

Crackdown in the online gambling sector

Following increasing concerns about mistreatment of customers arising from advances in technology, the Gambling Commission and the Competition and Markets Authority (“CMA”) have started a joint programme to improve transparency and fairness in the gambling industry. The Gambling Commission has updated its Remote Gambling and Software Technical Standards to put further obligations on operators, and it will be imposing harsh penalties on operators that do not co-operate to protect vulnerable customers. The measures represent a long-overdue overhaul of Britain’s online gambling industry.

Accordingly, from April 2018 all remote gambling operators licensed by the Commission must adhere to a revised set of standards, requiring them to provide customers with easy-to-understand tools to monitor their gambling activities, to provide full on-screen information about each gamble before customers commit to it, and to provide users with tools so that they can limit their own gambling budgets.

Alongside this, the CMA has launched enforcement action against certain operators warning them that if they do not address the CMA’s concerns about unfair commercial practices, particularly regarding the terms and conditions attached to promotional offers, then they risk heavy fines or losing their licences. In August 2017, for instance, 888 Ltd, one of Britain’s biggest online gambling operators, was fined £7.8 million by the Commission as a result of serious failings in its handling of vulnerable customers.

Background

According to the latest Gambling Commission statistics,¹ the UK gambling industry generates an annual gross gambling yield² of £13.8 billion. While the National Lottery and non-remote gambling accounts for two-thirds of this, the largest single sector is remote gambling (e.g. online betting, bingo and casino games), constituting 32% of the overall market, with an annual gross gambling yield of £4.5 billion. With smartphones and tablets providing customers with instantaneous, on-the-go internet access, players are now able to gamble round the clock. Against this backdrop of technological change, a recent report prepared for the Gambling Commission estimates that the number of British over-16s deemed to be problem gamblers has grown by a third in three years, with around 430,000 people in Britain suffering from a serious gambling habit.³

New industry standards for remote gambling operators

To address the challenges posed by technological developments in the sector, the Gambling Commission published its revised Remote Gambling and Software Technical Standards⁴ (RTS) in June 2017, following a three-month consultation. The RTS apply to all operators licensed by the Commission, and had remained relatively unchanged since their initial publication in 2007. The intention of the new measures is to enhance protections already in place, by ensuring that online operators offer consumers in the UK a uniform set of tools to monitor their gambling activities, helping players to make informed decisions about their online gambling. Under the updated RTS, which come into effect on 1 April 2018, remote operators will be required:

- (a) to ensure that consumers can directly access three months’ worth of account and gambling information (with a minimum of 12 months’ information also available on request) so that the

¹ *Gambling Commission Industry Statistics (updated to include October 2015 to September 2016)*,

<http://www.gamblingcommission.gov.uk/news-action-and-statistics/Statistics-and-research/Statistics/Industry-statistics.aspx>.

² The amount retained by operators after the payment of winnings, but before the deduction of the costs of the operation.

³ *Gambling Behaviour in Great Britain in 2015*, a NatCen Social Research report prepared for the Gambling Commission, published on 24 August 2017.

⁴ *Remote Gambling and Software Technical Standards (June 2017)*, Gambling Commission.

consumers have easily accessible information about their current balances and their recent activities (including easy-to-understand totals across a defined period), enabling them to understand the overall value and content of their transactions;

- (b) to provide consumers with access to information about their net deposits (i.e. the running total of all deposits minus the sum of all withdrawals), which is to be displayed at an account level, so that the figure represents the net position of all payment methods;
- (c) to display the financial commitment for each on-screen gamble (either in the currency of the consumer's account or in the currency of the product), as well as providing other sufficient information to give consumers clarity on the content of each gamble before they commit to it; and
- (d) to give consumers the option to set financial limits across their entire gambling account, as well as individual games, to enable them to stick to their personal budgets for gambling with the operator (and if a consumer sets more than one timeframe for their financial limit, such as a daily deposit limit and a weekly limit, the lowest limit must always apply).

In addition to the changes to be introduced in April 2018, the updated RTS also contain a number of additional requirements that came into effect on 1 October 2017, including that operators must take measures: (a) to reduce the risk that cheating or collusion by players unfairly disadvantages other players (this means informing customers about the risks involved, implementing measures intended to deter, prevent, and detect collusion and cheating, and retaining a record of relevant activities); and (b) to make peer-to-peer gambling customers aware that they may be gambling against a software program or "bot" (designed to automatically participate in gambling within certain parameters), or a human aided by third-party software.

Luck has run out for unfair operators – CMA launches enforcement action

Beyond the Gambling Commission's updates to the remote gambling standards, there has been a broader initiative to overhaul the gambling industry and to encourage more responsibility and transparency in the sector. On 21 October 2016 the CMA announced an investigation into the gambling sector's compliance with consumer protection law, following concerns that operators are not treating their customers fairly. As well as hearing from around 800 unsatisfied customers, the CMA demanded that companies answer questions about how they operate, and closely examined the play on a range of websites.

The CMA's investigation revealed a number of examples of potentially unfair treatment. The investigation showed that customers potentially lost out as a result of being locked into complex requirements linked to gaming promotions, with promotions being both difficult to understand and possibly unachievable (including terms that require customers to play for longer than anticipated before they can withdraw money). In fact, an annual report by the Gambling Commission published in February 2017 indicated that only 23% of gamblers have read terms and conditions,⁵ suggesting that operators need to make the terms of play easier to understand and more accessible to their customers. The CMA found that, as well as confusing customers with complex terms, gambling operators have wide discretion to cancel bets, or to alter odds after bets have been placed. In some instances, stringent complaints procedures made it hard or unrealistic for customers to make a complaint, or to challenge an operator's decision.

Consequently, the CMA announced on 23 June 2017 that it would be taking enforcement action against several online gambling firms suspected of unfair commercial practices and breaches of the

⁵ Gambling Commission Annual Report, *Gambling participation in 2016: behaviour, awareness and attitudes*, February 2017.

Consumer Rights Act 2015 – particularly where players are seemingly not getting the deal that they expect from sign-up promotions, and where operators are unfairly holding on to people’s money.

Sign-up promotions are intended to entice players onto casino-like gaming websites by offering bonus cash when they put in their own money. But the CMA is concerned that such deals often do not meet players’ expectations. The promotions come with an array of terms and conditions that are often confusing and unclear and, in some cases, even unfair. Players may have to play numerous times before they are allowed to withdraw any money, meaning that they have no choice to quit while they are ahead and to take their winnings when they want. Further, even where promotions are not involved, there have been suggestions that some operators are stopping players from withdrawing money from their accounts by imposing minimum withdrawal amounts far greater than the original deposit, or making it unnecessarily difficult for players to make any withdrawal.

While gambling operators are required to check their customers’ identities to fulfil both their social responsibility and anti-money laundering requirements, the CMA is also investigating concerns that some operators may be applying these requirements in a restrictive way, preventing consumers from rightfully withdrawing funds from their gambling accounts. The CMA has contacted a number of, as-yet, unnamed gambling operators demanding changes to their practices and, if adequate measures are not taken, operators may face heavy fines and may even risk losing their licences.

888, not a lucky number – the Gambling Commission issues more penalties

Unclear or unfair terms and conditions

It was online gaming operator BGO that first felt the full force of the social responsibility conditions that the Commission added to its Licence Conditions and Codes of Practice (**LCCP**) in 2015. In June 2015, during a review by the Commission, BGO was asked to provide information relating to compliance with the revised LCCP, specifically the Social Responsibility Code (**SR Code**) provisions 5.1.7 (marketing of offers) and 1.1.2 (responsibility for third parties). The Commission found that BGO’s ads (nine on its own website between July 2015 and July 2016, as well as 14 on its affiliates’ websites between February and October 2016) did not suitably outline what conditions were attached to its promotions, and so were potentially misleading to consumers. Although BGO made some of the changes recommended by the Commission in late July 2016, the Commission continued to capture evidence of ongoing breaches up to October 2016 in relation to advertising on third-party websites with which BGO had a contractual relationship.

BGO was fined a penalty of £300,000 on the basis that it did not take timely and effective action to address the misleading advertising, and because it provided inaccurate assurances that the issues had been fully addressed. By imposing its first financial penalty on BGO, the Gambling Commission sent a strong message to the industry that operators must ensure that their advertising is not falling foul of social responsibility rules or deceiving consumers.

Misleading advertising and marketing

The BGO penalty was the first in a string of enforcement actions by the Gambling Commission. Following an ASA ruling in early 2017 that gambling operator Lottoland breached the BCAP code⁶ (in relation to a complaint about a radio advertisement broadcast),⁷ the Commission began its own investigation. In June 2017, the Commission issued a £150,000 fine to Lottoland (payable to socially responsible causes) for failing to clarify to consumers that they were actually betting on the outcome of a lottery draw, rather than taking part in a lottery. Lottoland was found to be in breach of SR Code provision 5.1.7.2, which requires licensees to abide by the relevant provisions of both the BCAP code

⁶ UK Code of Broadcast Advertising Code (BCAP).

⁷ ASA ruling on EU Lotto Ltd t/a Lottoland, 1 February 2017 (<https://www.asa.org.uk/rulings/eu-lotto-ltd-a16-357523.html>).

and the CAP code⁸ in relation to “free bet”, “bonus” or similar offers, and it breached SR Code provision 5.1.7.1 in relation to the marketing communications on its website and Twitter feed. Despite Lottoland’s marketing making reference to a “bet”, the material information was presented in a manner that was unclear and ambiguous, which led the Commission to conclude that it was misleading and meant that consumers would take a transactional decision that they would not otherwise have taken.

The Commission used its Lottoland ruling to re-emphasise that all marketing and advertising by gambling operators should comply with requirements set out in its Licence Conditions and Codes of Practice, as well the CAP/BCAP Codes and the guidance on the rules for gambling advertisements. Further, operators must also take responsibility for the actions of their affiliates and third-party contractors, by ensuring that the marketing material they use is not misleading to customers.

Inadequate self-exclusion and customer interaction procedures

In a statement released on 31 August 2017, the Gambling Commission showed it had the winning hand when fining 888 Ltd, one of Britain’s biggest online gambling operators, a penalty fee of £7.8 million as a result of serious failings in its handling of vulnerable customers.⁹

A technical failure in 888’s system meant that over 7,000 of its customers who had chosen to exclude themselves from gambling on 888’s casino/poker/sports platform were still able to access their accounts on 888’s bingo platform. This system failure went undetected for over 13 months and allowed those customers to continue to gamble, depositing a total of £3.5 million into their accounts. While 888 did have self-exclusion procedures in place, the Commission unsurprisingly found that those were not robust enough, and that 888 had failed to be socially responsible in protecting potentially vulnerable customers. More vigorous identification procedures would have ensured that the relevant customer accounts were identified and correctly excluded from all platforms. The Commission highlighted one particular case, where 888’s failure to recognise visible signs of a particular customer’s problem gambling behaviour was so significant that it resulted in criminal activity, with the customer staking over £1.3 million, including £55,000 stolen from their employer. The lack of interaction with the customer, given the length of time and sums of money involved, according to the Commission, raised grave concerns about 888’s protection of customers at risk of gambling harm.

Comment

The Gambling Commission’s 888 ruling included advice on how to avoid the bad practice which led to such a hefty penalty. It explained that self-exclusion is a social responsibility that must be taken seriously by gambling operators, and it is vital that their processes are robust enough to protect those customers that are most vulnerable to gambling-related harm.

888’s fine is only one in a string of recent penalties imposed on the gambling industry: in February 2016, Paddy Power agreed to pay £280,000 after it was found to have encouraged a vulnerable customer to continue betting until he lost his job and access to his children; in April 2016, after taking thousands of pounds from a problem gambler who was using money that he had stolen from a vulnerable adult to feed his habit, Gala Coral agreed to pay a settlement sum of £880,000; and Betfred agreed to pay out £800,000 in June 2016 after the proceeds of theft were used on its website by a VIP customer, who was supposedly offered complimentary drinks and day trips to encourage him to keep betting.

⁸ UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (CAP).

⁹ <http://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2017/Gambling-firm-888-to-pay-over-7.8million-for-failing-vulnerable-customers.aspx>.

All of those recent actions from the Commission, and the current investigations by the CMA, support the government's stated intention to drive up standards in the gambling industry and to improve the treatment of customers, following concerns that both the government and industry were not doing enough to tackle the problems. The proposals for dealing with problem gambling, such as self-exclusion schemes or identifying people with harmful gambling patterns, all depend on co-operation from operators. Yet, recent enforcement actions have shown that not all operators are playing their part in tackling these issues.

Only time will tell whether the new measures will prove to be a game-changer for the industry.

Juliane Althoff, Associate, Simkins LLP