



**The Gambling Business Group's response to the Gambling Commission's Summer 2023 consultation on proposed changes to Licence Conditions and Codes of Practice (LCCP), Remote Gambling and Software Technical Standards (RTS), and arrangements for Regulatory Panels"**

Submitted on line 18 October 2023

Please note we did not respond to the sections on Remote Game Design nor on Remote gambling: financial vulnerability and financial risk

**Improving consumer choice on direct marketing.**

Q11. To what extent do you agree with the proposed new requirement relating to consumer choice and direct marketing?

Strongly disagree

Q12. Please give your reasons for your answer below.

GBG Members already enable customers to select their marketing preferences and to opt out of communications and they support the principle of customers having even more control over their product and channel marketing options

Given the Commission is awaiting outstanding research on cross selling we would strongly suggest that no changes are implemented until that research has been published and evaluated.

Q13. To what extent do you agree with the proposed change that customers should be presented with options to opt-in to gambling marketing on a channel basis (email, SMS, notification, social media, post, phone call, any other direct communication method)?

Disagree

Q14. Please give your reasons for your answer below. Are there any options that are missing?

According to the ICO, consent and its withdrawal is that it should be as simple a customer journey as possible, and so this should not be made more complex or longwinded by adding additional categories and subcategories or by requiring customers opt-in to multiple channel options for each product type.

Q15. To what extent do you agree that the category 'any other direct communication method' future proofs the provision?

Neither agree nor disagree

Q16. Please give your reasons for your answer below.

This category should be sufficient to cover future technical changes without complicating the process further for customers or imposing further costs on operators. However, clarification is sought that additional channels and technologies can be added under the "any other direct communication method" in future as long as they have clear opt ins?

Q17. To what extent do you agree with the proposed change that customers should be presented with options to opt-in to gambling marketing on a product (e.g., betting, bingo, casino, lottery) basis?

Neither agree nor disagree

Q18. Please give your reasons for your answer below. Are there any options that are missing?

GBG members support the position that customers should need to opt-in to gambling marketing on a product basis - only for those products that they offer (and not all products) - but would suggest that the product categories are revisited to make it clearer for customers. For example, would bingo customers who want information about retail slots realise they have to tick the casino option?

The industry proposes that the category of 'casino' should be changed to 'gaming' as customers and industry understand what is encapsulated by this option. The product categories should therefore be betting, gaming (to include bingo) and lottery.

Q19. Do you have any comments about implementation issues, timelines and practicalities?

- Operators will have different technologies and systems that will need to be changed or replaced and that should be addressed in the impact assessment to accompany this proposal. The cost of implementing the change should not be disproportionate to the benefits.

Q20. Please provide an estimate of the direct costs associated with implementing these proposals, including any updates to your marketing approach?

As per our response to Q19.

## Equalities considerations (direct marketing)

Q21. Do you have any evidence or information which might assist the Commission in considering any equalities impacts, within the meaning of section 149 of the Equality Act 2010, in the context of any proposal considered in this direct marketing section of the consultation?

Given the demographics of bingo (and casino) customers we have concerns about accessibility challenges of this proposal.

Q22. Attaching additional information - you may attach additional information here relevant for our proposals on direct marketing if you wish.

No comment.

## **Strengthening age verification in premises**

**Q24** *To what extent do you agree with the proposed change to remove the exemption from age verification test purchasing for category A and B betting, bingo, AGC and FEC licensees?*

*Please select only one item*

- Strongly agree
- Agree
- **Neither agree nor disagree**
- Disagree
- Strongly disagree

**Q25** *Please give your reasons for your answer below.*

Whilst there is little evidence of under gambling in land-based premises, we have an obligation to protect vulnerable consumers in all sizes of businesses, not just the larger ones. This change will provide an even playing field across the land-based sector if all fee categories of non-remote licensees are required to undertake test purchasing and provide the results to the Gambling Commission. They in turn will then have a more complete picture of compliance levels and they can provide greater assurance for consumers that the age verification measures are being monitored.

However, the requirement will introduce a significant additional cost for smaller businesses (see our response to Q29).

**Q26** *To what extent do you agree with the proposed ordinary code change that licensees adopt a 'Think 25', rather than a 'Think 21' approach to age verification?*

*Please select only one item*

- Strongly agree
- **Agree**
- Neither agree nor disagree

- Disagree
- Strongly disagree

**Q27** Please give your reasons for your answer below

Most, if not all, gambling licensed premises have been operating Think 25 on a voluntary basis for several years and asking anyone that looks under 25 years for their age and ID, and recording that interaction. This proposal will bring the sector into line with the off-trade sector and other retail outlets that already operate Challenge 25. The pub sector typically operates Challenge 21.

However, see our response to Q29 for cost concerns about this proposal.

**Q28** Do you have any comments about implementation issues, timelines and practicalities?

Once this change is implemented, the LCCP ordinary code will state that good practice for operators is to adopt a Think 25 policy. This is in addition to the mandatory condition on gambling premises licences which requires “a notice stating that no person under the age of 18 is permitted to enter the premises and is the notice displayed in a prominent place at every entrance (or entrance to areas where Cat C machines are made available for use)”.

Typically gambling premises display both the “no under 18s “ and the “Challenge 25” notices at entrance ways and there are anecdotal examples of Licensing Authorities requiring the “no under 18s” sign to be bigger and therefore more prominent than the Challenge 25 notices, despite there being no size requirement for the no under 18s notice. This leads to unnecessary resources spent on correspondence from the Licensing Authority and by the operator to address this, even though the notice is alongside the Think 25 poster which makes it clear that the premises is going well beyond the 18 minimum age limit and challenging anyone that looks under 25.

GBG members would request that clarification is made in the Guidance to Licensing Authorities regarding a minimum size for notices (as opposed to a specific size).

In premises where there is a requirement for age verification signage to be displayed in relation to the sale of alcohol (which typically implements Challenge 21) and the provision of gambling facilities such as bingo premises and casinos, there needs to be consistency to avoid both Challenge 21 and 25 schemes and signage operating in the same venue.

**Q29** Please provide an estimate of the direct costs associated with implementing these proposals.

For Category A & B licensees, even at the Commission’s minimum of one test per premises per year, the costs will be substantial for small operators especially as the providers of the test purchasing services tend to charge more for remotely located venues with greater travel requirements. Also, businesses that provide age verification services typically do so at a rate based on a minimum contract fee, which will also disproportionately disadvantage operators with single (or few) sites.

Another consideration is the cost of making remote age verification checks where cameras and age estimation technology is deployed. Each check carries a cost and all under 21s are currently included. Moving the check threshold to 25 will considerably increase the number (and therefore cost) of necessary age checks being made. The quantum of this requirement will need to be looked into as part of the 'impact assessment' that accompanies these proposals.

*Q30 Considering particularly premises that do not have direct staff supervision, please provide any views, along with supporting evidence, on the controls deployed by licensees (and their effectiveness) to meet our requirements on the prevention of underage gambling.*

Given the GBG Membership, our response relates to the measures in place in AGCs in Motorway Service Areas (MSAs) only. MSAs have :

- A level of physical staffing, either directly or indirectly from adjacent outlets and on-site management 24 hours a day.
- All relevant staff are fully trained on age verification requirements with regular refresher training including on spotting fake IDs.
- All visitors arrive at an MSA by motor vehicle so children and young people will only ever be on site if supervised by an adult.
- Clear signage that no under 18s allowed at entrance to AGC (and not even children going in with their parents, nor any staff who may be under 18 can enter).
- They operate "Think 25" and if a customer is unable to provide proof that they are over the age of 18, they will be asked to leave the gaming area.
- Many AGCs are gated, meaning no one can enter the AGC unless a member of staff has checked remotely that they are old enough to enter.
- A buzzer sounds when a light beam across the access point is broken to alert staff to the need to perform a visual check on the person entering the venue (by looking at the screens in the adjacent WH Smith or similar outlet).
- If a physical check on camera or facial recognition software or the remotely monitored CCTV surveillance suspects that anyone is under the age of 25 an Age Verification Challenge takes place.
- Additionally regular physical visits to the AGC are made by staff every 20 to 30 minutes and the visit is logged on the monitoring system (MSAs use the Smart Hub system for recoding a wide range of information).
- There is remote central monitoring in addition to local management of the AGC and the remote monitoring company will issue recorded alerts and also phone the sites directly.
- If a child and/or young person has been refused entry to an AGC, this refusal will be logged, including the time, date of the event plus any action taken and the outcome of that action.
- MSAs will centrally monitor Age Verification checks across all sites on a weekly basis.
- MSAs undertake independent third-party testing of sites with results shared quarterly with the Gambling Commission. Where sites fail, more frequent testing will take place and further measures are introduced such as refresher training, until they successfully carry out an age challenge.

- For MSAs the “age challenge at any point” rate is upwards of 85% which is in line with high street AGCs.
- The MSAs have primary authority partnerships in relation to age restricted sales.
- The MSA sector meet as part of the Gambling Business Group on a quarterly basis, as a minimum, to discuss any issues and to share information and best practice - for example one MSA operator is exploring installing Age Verification cameras on gaming machines.

**Q31** *Do you have any evidence or information which might assist the Commission in considering any equalities impacts, within the meaning of section 149 of the Equality Act 2010, in the context of any proposal considered in this section of the consultation?*

No comments.

**Q32** *Attaching additional information Please attach a copy of any documents you wish to include to this printout.*

No comments.

## **Extending Personal Management Licences requirements**

**Q102** *To what extent do you agree with the proposed clarification to the requirement for a CEO, Managing Director or equivalent to hold a PML. Please select only one item*

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q103** *To what extent do you agree with the proposal that for organisations with a Board, the person responsible for chairing the Board should hold a PML? Please select only one item*

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q104** *To what extent do you agree with the proposal that the person responsible for the licensee’s anti-money laundering and counterterrorist financing function as head of that function should hold a PML? Please select only one item*

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q105**, Do you have any comments relating to which employees within a gambling business should be required to hold a PML?

Licence condition 1.2.1 currently does not apply to AGC or FEC operator licences. It seems an anomaly that those responsible for machines are not required to hold a PML.

**Q106**, Do you have any comments about implementation issues, timelines and practicalities.

- Clarity is sought that the proposal applies to both executive and non-executive chairs.
- How will the new requirements apply to large multinational gambling businesses e.g., will it extend to the Chair of a parent company?

**Q107** Please provide an estimate of the direct costs associated with implementing these proposals.

No comments.

**Q108** Do you have any evidence or information which might assist the Commission in considering any equalities impacts, within the meaning of section 149 of the Equality Act 2010, in the context of any proposal considered in this consultation?

No comments.

**Q109** Attaching additional information Please attach a copy of any documents you wish to include to this printout.

No comments.

## **Changes to Regulatory Panels**

**Q111** To what extent do you agree with the proposed change to the quorum and composition of regulatory panels? Please select only one item

- Strongly agree
- Agree

- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q112** Please give your reasons for your answer below

The proposal is to change the quorum and composition to a legally qualified Adjudicator (employed by the Commission) chairing a Panel comprising another senior member of Commission staff and a Commissioner. In other words, all three members of the Panel will be retained and employed by the Gambling Commission. There are no independent legal advisors involved.

How does this arrangement comply with Article 6 of the European Convention on Human Rights (ECHR)?

Article 6 of the Convention guarantees the right of applicants to a fair trial including:

- A fair and public hearing with a public judgment
- An independent and impartial tribunal established by law
- A reasoned judgment

The proposed arrangements for Regulatory Panels have been compared to the new regime created by the Licensing Act 2003, under which responsibility for administration of the new regime was transferred from magistrates' courts to local authorities.

A great deal of concern was expressed at the prospect of responsibility being transferred from highly trained, objective and experienced licensing justices to elected individuals with political and other agendas, little knowledge and experience of licensing matters and some of whom remain in post for a short period of time.

In addition, there was concern that local authorities would be dealing with applications presented by their own officers and, on some occasions, relating to premises that they owned or occupy.

The concerns were brushed aside with the response that there was always a right of appeal to a magistrates' court against any decision made by a licensing authority. The fact that appeals are extremely expensive and create lengthy delays was not taken into consideration.

In relation to these proposals for Regulatory Panels, they would create an even worse situation. Not only would the Panel consist of individuals who are all retained by the Gambling Commission, but each case will be presented to them by an employee of the Commission who may be supported by other Commission staff.

Furthermore, the subject matter of the case would in all probability relate to allegations concerning a breach of the Licence Conditions and Codes of Practice published by the Commission.



Any issues concerning interpretation of the Licence Conditions and Codes of Practice would be determined by the Adjudicator as there is no independent legal adviser.

**Q113** *To what extent do you agree with the proposal that an Adjudicator should decide on personal licence matters, replacing a Director's hearing? Please select only one item*

- Strongly agree
- Agree
- Neither agree nor disagree
- **Disagree**
- Strongly disagree

**Q114** *Please give your reasons for your answer below*

We have strong concerns about the independence and impartiality of the Adjudicator. The proposal appears to be an attempt by the Commission to reduce its resources required to deal with Panel hearings.

**Q115** *Does the draft [Adjudicator Governance Framework address](#) concerns about impartiality? Please select only one item*

- Yes
- **No**
- In part

**Q116** *Please give your reasons for your answer below*

The draft Adjudicator Governance Framework appears inadequate, particularly in relation to impartiality and objectivity and just reinforces the conflict of interest concerns flagged in our response to Q112.

For example, the Adjudicators will, inter alia:

- Be employed by the Commission
- Have annual performance reviews with the Chair of Commission
- Receive performance related pay
- Be considering representations from its colleagues in the Commission
- Engage with the Governance Team for "routine contact"

**Q117** *To what extent do you agree with the proposal that Regulatory Panels will take decisions on the papers unless the Panel considers that a hearing is required? Please select only one item*

- Strongly agree

- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q118** Please give your reasons for your answer below

The Commission mentions “fairness” in its consultation but there is a complete absence of the principles of natural justice in this proposal arrangement.

The principles of natural justice are based on two core concepts: the right to a fair hearing and the rule against bias. A number of rules of natural justice have been developed and described as follows:

1. A person must be allowed the opportunity to present their case; this includes reviewing any evidence against them beforehand, the opportunity to prepare and present their own evidence and reply to any accusations against them.

2. No one can be a judge in their own case; the decision-maker in any case must be unbiased during the hearing and in making the decision. The decision-maker must make the decision based on an assessment of the evidence without favouring one party over another. All parties involved in the decision must avoid any appearance of bias and must ensure that there is no conflict of interest.

3. The decision must be logical and based on the evidence, and the decision-maker must not base decisions on speculation or suspicion. Decision-makers must be able to clarify the evidence on which the decision has been made, all the evidence, including arguments, allegations, documents, must be disclosed to the other party.

The leading case of *Porter v Magill* (2002) established that the test to determine whether there was bias, or an appearance of bias, was to ask whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.

Additionally, as with Questions 112 and 120 how does the arrangement comply with Article 6 of ECHR?

**Q119** To what extent do you agree with the proposal that personal licence matters will be decided on the papers unless the Adjudicator considers that a hearing is required? Please select only one item

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q120** Please give your reasons for your answer below

See our response to Q118.

**Q121** *Which decision-making processes from other regulators should the Commission consider in developing our approach?*

The default position should be to hold a hearing in person unless ALL parties agree otherwise. It should not be for the Regulator (in the guise of the Panel) to make that decision.

The Gambling Act is very clear on the expectation of Licensing Authorities in relation to reviews and hearings.

Licensing Authorities must hold a hearing for reviews unless the applicant and the representation raising interested parties and responsible authorities ALL consent to the application review being conducted without one. (s201 4(a)).

Similarly, if the holder of a licensed premises gaming machine permit receives notice from the Licensing Authority that it proposes to cancel the permit, the permit holder may submit representations to the Authority and request a hearing, which must be held (see paragraph 16, Schedule 13 GA05).

Mirroring the approach taken by the co-regulators of the Act should be the default position i.e., an in-person hearing unless ALL parties agree to a paper-based decision.

**Q122** *Do you have any further comments?*

No comments.

**Q123** *Do you have any evidence or information which might assist the Commission in considering any equalities impacts, within the meaning of section 149 of the Equality Act 2010, in the context of any proposal considered in this section of the consultation?*

No comments.

**Q124** *Attaching additional information Please attach a copy of any documents you wish to include to this printout.*

No comments.