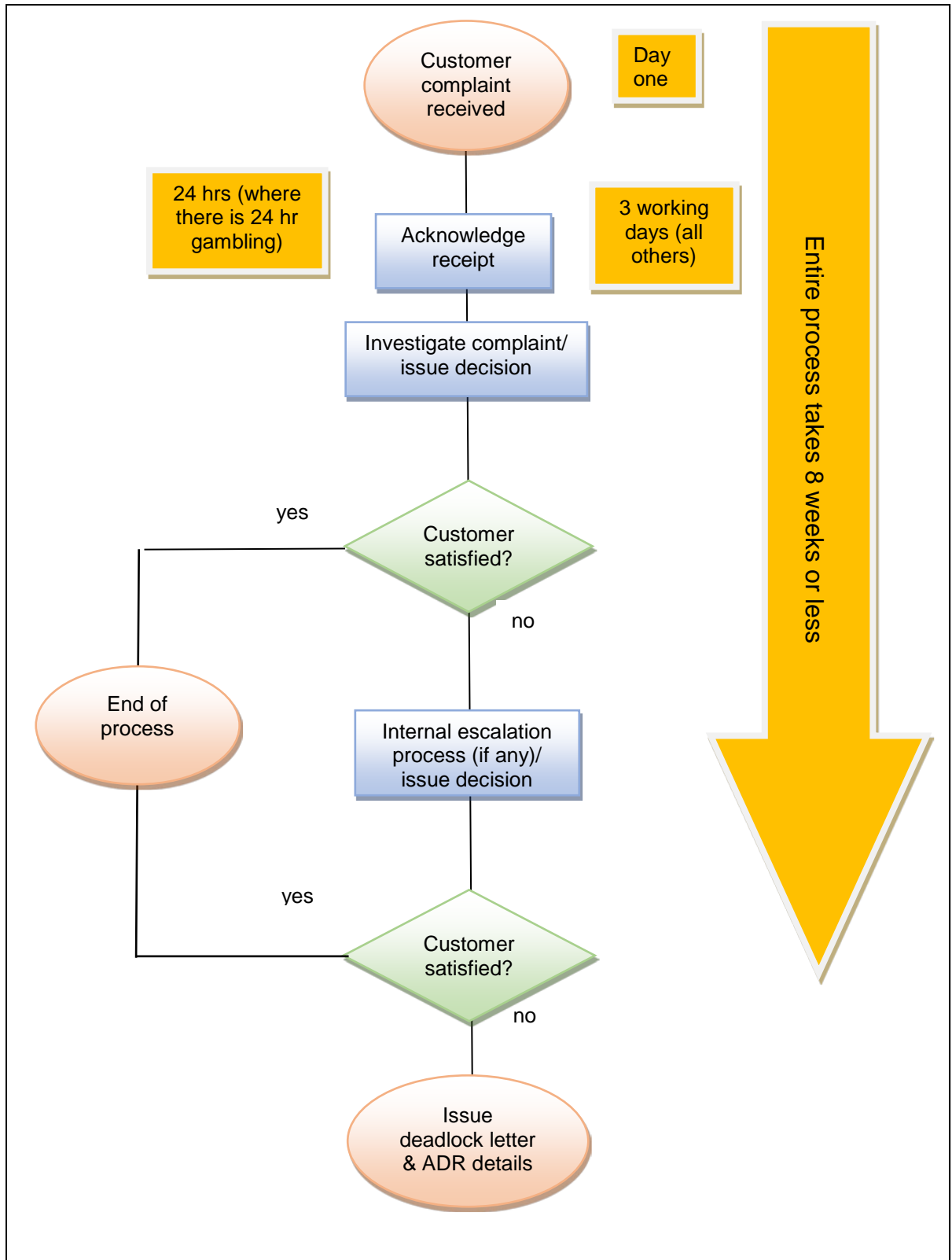
<sup>5</sup> For further information, see paragraph 6.1

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

### **Time limits and escalation of complaints**

- 3.8** As required by CMA's [Unfair contract terms guidance](#), licence holders must not unfairly restrict access to complaints procedures by imposing unreasonable time limits for customers to make complaints. Licence holders should allow customers to raise complaints for at least six months from the date of the incident. Licence holders may wish to encourage customers to make complaints as soon as possible, but may not do this by including terms that do not allow complaints to be raised within that six month period.
- 3.9** Licence holders should provide customers with an acknowledgement of the complaint. Where licence holders offer 24 hour gambling facilities, this should be within 24 hours of receiving the complaint. For other licence holders, this should be as soon as reasonably possible, but in any case within three working days of receiving the complaint.
- 3.10** Licence holders may choose to put in place procedures to escalate the complaint within the business, if the customer is not satisfied with the response they receive when they first make their complaint. Licence holders must ensure that the entire complaints process, including any internal escalation, takes no longer than eight weeks from when they first received the customer's complaint.
- 3.11** Where the licence holder is unable to resolve the complaint within eight weeks, or the licence holder's complaints process reaches the end without resolution before eight weeks is up, then the parties have reached 'deadlock'. The licence holder should then write to the customer to explain how to escalate their complaint to an independent ADR entity if they wish to do so.

Flowchart: Complaint process timescales



## 4 ADR requirements

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

## 5 Information to customers

- 5.1 Licence holders should ensure that the information they provide to customers includes information on how to make a complaint, and relevant contact details for doing so. It should also include information about how the complaint process works, and expected timescales for resolution.
- 5.2 Information on complaints processes should also include the identity (with contact details, which can be by way of a link from the licence holder's website) of the approved ADR entity to whom disputes can normally be referred, and where necessary, details of any limitation on the nature or subject matter that an entity can deal with, for example, if an entity only deals with a particular sector of gambling. This information should be provided to the customer if the complaint cannot be resolved by the licence holder.
- 5.3 Exceptionally, customers may request to use an ADR provider other than the one that is named by the licence holder. Licence holders may agree to use an alternative provider. However, if the alternative ADR provider is not on the list of providers approved by the Commission, Licence holders must inform the customer of the associated risks in using the alternative provider to allow the customer to make an informed choice.



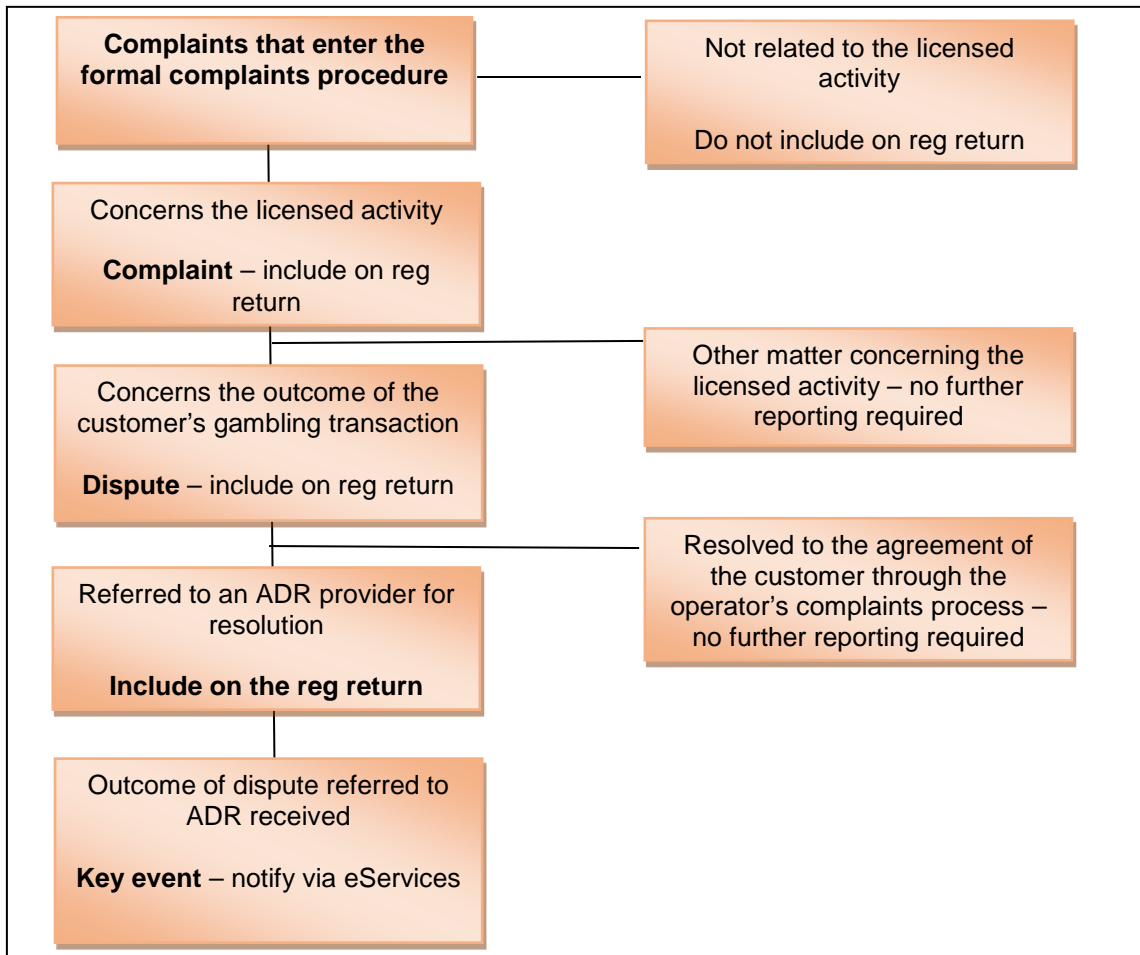
For example, unapproved providers are not bound by the requirements of the ADR regulations, which require providers to be fair, transparent and open. Licence holders should also inform such customers that they may use the licence holder's named, approved ADR provider for the dispute even if they have already used an unapproved ADR entity.

- 5.4** Licence holders should provide a copy of the complaints policy to a customer on request, or when the customer makes a complaint.

## **6 Information required by the Commission**

- 6.1** Licence holders must keep a record of all complaints that enter the formal complaints procedure. The licence holder does not need to report to us those complaints that are resolved very easily, for example, quickly via live chat, or at first contact in the premises, though the licence holder should still record these for their own purposes.
- 6.2** Licence holders must report the numbers of formal complaints they receive, and the number that are not resolved at the first stage of the complaints procedures (that is, those that become disputes) to the Commission. Licence holders must also report the number of disputes that they are aware have been referred to an ADR entity. This is part of the Regulatory Return reporting requirements, under Licence Condition 15.3.1.
- 6.3** Licence holders must arrange for a copy of the decision, or a note of the outcome of each dispute referred to an ADR entity to be provided to the Commission, either by the ADR entity or by the licence holder. It is the licence holder's responsibility to either provide this or ensure that it is being provided to us. This information should be provided by through our eServices portal as follows:
- **Type:** LCCP reporting
  - **Subtype:** Operator LCCP reporting
  - **LCCP Question:** ADR disputes
- 6.4** Licence holders must notify us of any change in the identity of the ADR entity they use, including where they temporarily use an ADR entity other than the one named in their complaints policies, as required by Licence condition 15.1 (Reporting key events). This information must also be provided via eServices, using the following selections:
- **Type:** Key event
  - **Subtype:** Operator Key EVENT
  - **LCCP Question:** ADR entity
- 6.5** Licence holders must also arrange to notify to the Commission, as a key event, of any outcome adverse to the operator (in whatever jurisdiction) of any proceedings taken against the licence holder by a customer in relation to a gambling transaction, but excluding proceedings allocated to the County Court small claims track or equivalent in jurisdictions outside England and Wales.

## Flowchart: Complaints and disputes regulatory return requirements



Month Year

making gambling fairer and safer

[www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)