

GAMBLING COMMISSION

Principal, Privacy and Data Ethics
UK Finance

5th Floor, 1 Angel Court
London
EC2R 7HJ
[Sent by email]

27 April 2023

Frictionless checks to assess financial risk in the gambling sector

Dear [REDACTED],

In December 2022, UK Finance wrote to the Gambling Commission and asked us a number of questions to support consideration by UK Finance and its members of data sharing to support frictionless checks to assess financial risk/ vulnerability in the gambling sector. Apologies that it has taken some time to respond formally to you, but we have taken account of the ongoing discussions with UK Finance, Government and the ICO before responding. We have set out below our position.

We consider that it is possible to facilitate frictionless checks in a manner which delivers appropriate transparency to consumers and puts in place safeguards against misuse of the data. We respond in more detail to your specific queries below.

The notification / transparency obligations to be imposed on gambling operators. We see this as key to ensuring transparency and are concerned that information on CRA data use might merely be included in the middle of general privacy notices, as opposed to being prominently brought to the attention of both new and legacy players in a specific communication. We would welcome a chance to understand from the GC what this requirement might look like.

The Gambling Commission considers transparency to be an important principle, particularly in relation to this policy area. Gambling operators of course have a duty to be transparent in order to comply with data protection legislation and processing of personal data must be lawful, fair, and transparent in line with the first data protection principle in Article 5(1)(a) of the UK GDPR. In support of transparency, the Commission could further mandate how gambling operators discharged this responsibility in relation to financial vulnerability checks by adding it as a requirement to our Licence Conditions and Codes of Practice (LCCP). We are prepared to do so if we collectively consider that is appropriate and necessary, and have committed to explore how transparency should be delivered in our future consultation on this topic.

The key points we have been considering for gambling operator transparency are:

- We consider that data sharing which takes place concerning financial vulnerability should be prominently and clearly communicated to gambling customers by gambling businesses.



Victoria Square
House
Victoria Square
Birmingham B2
4RP

T 0121 230 6666
F 0121 230 6720
www.gamblingcommission.gov.uk

- Our starting point is that including the information only in a Privacy Notice would not be sufficient. We will explore how to achieve effective transparency in the future consultation.
- It is important that transparency is achieved for both new and existing gambling customers.
- It is important that transparency is achieved for all customers who gamble – whether or not they had reached the thresholds at which the data sharing would take place. Under current plans (subject to consultation) less than 3.5% of gambling accounts would be subject to CRA data being shared with gambling operators for the purposes of minimising harm. Although this is a small percentage of accounts, we consider that it is important, and necessary, that all gambling customers have full transparency about the potential for this data processing to take place.}

The limitations to be imposed on gambling operators by the Gambling Commission regarding their use of the data. The data clearly has great potential to be misused, eg: for marketing purposes, so managing this risk is a key control. Clarity from the GC on the penalties for breaching these rules would also be valuable.

Our expectation is that operators apply the data protection principles and apply the data solely for the purposes it is collected. Our approach to Licensing, compliance and enforcement under the Gambling Act 2005 are set out here: 1 - Introduction - Gambling Commission specifically our approach to Enforcement including sanctions for breaching Gambling Commission requirements are set out here: 5 - Regulatory enforcement - Gambling Commission. It would be a significant regulatory issue if an operator used data obtained for safer gambling purposes for commercial gain and this could attract a significant sanction.

The thresholds at which CRA data will need to be pulled by gambling operators (triggers). This information will help members have confidence that data sharing is proportionate. We understand that the GC may have concerns about disclosing the details of triggers, given potential commercial impacts on gambling operators; we are open to discussing what information GC can provide, eg: confirmation that CRA data would only be pulled for players whose gambling activity / spending indicates heightened risk of gambling harms.

The threshold levels would be subject to views received during the next stage of the consultation process but we do not intend to suggest a figure that would impact on anything more than low single digit percentage of accounts, proportionate to the risks we have identified. [We anticipate that Government will set out further detail about this aspect in the upcoming White Paper in connection with the Government's Review of the Gambling Act 2005.]

The provisional actions that the GC would expect operators to take in relation to a consumer, once CRA data is accessed. In particular, what is the role of automated decisions, versus human case manager decisioning?

A consumer reaching a net spend threshold could result in an automated request to obtain CRA data. However, decision making on how to react to the information obtained from the CRA would be dealt with by a human case manager. This is because the CRA data will only be one piece of the picture available to gambling businesses when considering risk in relation to that customer and any appropriate steps the operator should take to minimise harm. Actions taken can range from no further action, engagement with the consumer, setting deposit limits with or on behalf of the customer, and in extreme cases ceasing the business relationship due to the overall picture of risk (of which CRA data would be only one aspect). We do not therefore consider it likely that Article 22 would be engaged, as operators would not rely on an automated decision alone.

What processes would gambling operators need to have in place to handle customer queries and complaints appropriately? Are there any GC rules on this? Members have concerns that gambling operators might push such queries to lenders. In our view, where a customer has a complaint or challenges the accuracy of a given data point, this should be addressed by the gambling operator (for example by asking for a payslip to confirm income) with assistance from the CRA in the first instance, as the data controllers.

Operators are required to have their own complaints process in place and to offer customers recourse to an Alternative Dispute Resolution body; the relevant LCCP requirement can be found here: LCCP Condition - Gambling Commission. Our expectation, like yours, would be that operators if challenged about the accuracy of the information would discuss this with the CRA and obtain any additional insight necessary from their customer, for example by reference to payslips or other means of confirming income or financial position. It may be appropriate that this is done in conjunction with the CRA so as to ensure that relevant CRA data provides a wider view of the risk of financial harm, alongside consumer provided data. Consumers may also query the position directly with the CRA. We would not expect operators to push queries to lenders and we could provide guidance to this effect. Both of these issues 'accuracy' and 'right of access' to information are covered by the GDPR and the obligations it places on gambling operators would indicate that they would be the first point of call for a customer seeking information or to complain.

As you may have seen, the Government today published their White Paper on gambling reform (<https://www.gov.uk/government/publications/high-stakes-gambling-reform-for-the-digital-age>) which set out their position that frictionless checks to assess financial risk to reduce harm are needed. The White Paper confirms that the Gambling Commission will consult on this issue and we look forward to continuing to work with you both before and after consultation.

Yours sincerely



Helen Rhodes
Director – Major policy projects and evaluation
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

www.gamblingcommission.gov.uk