

# **Raising standards: consumer law and the remote gambling sector**

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# Overview

- The Competition and Markets Authority (CMA) and our approach to enforcing consumer law
- How and why we decided to take enforcement action in the remote gambling sector
- Update on the CMA's ongoing consumer enforcement activity in relation to online gaming and free bet promotions
- Overview of key terms and practices of concern
- Changes expected of operators
- Next steps

- UK's primary competition and consumer enforcement agency
- Key consumer legislation relevant to our investigation:

## **Consumer Protection from Unfair Trading Regulations 2008 (CPRs)**

- Unfair commercial practices, in particular misleading acts or omissions
- Behaviour contrary to the requirements of professional diligence

## **Consumer Rights Act 2015 (CRA)**

- Unfair contract terms in consumer contracts – terms must be fair and transparent
- Does a term create a significant imbalance, contrary to the requirements of good faith, to the detriment of consumers?

# Standards of behaviour

## GC Statement of principles for licensing and regulation, para 4.2:

- “the Commission expects operators to ...have due regard to the interests of customers and treat them fairly ... have due regard to the information needs of customers and communicate with them in a way that is clear, not misleading, and allows them to make a properly informed judgment about whether to gamble...”

## Licence Conditions and Codes of Practice, para 5.1.1:

- “neither the receipt nor the value or amount of the benefit is (i) dependent on the customer gambling for a pre-determined length of time or with a pre-determined frequency; or (ii) altered or increased if the qualifying activity or spend is reached within a shorter time than the whole period over which the benefit is offered”.

## Remote Gambling and Software Technical Standards:

- RTS 14 (Responsible product design) is designed to “ensure that products are designed responsibly and to minimise the likelihood that they exploit or encourage problem gambling behaviour.”
- *RTS requirement 14A states that: “Gambling products must not actively encourage customers to chase their losses, increase their stake or increase the amount they have decided to gamble, or continue to gamble after they have indicated that they wish to stop.”*

# Why we came into the sector

- Initial approach from the GC
- Early scoping work
- Enforcement vs. markets tools
- Focus on the remote sector:
  - Nature of online interactions
  - Particular impact of restrictive terms connected with online accounts and ability to withdraw
- Focus on promotions:
  - Behavioural biases
  - Imbalanced terms, involving broad exercise of *ex post* discretion and disproportionate sanctions

# Status of our investigation

- Use of our formal powers to request information and data
- Live gameplay demonstrations
- Cooperation with the GC
- Enforcement cases opened over the summer
  - Formal consultation launched in October 2017
  - Next decision waypoint in December 2017

# Key concerns

- Lack of transparency of significant promotion restrictions
- Restrictions on withdrawing:
  - Deposit winnings
  - Unspent deposit funds
- Fairness and transparency of play restrictions
- Withdrawing free bets or reducing their value
- Compulsory publicity

**NB** – no issue with terms which tackle cheating or fraudulent behaviour, or which ensure operators' compliance with other laws and regulations

# Transparency of key terms

## The issue

- Inadequate communication of significant conditions / restrictions, e.g. deposit winnings can't be withdrawn until WR met, bonuses for wagering purposes only, play restrictions apply

## Underlying principles

- Failure to communicate information necessary for consumers to understand the economic consequences of their decision
- Misleading action / omission under the CPRs
- CRA requirement of transparency

## What operators need to do

- Ensure significant conditions provided in a clear, timely and intelligible manner
- Ensure all T&Cs relating to a promotion are accessible within a single click



# Deposit winnings restriction

## The issue

- Consumers can't access winnings obtained using their deposit funds until WR are met, regardless of whether the consumer has 'touched' the bonus
- Deposit and bonus funds often 'co-mingled'

## Underlying principles

- Consumers legally entitled to winnings as an enforceable debt
- Consumers asked to risk an unknown amount of potential deposit winnings in return for the benefit of playing with bonus funds
- Consumers required to commit to an extended period of gambling

## What operators need to do

- Stop offering gaming promotions that restrict withdrawal of deposit winnings
- Ensure terms clearly articulate right to withdraw
- Ensure consumers can clearly distinguish between play with restricted and unrestricted funds

# Unspent deposit funds

## The issue

- Express prohibitions on withdrawing unspent deposit funds
- Indirect restrictions where a consumer's deposit is used to purchase a fund, which is subject to withdrawal restrictions

## Underlying principles

- Consumers retain a proprietary right in their deposited funds
- Failure to respect consumers' legitimate interests in stopping play at the time of their choice (contrary to the licensing regime)
- No legitimate justification – operators can manage commercial exposure from offering bonus funds in a much less restrictive way

## What operators need to do

- Stop imposing restrictions on withdrawing unspent deposit funds
- Ensure terms clearly articulate the right to withdraw, and that consumers can distinguish between play with restricted and unrestricted funds

# Play restrictions

## The issue

- Operators deeming certain play strategies invalid / 'abusive' after the event
- Application of opaque and nebulous terms, conferring excessive discretion
- Disproportionate sanctions, with consequences for both bonus and deposit funds, yet nothing to stop consumers from breaching the restrictions

## Underlying principles

- Winnings constitute an enforceable debt – terms seeking to legally reserve an operator's liability are imbalanced
- Breadth of discretion afforded to operators, and nature of the sanctions are unfair

## What operators need to do

- Ensure play restrictions do not apply to deposit funds (unless invalid wagers can be prevented)
- All prohibited types of play must be articulated (no discretion reserved)
- Clear distinction between play restrictions and other terms necessary to address possible fraud, collusion, multiple accounts, manipulation etc.

# Free bets

## The issue

- Operators remove a consumer's entitlement to a free bet, despite the consumer having placed all or some of the necessary qualifying bets
- Restrictions imposed making it harder to complete remaining qualifying bets, or reduce the value of the free bet

## Underlying principles

- Inappropriate to unilaterally remove / alter obligations to provide substantive benefits promised under a contract

## What operators need to do

- Operators should ensure they honour deals, meeting consumers' expectations and treating them fairly
- Best achieved by not seeking to enforce account restrictions to a free bet where a consumer has already placed all or some of the qualifying bets

# Compulsory publicity

## The issue

- T&Cs purporting to allow operators to use consumers' names, photos, locations and other personal data for promotional purposes without seeking their specific consent

## Underlying principles

- Data Protection Act 1998 requires personal data to be processed lawfully and only where one of the legal conditions for processing is satisfied
- Processing is solely for operators' commercial benefit of publicity
- Likely to be contrary to consumers' expectations and legitimate interests in personal privacy

## What operators need to do

- Operators must not use, enforce or seek to rely on such terms in their contracts

# Next steps

- Common expectation of the CMA and GC that all operators will implement these changes
- Important that operators review their terms and practices more broadly for compliance with consumer law
- Continuation of joint CMA / GC programme of work
  - Separate workstrand examining withdrawals issues
  - Supporting the GC's enforcement and compliance strategy