

**Proposed amendments to licence  
conditions and codes of practice (LCCP)  
for all operators**

**Response document – part two  
Protection of customer funds  
April 2014**

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# 1 Introduction

- 1.1 This is part two of the Gambling Commission's (the Commission) response to the three separate consultations on proposed amendments to licence conditions and codes of practice (LCCP) which were carried out from September 2013 through to April 2014.
- 1.2 The Commission consulted on [Protection of customer funds: proposals for amendments to current licence condition 4 for all gambling operators](#) at the end of 2013, alongside a separate consultation on a range of wider [Proposed amendments to licence conditions and codes of practice for all operators](#). Further to these consultations, the Commission carried out a short supplementary consultation entitled [Supplementary consultation on submitting suspicious activity report unique reference numbers to the Commission](#).
- 1.3 In March 2014, the Commission published part one of the Commission's response and explained that the remaining responses would be published in two further parts. This document - part 2 - relates to the protection of customer funds. Part 2 is relevant for both remote and non-remote operators.
- 1.4 A further document – [LCCP changes part 3](#), published alongside this document, sets out one amendment to LCCP which is relevant for all operators (key event reporting of the unique reference numbers of suspicious activity reports (SARS)), and a series of amendments which are relevant only for remote gambling operators and gambling software operators.
- 1.5 In making decisions on the proposed amendments to LCCP, the Commission has considered the written responses to the consultation, comments raised during stakeholder meetings and workshops and issues raised during Parliamentary debates on gambling, in particular those raised during debates on the Gambling (Licensing and Advertising) Bill (the Bill).
- 1.6 The consultation document [Protection of customer funds: proposals for amendments to current licence condition 4 for all gambling operators](#) was published on 12 September 2013 and the consultation period lasted for 12 weeks, closing on 4 December 2013. A total of 16 formal written responses were received during the consultation period and the consultation document was downloaded 411 times from the Commission's website during that period. The respondents are listed in Annex A to this document and the full responses are available on the Commission's website.
- 1.7 Responses to that consultation were received from nine gambling operators, three trade associations, one law firm, one campaign group and two members of the public.
- 1.8 We will shortly be publishing a consolidated version of LCCP which contains all of the changes outlined in the three parts of the responses to the consultations. This version of LCCP will come into force **at the beginning of August 2014**. The only planned exception to this implementation date is the new licence condition which will require Commission licensed operators to source their gambling software from Commission licensed gambling software businesses. This provision will come into force on 1 January 2015.
- 1.9 As part of our ongoing process of reviewing our regulatory approach, we will be consulting on and implementing further changes. These will include:
- the Commission is undertaking a social responsibility review of LCCP and *Guidance to Licensing Authorities*. Rachel Lampard, a Gambling Commission Commissioner, will be leading this work with a view to the Commission consulting on strengthened provisions in these areas this summer
  - *Remote gambling and software technical standards* (RTS) being updated later in 2014 - for example, more information may be included in our standards about the display of licensed status and on the information to be displayed to customers on

protection of customer funds, particularly in relation to restricted display devices, (such as mobile phones)

- the Commission will release information on its testing strategy for compliance with RTS - for example, to make transitional provisions in respect of those licensed for the first time following implementation of the Bill.

## 2 Background

### Existing levels of protection for customer funds

- 2.1** The consultation document on this topic explained that customers who hold an account with a gambling operator frequently deposit monies or keep winnings with that operator with the option to use those funds for future gambling or to withdraw at a later date. In some sectors, particularly remote poker and betting exchanges, customers may hold large amounts with an operator in order to have sufficient liquidity to play in tournaments or to cover the full liabilities for their bets. In non-remote sectors, operators do hold funds on behalf of customers - sometimes in an account such as a betting or lottery account, and sometimes in the form of tokens or tickets to be redeemed in store or in machines. The latter are more akin to the vouchers that can be purchased for high-street stores, and are often not directly connected to an individual account.
- 2.2** The Commission has in the past taken a *caveat emptor* (buyer beware) approach for all forms of funds held with operators, and has placed no specific burden on operators to protect customer funds in the event of insolvency. For the largely **non-remote** operators that we have licensed to date, the lack of such a requirement has not created significant difficulties or concerns.
- 2.3** This may be partly because the level of insolvencies in the non-remote sector has been relatively low, and because customers tend to hold smaller amounts of funds with non-remote operators. Thus the risk to individual customers has been comparatively low. It is also true that of those remote operators that we currently regulate, some - particularly larger operators - have chosen to implement some form of protection for their customer funds.
- 2.4** However, there have in recent years been some individual and high-profile cases where customer funds were put at risk by problems at or the collapse of a remote gambling company. In some of these cases, customer funds have been lost or significantly delayed and have only been reinstated some time later, perhaps when another company has taken on the assets and liabilities of the collapsed operator.
- 2.5** These individual cases and, in particular customer reaction to the situations, has demonstrated that there is a significant gap between the level of protection that customers and commentators assume they might receive (and which they assume regulators would have required) and the actual level of protection afforded.
- 2.6** Similarly, the consultation document indicated that a change in approach for remote gambling operators particularly may be appropriate for several reasons. First, the remote gambling sector that the Commission regulates is likely to grow significantly. The Commission currently regulates approximately 15% of the UK remote gambling consumer market, because some operators based offshore are permitted to offer gambling to UK customers under current legislation. The total value of funds held in customer accounts by all those operators which we regulated averaged £184.97m<sup>1</sup> over the period April 2012 – March 2013. The [Gambling \(Licensing & Advertising\) Bill](#), which is expected to receive Royal Assent shortly and to be implemented later this year will, once implemented, require all operators who offer gambling to UK customers to have a Commission licence to do so. We therefore expect the total value of customer funds held by Commission licensed operators to increase significantly later this year.
- 2.7** Secondly, the nature of remote gambling carries with it some additional risks – in particular that customers would tend to hold (higher amounts of) funds with an operator.

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<sup>1</sup> Source: Gambling Commission Industry Statistics [available our website](#).

## Example levels of protection in other sectors

- 2.8** There are a wide range of schemes in other non-gambling sectors which exist to protect consumer funds - ranging from financial services, solicitors, licensed conveyancers, employee pensions, tour operators, funeral funds, Christmas savings schemes etc. Some of these are statutory such as a compensation fund to which regulated entities are required to contribute whilst others are less formal arrangements. Some offer full protection; however most of the examples identified offer protection only in certain circumstances and to a certain level. In the gambling sector in the UK, there is no universal scheme or arrangement.
- 2.9** Gambling regulators in other jurisdictions also take a range of approaches to the protection of customer funds. Most often, minimum levels of protection are applied only to remote gambling operators. Again, most frequently the minimum protection level required is to have a separate set-off free account for customer funds. However, in some jurisdictions, it is unclear the extent to which the customer funds would be protected in the event of insolvency. This would depend in many cases on the location of the funds and laws of the relevant jurisdictions - they may not be protected against other creditors if the company was unable to continue as a going concern.
- 2.10** There are examples where remote gambling regulators have put in place rules which more explicitly protect customer funds - for example, regulators in both Nevada and France would require a trust account or reserve to protect customer funds.
- 2.11** The consultation document explored the issues and we asked for respondents' views on the advantages of protecting customer funds balanced against the additional costs to both operators and customers. Similarly, we explored the risk that some forms of 'protection' would give false assurance to customers about the risk that remains in insolvency or company difficulties.

## Existing disclosure to customers

- 2.12** In the past, the Commission's approach to disclosure to customers has been that operators must make clear to their customers whether, and if so how, their money is protected in the event of insolvency. This was intended to allow customers to make informed choices about where to play and how much money to keep on account with various remote operators. This requirement, which was previously set out in licence condition 4, was intended to be a key element of the Commission's *caveat emptor* approach.

### Existing licence condition 4

#### *Protection of customer funds*

#### **All operating licences, except gaming machine technical, gambling software, ancillary remote bingo, ancillary remote casino and lottery licences issued to non commercial societies or local authorities**

Licensees who hold customer funds for use in future gambling must set out clearly, in information made available to customers in writing, whether they protect customers' funds in the event of insolvency and the method by which this is achieved.

- 2.13** Almost all operators included the information required by the existing licence condition 4 in their terms and conditions. The Commission was concerned however that customers did not understand the information made available to them or that the information may give customers false expectations of the level of risk that would remain in the event of

insolvency or fraud. For example, the statements made by operators often did not distinguish sufficiently between the different levels of protection which are in place for customer funds. Furthermore it was clear, particularly from the reaction to the individual high profile cases of insolvency, that there was a widespread assumption that funds with licensed operators are protected in some sense.

- 2.14** Therefore, the consultation document considered the options for helping customers understand and choose the level of risk they wish to accept for their funds held with remote gambling operators and non-remote operators, in addition to considering an appropriate minimum level of protection for customers for remote operators. In other words, we sought to allow customers to distinguish between operators where one company exceeds the minimum level of protection.
- 2.15** The consultation document explained that some customers consider that it is appropriate for consumer choice to be available for those customers who have a greater appetite for risk, who have faith in the brand(s) with which they choose to play or who take care to hold a level of funds with gambling operators, the loss of which would not affect them materially.
- 2.16** The consultation document made the point that the loss of funds held with a gambling operator is not directly comparable to the severe financial hardship which might be the result of lost pensions for example. Gamblers may have more appetite for risk. Customers may not wish to bear the increased costs of protection and would rather assess companies individually. However, such assessment is only possible if consumers are given sufficient, meaningful information. In turn, consumer choice may drive increased protection on a voluntary basis if marketing and transparency encourages customers to move to operators who offer more protection.

## 3 Options for consideration

### Consultation options and proposal

- 3.1 Section 3 of the consultation document outlined the options which are open to the Commission and to the operators we regulate. There is no option which in isolation would protect customer funds absolutely and in all circumstances. As seen in other sectors, it is almost impossible to rule out absolutely the fraudulent misuse of funds. What is important is that the regulator takes all appropriate actions to mitigate the risks to consumer funds **and/ or** to ensure that the consumer makes informed choices about the risks they are comfortable with. When viewed as part of the wider regulatory framework, the options below all represent, to a greater or lesser degree, increased protection against the risks of funds being unavailable to customers in the event of insolvency or because of fraudulent actions.

#### Option 1: Segregated accounts

- 3.2 This option would see customer funds held in a client account separate from other company accounts. Unless a specific method of 'ring fencing' is applied, the mere existence of a separate client account does **not necessarily** protect customer funds in the event of insolvency. However, keeping separate accounts for customer funds and company funds does support and enable appropriate financial management of the accounts. It enables reconciliation of customer account balances with the amount owned by customers in a visible manner. Therefore, whilst it may still be possible to access customer funds, an operator must make the decision to do so consciously and should be more aware of and more able to manage any potential deficit in customer funds.
- 3.3 There is, however, a serious risk that a customer may have false expectations of the level of protection which is offered to them under this arrangement, especially if the term 'ring fenced' is used incorrectly. The Commission stated in the consultation document that this option would therefore only be acceptable if implemented alongside meaningful disclosure to customers about potential risks to their funds.

#### Option 2: A 'Quistclose' trust

- 3.4 A *Quistclose* trust arises in the UK when a sum is advanced/ paid by a customer to a person/ company ('payee') to be used for a specific purpose. The sum is held on trust by the payee for the specific purpose. A *Quistclose* trust<sup>2</sup> is a concept of English law. If for whatever reason the specific purpose cannot be fulfilled, there will be a 'resulting trust' in favour of the customer and the money will be held for and should be returned to the customer (the person/ company that advanced the sum). The trust places an obligation on the bank or other holder of the funds with notice of the arrangement to ensure that the funds are not paid to a liquidator/ administrator. The main principle of the *Quistclose* trust is the existence of a clear and specific purpose for which the sum is to be applied; if the specific purpose fails, the sum reverts back to the customer who paid the sum. The second principle is that the bank has been informed of, or is otherwise on notice of, the arrangement.

#### Option 3: Insurance against insolvency

- 3.5 Insurance against insolvency is a high-cost option of protecting customer funds, which can help recover a proportion of what is owed to customers in the event of insolvency. It is an option not open to all operators, and there is a risk that insurance payments would be included in the general assets of the company in insolvency. Finally, there is a risk that insurance could potentially be withdrawn/ no longer available as the risk of insolvency increases.

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<sup>2</sup> Barclays Bank Ltd ('Barclays') v Quistclose Investments Ltd ('Quistclose')



## **Option 4: An independent trust account**

- 3.6** A trust account with an independent trustee to oversee the management of the trust offers a high degree of protection against insolvency and can also provide some protection against fraud by the operator. An independent trust is more costly and bureaucratic and trust law differs between jurisdictions, so care would have to be taken by international operators about where and how the trust was created. The consultation document explained that we would expect operators with such arrangements to emphasise them as a marketing tool to customers, and that this marketing could over time encourage higher overall levels of protection across the industry.

## **Option 5: Reserve held by the regulator**

- 3.7** Regulators can require operators to place with the Commission a reserve which would be held to offset the risk of insolvency and fraud. It would be extremely costly for operators as they would have to also maintain cash reserves to cover the daily management of customer funds and can therefore be seen as duplicating the costs to the operator. It is also difficult to maintain a reserve that would keep pace with fluctuations in the value of customer funds held by the operator. The consultation document explained that we did not consider this a viable option.

## **Option 6: Rules for specific gambling products**

- 3.8** The consultation document explored the possibility of setting rules for specific gambling products. The most high-profile historic cases of gambling operator insolvencies have been of remote poker operators. The movement of funds between players is very volatile in most remote poker products and customers will often hold large amounts of funds with an operator to facilitate these movements.

## **Preferred option**

- 3.9** The consultation proposed the preferred option of setting a minimum requirement for remote gambling operators that customer funds must be kept in a segregated account (Option 1). This option was to go alongside requirements for meaningful disclosure to customers to ensure that information about the level of protection was made available to customers in a more visible manner. This additional disclosure was important to ensure that customers did not get a false impression about the levels of protection that segregation of accounts (or another option in place) offered to customers. This meant that operators offering a higher level of protection for customers could use this information as a marketing tool, which we considered could lead to higher overall levels of protection for customers.

## **Respondents' views**

- 3.10** Some respondents suggested that the Commission should have a very limited role in setting rules for the protection of customer funds and disclosure to customers. They considered the risks to be very low and that the isolated examples of operator insolvencies were exceptional and had other factors involved, such as the uncertain legal position of some of the gambling involved. They considered that the existing regime in Britain had been sufficient in ensuring that information about the protection of customer funds was included in terms and conditions. A number of respondents commented that although the protection of customer funds was very important, protection was not required in other similar sectors such as pre-pay gift vouchers, where there had also been similar or even more high-profile insolvencies. These respondents did not feel gambling funds were the equivalent of sectors where high levels of protections are rightly required, such as pensions or private bank accounts – partly because of the life-changing nature of these products, compared to the typically low levels of individual funds held by gambling operators.

- 3.11** At the other end of the spectrum, some respondents felt that the Commission should put in place the highest possible level of protection, and one respondent in particular felt that there should 'never be any risk to gambler funds'.
- 3.12** The majority of respondents considered that there was a need to review protection of customer funds in the light of the recent cases in Britain and abroad. In particular, respondents agreed that these high-profile cases had demonstrated the incorrect assumptions customers had been making about the extent to which their money might be protected if things went wrong.
- 3.13** In considering the options available to the Commission and to operators, almost all respondents considered that Option 5 (Reserves) and Option 3 (Insurance) were not viable options because of the limited protection they offered, particularly when considered alongside the significant and disproportionate costs involved.
- 3.14** A majority of respondents expressed the opinion that although Option 4 (an independent trust account) offered significant levels of protection, this option should not be set as a requirement on operators. Rather, it was suggested that this option should be used as a choice for customers who wished to ensure that they gamble with an operator where low levels of risk were in place.
- 3.15** The option of a Quistclose Trust (Option 2) received mixed comments from respondents, with some respondents stating the risks of the management of the trust not being understood by all operators were too high to make this a requirement for operators. Others commented that the terminology or levels of protection would not be understood by customers. Respondents also commented that this option could not be made a requirement, since it is not an option which is available or possible in all jurisdictions.
- 3.16** The preferred option proposed in the consultation document was Option 1 (requirement for segregation of customer funds for remote gambling operators). Whilst the majority of respondents considered that Option 1 was achievable for most remote operators, there was a significant minority who were strongly against this option. A small number of operators expressed concern that this option was not practical and stated it would add significant costs, in order to mitigate the very low risk of inadequate financial management. Respondents commented that they considered that this risk, and the risk of insolvency, are particularly low for large companies where gambling is only one part of the business.
- 3.17** One respondent felt that the requirement to segregate funds should apply to non-remote operators as well as remote operators, although almost all respondents considered this to be unnecessary because of the nature of the mainly cash-based transactions in the non-remote environment (rather than account-based transactions).
- 3.18** One respondent stated that, whilst increased protection of customer funds is desirable overall, any requirements for the protection of customer funds should not prevent new entrants to the market by setting draconian rules which they could not meet. They suggested that the levels of protection required could increase in line with the amounts of funds held by an operator.
- 3.19** A few respondents commented that a number of the insolvencies in the gambling sector had involved remote poker operators and that the nature of poker play encourages customers to keep a 'bankroll' with operators that would not necessarily be staked. A large proportion of respondents also commented however, that poker operators operating legally in or to Britain would not necessarily be at higher risk of insolvency and that there had been individual examples of insolvencies from the broader gambling sector. These respondents did not support rules for specific gambling products.
- 3.20** Some respondents queried the extent to which the proposals would or should apply to their sector or company.

## The Commission's position

The Commission has decided to proceed with the condition as proposed in the consultation that remote gambling operators must segregate customer funds into a separate bank account. Although we recognise that this will bring additional costs for some operators, we consider it appropriate that there is a clear distinction between funds held in customer accounts and company funds.

This provision has an important deterrent effect - to prevent operators dipping into funds which they hold for players to use for gambling. It is not intended to provide underwriting for winnings. There remains the risk that an operator could - in the event of insolvency - be unable to honour a winning debt which occurs at the point of insolvency. Similarly a delay in payment could occur - caused perhaps by an operator which has underestimated its liabilities - by miscalculation of the odds or by the underestimation of the take-up of free bets and bonuses.

It is very important that this separation to aid financial management is implemented alongside visible and meaningful disclosure to customers to ensure that customers are not given false assurances about the level of risk which remains in the event of insolvency. Over time, customer demand may lead to higher levels of protection for customers overall. Most importantly, customers will be given clear and sufficient information which will give them the opportunity to pick the level of risk with which they are most comfortable.

This approach allows customers to choose a level of risk which they consider appropriate to their circumstances, such as the amount of funds they will deposit with an operator, the potential impact a loss of funds might have on them, and an assessment of the risk of insolvency. The high costs of a reserve, insurance or independent trust would be borne ultimately by customers and - particularly where the protection afforded is uncertain - many customers may prefer to take some risk to benefit from more competitive pricing.

In response to a number of individual queries, we can clarify that the requirement to segregate customer funds applies only to remote gambling and only to circumstances where customers' funds are held (for example for future gambling). These are frequently (but not always) account-based and therefore attributable to individual customers. Customer funds do not include prize pots that have yet to be won - there is a risk therefore that a particular operator could be unable to pay out a large prize. However, this provision is designed to cover money waiting to be staked or, money which has been credited to the consumer's account but not yet withdrawn. For example:

- Although the National Bingo Game requires a remote gambling licence, the operator does not hold customer funds. When the game is played, customers stake via their local operator for each game.
- Where a customer pays for a lottery subscription in advance, the funds are considered customer funds until they are committed to a particular lottery and are therefore no longer held for future gambling - at this point they become lottery proceeds and are subject to the separate requirements for lottery proceeds. The point at which monies cease to be customer funds and fall to be proceeds will vary from scheme to scheme depending on how and when the monies are applied to the purchase of a ticket for a particular lottery. This may, but by no means need be, at the point the monies are received by the lottery operator.
- Similarly, entries into a series of pool bets are often allocated to the pools in question and staked immediately. Again, the point at which monies cease to be customer funds and are considered stakes applied to the pool (and therefore are no longer customer funds) depends on the arrangements of the particular pool betting operator.
- The requirement to segregate funds does not apply to ancillary remote licences, other than ancillary telephone betting where customer funds are typically held for future gambling.
- At this stage, we do not consider it necessary to extend the requirement to segregate customer funds to non-remote operators. However, we will keep this under review.
- Similarly, we have chosen not to impose specific rules for different gambling products, but we will continue to monitor this position over time.

## 4 Enhanced disclosure to customers

### Consultation proposal

- 4.1** The consultation document explained that the existing practice of including a statement on protection of customer funds within general terms and conditions was considered insufficient to enable customers to make meaningful assessments about the risks of placing funds with gambling operators for future gambling.
- 4.2** The consultation document therefore proposed that a standard rating system for the level of protection would be set by the Commission and information required to be displayed to customers not only in the terms and conditions, but prominently on the website page used for depositing customer funds and be available from the home page. In addition, at the point of depositing funds for the first time, the customer should confirm that they have read and understood the potential risk to their funds. Finally, should the operator's policy for the protection of customer funds change materially, we would expect that the customer is notified in advance of this change of terms and conditions (with the ability to close their account if they do not wish to accept the changes), and the customer must acknowledge the revised policy at the next occasion on which they deposit funds. We did not consider it necessary for the customer to confirm their acknowledgement of the protection of customer funds at every deposit though the information should be available on each occasion. In all cases, there must be a link to further information about what this means in practice.
- 4.3** The illustrative standard rating system set out in the consultation document was:
- Basic: Segregation of accounts
  - Medium: *Quistclose* or equivalent/ insurance/ reserve
  - High: Independent trust account
- 4.4** The consultation document proposed that (as for other information display requirements) a brief statement about the protection of customer funds rating is made available on restricted display devices<sup>3</sup>, with further information available on the restricted device by means of a link. The consultation document also proposed that the requirement for customers to actively acknowledge the messages about customer funds at first deposit would still apply where such a first deposit was made via a restricted display device.
- 4.5** In summary, the consultation document made clear that:
- Information about customer funds must be made available from the home page
  - Information about the handling of customer funds should still be included in terms and conditions.
  - Changes to the arrangements for the customer funds would be a change of terms and conditions, which operators are required to notify to customers in advance.
  - Information must be made available and acknowledged by the customer at first deposit stage.
  - If there is a material change in the arrangements, information must be made available and acknowledged at the next occasion on which a customer deposits money.

### Respondents' views

- 4.6** The majority of respondents were content that information about the levels of protection of customer funds should be made available from the home page and within terms and conditions, and were similarly content that changes to this aspect of terms and conditions

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<sup>3</sup> The definition of restricted device is set out in the Commission's Remote Gambling and Software Technical Standards. The current definition is that a restricted device is a 'device such as a mobile phone or personal digital assistant which has limited space on which to display information, when used to access gambling facilities that the operator intends a customer to use by means of such a device'.

should be notified in advance. One respondent felt that disclosure to customers should not be necessary because the levels of protection should in any case be so high that customer concerns would be addressed for all operators.

- 4.7** A number of respondents were however not in favour of a requirement that customers actively acknowledge the level of risk during the first occasion on which a deposit is made. The reasons for these concerns varied:
- Some respondents mistakenly thought that the proposal meant that customers would have to acknowledge the message on every deposit, and felt customers would be irritated by these repeat messages.
  - Some respondents considered that customers would not read the messages and would simply tick the acknowledgement, whatever the message - as they do for pages of terms and conditions which are frequently not read.
  - Many respondents felt that information within terms and conditions would be sufficient as the information is available for those who are interested.
  - Other respondents felt that some customers would read the messages and be unduly scared off.
  - Some respondents were concerned that any additional steps at the first deposit stage would put off customers.
- 4.8** One respondent felt that the requirement to acknowledge the message should apply at every deposit (not just the first deposit) because customers with multiple accounts may not remember the protection for each account.
- 4.9** A number of the responses addressed the difficulties of supplying sufficient information to customers whilst also ensuring that the information could convey the quite complex messages that would be needed to set the levels of protection within the overall context (which many respondents considered to be the overall low levels of risk to customer funds). Some respondents considered that a simple rating system would be the best means of achieving this balance. However, a number of operators considered that the proposed rating system would not be appropriate because for example:
- Customers would be given the undue sense that the risks were high.
  - There is the potential that a more 'risky' operator could appear the safer option under a rating system than a large 'stable' operator who on paper offers a lower level of protection.
  - It must be clear that under all options, operators are meeting the Commission's requirements for the management of funds.
- 4.10** A comment made repeatedly during the consultation was that segregation of funds does not in itself offer protection against insolvency and so any rating system would have to reflect that reality.

## **The Commission's position**

The differences in opinion in the responses on the possible impact of enhanced disclosure to customers and to a rating system perfectly illustrate the difficulties of getting the balance of volume and content of information for customers right. However, it is clear that without setting a very high and costly level of required protection, there is a need to be clearer to customers about the potential risks to customer funds and that there is some consumer choice available to them to choose operators which offer a level of risk they are comfortable with.

Although some respondents considered that customers would not read the messages about protection before acknowledging them and proceeding with a deposit, the Commission remains of the view that this is less of a risk than that they would be reluctant to wade through pages of terms and conditions to find the same information.

We accept that customers can find 'safety' messages irritating when completing transactions online. For that reason, we did not intend that the need to acknowledge messages about customer funds would apply to all deposits, only the first deposit and the first deposit after a material change in the way in which funds are protected.

Messages to customers need to be carefully prepared to take account of the comments made during consultation. We consider it acceptable (and in some cases desirable) that the links where further information is available can include information such as:

- No option offers absolute protection of customer funds
- Operators are meeting the Commission's requirements for the management of funds (whichever rating level has been applied)
- Some limited information about the overall financial management of the company can be made available.

However, to ensure that the messages are not watered down so that the differing levels of protection are no longer distinguishable, the Commission has decided that - as proposed in the consultation - information must be made available on both first deposit and first deposit following any change in the levels of protection, and that the key message of that information is to rate the level of protection of customer funds against insolvency, rather than the likelihood (or otherwise) of insolvency occurring.



## 5 The definition of customer funds

### Consultation proposal

5.1 The consultation document explained that:

- The Commission considers all 'crystallised' entitlements (such as winnings and bonuses) as well as sums deposited to fund stakes in (or make payment for participation in) future gambling to be customer funds. This means that if the operator makes commitments on how customer funds are protected, all such entitlements should also be protected in the same way. This also means for example, that the operator must ensure that funds in transit to the player via a payment processor are considered to be customer funds and protected in the same way.
- Gambling operators should make clear to customers what charges and fees apply and may be debited to their accounts. If the operator's terms and conditions are clear, fair and open when specifying the charges and the circumstances in which such charges will be applied, then only the remaining balance (after fees and charges) should be considered customer funds. The operator must meet the separate requirements of LCCP relating to the fairness of gambling operators' terms and conditions.
- We consider that in a network it is the B2C operator who holds direct responsibility to the customer to meet commitments relating to the protection of customer funds (assuming that the contract is between the B2C operator and the customer) because it is at this point of striking the contract that commitments may be made about the level of protection for customer funds. Of course, we understand that the B2C operator would wish to ensure that their commercial arrangements address the risk to them of the loss of funds which they may have paid or be obliged to pay to a customer. However, regardless of the commercial arrangements between the B2B and B2C operators, we consider that it is the B2C operator in this case who is responsible for meeting any commitments made to the customer. For this reason, we propose that the B2C operator includes in its financial arrangements the segregation (and further protection where relevant) of all customer funds (crystallised benefits such as winnings, unused deposits, bonuses etc.) whether or not the B2C operator has received settlement of these funds from the network/pool. This is incorporated into our draft definition of customer funds.

5.2 The consultation document proposed a definition of customer funds to ensure that these principles were applied and to ensure consistency across operators.

### Respondents' views

5.3 Respondents comments on the draft definition of customer funds included suggestions that:

- The definition should exclude any unstaked bonuses.
- Equally the definition should exclude monies which are in transit to a payment processor - ie monies which have been the subject of a withdrawal request from the player that has been actioned by the operator. One respondent in particular commented that since the Commission planned separately to specify requirements as to payment processors which gambling operators may use, there should be no need for the operator to protect funds in transit to those payment processors. One respondent (a trade association) estimated that approximately 95% of UK customer deposits are made via debit or credit cards, but explained that where withdrawal requests are being processed by the payment processor, the operator does not have control over the precise timeframes. They considered it unfair that the operator might have to 'underwrite' the monies twice over for these periods.
- The definition should include the real-money value, for example of items which can be bought or traded.

## The Commission's position

The Commission does not agree with those respondents who suggested that the definition of customer funds should exclude any unstaked bonuses. Instead, the Commission considers that if the bonus has 'crystallised' or has been 'converted' (and is therefore not subject to further terms and conditions before the bonus payment is made available to the customer), it is no longer separate from other funds held by a customer with an operator such as deposits or winnings. We therefore consider that crystallised or converted bonuses should be considered as customer funds.

For example, a bonus that is still subject to conditions which have not been met (perhaps concerning 'churn') would not be considered 'crystallised'. Therefore, the bonus (which may appear in the customer's balance) would nevertheless not be considered customer funds. The Commission is separately carrying out a review of free bets and bonuses, which will be focussed on ensuring that free bets and bonus offers are marketed in a fair and open way by the gambling industry and that those principles are reflected appropriately within LCCP. Adding that proviso then, the position is that where a bonus has not crystallised because it has not yet met conditions **which are fair and open**, the bonus is not considered to be customer funds. As soon as those conditions are met, the bonus does become customer funds.

The definition of customer funds excludes funds which have not 'cleared' from a payment processor - ie only when the money arrives with an operator do they have to consider and treat it as customer funds. However, the definition does not exclude monies where a withdrawal request has been actioned by the operator but where the monies remain in transit to a payment processor. The Commission understands the concerns raised by some respondents about the practicalities of considering these monies to be customer funds, because the precise timings of settlement are beyond the immediate control of the operator. However, the Commission maintains that the monies should be considered customer funds until the funds could reasonably be expected to have arrived at the destination set by the withdrawal request. For this reason, we have not excluded funds in transit from the definition of customer funds.

We will however take a reasonable approach to compliance and enforcement of the condition - for example, some other gambling regulators take a similar approach and specify that the funds in transit to payment processors are customer funds but allow a reasonable buffer to cover such funds. This 'buffer' approach may not be suitable for the type of protection which an operator chooses to put in place - for example, a buffer in a Quistclose Trust would have to be carefully considered and assessed in case the presence of such a buffer jeopardised the existence of such a trust or could affect the ability of the trust to fulfil its aims.

An alternative approach to a buffer might be the operator assessing the standard timeframe for funds in transit to be processed by each of the payment processors which they use and applying those timeframes as the period during which the operator should consider the funds in transit as customer funds. This would mean that the operator was taking all reasonably practicable steps to ensure that the definition of customer funds is applied. Of course, since reconciliation of customer funds may occur at set timeframes (minimum weekly), the amount of customer funds held in the relevant bank account is unlikely to exactly match the liabilities to customers at any time between reconciliation points. The Commission understands that standard rules and assessments will need to be applied to keep the customer funds account as close as possible to the actual liabilities to customers.

Finally, the definition of customer funds does not specify whether the real-money value of items which may be bought or traded should be included as customer funds or whether it is permissible for the operator to set a different value on those items. We consider this is a matter which can be addressed by the operator in their terms and conditions about customer funds - for example it is not uncommon for an item which could be bought or traded to be allocated a nominal value by the issuer or processor in certain circumstances.

The definition of customer funds therefore remains unchanged from the consultation document.



## 6 Further issues for consideration

### Small-scale operators

#### Consultation proposal

- 6.1** The consultation sought views on whether the proposals would be disproportionately costly for small operators to implement. Many small operators already implement segregation of customer funds. The consultation document explained that the advantages appeared to outweigh the potential costs, particularly because it is possible that smaller companies (particularly new starts) could be more at risk of insolvency. Therefore our preferred option was to ensure that all operators disclose this information to customers, and that small remote operators would also be required to segregate customer funds.

#### Respondents' views

- 6.2** A number of respondents considered that it is possible to argue that smaller operators are at a higher risk of going out of business than larger or more stable operators. One respondent commented that smaller operators could be allowed to offer lower levels of protection, as they suggested that requirements for protection would increase depending on the volume of customer funds held.

#### The Commission's position

The Commission remains of the view - set out in the consultation document - that small-scale operators should be subject to the same licence conditions concerning the protection of customer funds as other larger operators.

While the overall impact of a small operator's insolvency may be limited, the impact on the individual customer can still be significant. Indeed, some small operators have low overall levels of customer funds, but high levels of funds held per customer. Both the overall levels of funds and the average amounts held per customer can fluctuate significantly between operators and over time, making a small-scale operator exemption difficult to define and enforce.

Finally, some would argue that small and newly-licensed operators are more susceptible to insolvency, and that therefore the risk to the customer is inherently greater. Although this theory may not apply in all cases, the Commission does not intend to implement a small-scale operator exemption in this area.

### Frequency of reconciliation

#### Consultation proposal

- 6.3** The consultation document explained that customer funds vary constantly as players move money in and out of their accounts to play games or to place bets or to 'cash out' or to move to a different type of product with the same operator. Therefore, the consultation document asked respondents to consider how frequently reconciliations of the client account should be completed or required. In some of the options above it would be desirable for operators to put in place a small margin in the account to allow for fluctuations (so that the total amount held was approximately 101 -105% of customer funds). In some cases (such as Quistclose Trusts) however, a margin could increase the susceptibility of the account to creditor action in the event of insolvency.
- 6.4** In a system where the Commission allowed consumer choice, information about what is covered and frequency of reconciliation may be helpful to a customer in assessing the

extent to which their funds are at risk. On the other hand, the Commission is clear that the information must be as understandable as possible by players and this is why we propose that enhanced transparency should be based on a rating system, rather than on lengthy and potentially opaque explanations.

- 6.5** In the consultation document, the Commission explained that we would expect most operators to reconcile customer funds at least weekly. For many operators, reconciliation would be necessary on a much more frequent basis. Some operators would argue that the need for more frequent reconciliation timing must be set by the operator's specific circumstances. Weekly reconciliation information is likely to be used in compliance reporting, which is explored separately later in this document.

### **Respondents' views**

- 6.6** The majority of respondents agreed that weekly reconciliation is appropriate for most operators, and that many operators already complete such reconciliation processes at least weekly.
- 6.7** Some respondents suggested that larger operators could be encouraged to reconcile more frequently (daily for example) if they hold a large amount of player funds. Some respondents stated that for some products daily, hourly or even real time calculations might be practicable.
- 6.8** A few respondents stated that if a frequency for reconciliation were to be set, then it would need to be verifiable and subject to potential audit.

### **The Commission's position**

In line with most respondents, the Commission considers that weekly reconciliation is appropriate for most operators. The compliance reporting requirements to enable the Commission to assess compliance by remote gambling operators will therefore require information to be included about weekly reconciliations (although reporting is likely to be on a monthly basis for remote operators).

There is a distinction to be drawn between a full scale auditable reconciliation which we propose to require on a monthly basis and the more frequent daily or (at a minimum ) weekly reconciliation operators will conduct for financial management purposes which may not attempt a full reconciliation of funds in transit.

As set out later in this paper, we will expect to receive information about the weekly reconciliation alongside the full verifiable reconciliation in a regular report, and to receive key event notification if there is a material discrepancy.

## **Common or combined wallets**

### **Consultation proposal**

- 6.9** The consultation document explained that remote gambling operators frequently offer common wallets to customers who gamble or may gamble on more than one of the gambling websites they offer. Having one wallet in this way allows players to move easily between the different gambling products - such as remote casino games and remote betting. The wallet may however be only a visual representation to the customer of their financial activity over a number of sites. The different sites in question may be operated by different legal entities which may or may not have separate financial systems.

- 6.10** Increasingly, we are seeing a further move towards systems which may allow customers to access a common wallet which allows the deposit and retrieval of funds across not only different remote gambling products, but also across remote and non-remote gambling. In other words a customer may be able to deposit and retrieve funds via an on-line account and those funds also being available in a betting shop, for example.
- 6.11** The Commission considers that the impression the customer receives from a common wallet is that all funds they hold with a particular brand (whether or not one or more licensed operators physically hold the relevant funds) are treated collectively and have the same risks attached. Therefore the Commission considered it appropriate that, where a common wallet is offered to customers by a Commission licensed operator, all customer funds, regardless of source, should be held in one or more customer accounts which are afforded the same level of protection. The Commission considers that this applies to all funds received across different remote gambling products and all funds received from both remote and non-remote products.
- 6.12** An operator which offers a common wallet equivalent across only non-remote gambling products should similarly ensure that the information provided to the customer on the protection of customer funds is accurate at all points where funds may be deposited (eg over the counter, gaming machines etc).

### **Respondents' views**

- 6.13** Respondents were in the main in agreement that funds within a common wallet should offer the same level of protection across all products - even where one or more of the products might be non-remote gambling. Some respondents therefore strongly supported the Commission's proposals in the consultation, and considered that funds held within a common wallet system should be held in one or more accounts that offer the same level of protection
- 6.14** One respondent commented that such a provision across a group of companies is only feasible if common wallets across those companies are available.

### **The Commission's position**

The Commission maintains the position that funds held within a common wallet system should be held in one or more accounts that offer the same level of protection and that this should apply across both remote and non-remote gambling products.

## **Additional requirements for lottery managers**

### **Consultation proposal**

- 6.15** As well as the issues relating to the protection of customer funds, the consultation document addressed issues relating to the additional aspect of protecting society lottery proceeds in the event of insolvency of an external lottery manager, or from fraud or mismanagement of lottery proceeds. The existing provision in this area was intended to ensure that the lottery manager handles lottery proceeds appropriately, maintains separation from their own trading income and puts in place a trust or equivalent to ensure the lottery proceeds they hold will be paid to the society in the event of the lottery manager's insolvency.
- 6.16** However, the Commission had, prior to the consultation, identified lottery managers who on one or more occasions had not put in place the appropriate separation and protection of lottery proceeds - which must not be mixed with the manager's own trading income.

**6.17** We therefore proposed some clarifications to the existing licence condition to ensure that the intended purpose was fully met. We also proposed to place the new provision within a wider condition applying to lottery managers. This wider condition (which was set out in the separate consultation on LCCP amendments) consolidated the requirements for lottery managers in relation to accounting records and submissions to the Commission, so as to put protection of proceeds in the context of the appropriate financial management of the lottery manager.

### **Respondents' views**

**6.18** No written comments were received on this issue. However, during consultation workshops, the Commission was asked to confirm the previously understood position about the application of requirements for protection of customer funds vs the requirements for lottery proceeds.

### **The Commission's position**

The Commission will proceed with the planned new licence condition (within the overall condition for external lottery managers) as proposed in the consultation.

In response to the individual query asked about the distinction between lottery proceeds and customer funds, the Commission reiterates its previous advice on this topic - we can confirm that the position has not changed on this issue. Where a customer pays for a lottery subscription in advance, the funds are considered customer funds until they are committed to a particular lottery and are therefore no longer held for future gambling. At this point (that they are committed to a particular lottery) the monies become lottery proceeds and are subject to the separate requirements for lottery proceeds.

The point at which monies cease to be customer funds and fall to be proceeds may well vary from scheme to scheme depending on how and when the monies are applied to the purchase of a ticket for a particular lottery.

## **Requirements on where customer funds may be held**

### **Consultation proposal**

**6.19** Some gambling regulators, particularly those who regulate remote gambling, require customer funds to be held in a financial institution in the jurisdiction of the regulator, which in some cases ensures that the relevant jurisdictional laws would apply to those accounts. This is seen to add a certain degree of protection combined with other protection or reporting requirements. The Commission asked respondents to consider whether it would be appropriate for the Commission to set requirements about the financial institutions with which customer funds may be held.

**6.20** One option which is open to the Commission to consider is a requirement that reflects the regulatory framework that may be applied to deposit-takers (banks, building societies and credit unions) by the Prudential Regulation Authority (PRA). We have taken a similar approach in the case of payment processors, where we have proposed that, in the case of customers using their facilities in Great Britain, remote gambling operators may only use payment processors which are authorised under the Payment Services Regulations 2009 by the Financial Conduct Authority (FCA) or equivalent. Further information about this is in LCCP Responses Part 3, available on our website.

## Respondents' views

- 6.21** Most respondents did not consider that the Commission should prescribe categories or locations of permitted financial institutions with which customer funds may be held, considering this to be a commercial issue.
- 6.22** Some respondents advised that there are issues the Commission should consider in this area, including the ease of access to funds in the case of liquidation and the possible prohibition of the use of financial institutions which are themselves more likely to become insolvent.
- 6.23** However, opinions varied on the appropriate means of the Commission addressing these issues. Some respondents felt that the licensee should be able to determine the location and category of institution in which customer funds are held and demonstrate the suitability to the Commission.
- 6.24** Others felt that if the Commission considered it necessary to set requirements in this area that:
- There should be no issue provided that the customer funds are held in a bank regulated by the equivalent of the PRA/FCA.
  - The Commission should not automatically restrict to financial institutions within the EEA.
  - It may be appropriate for the Commission to specify categories of financial institutions with which customer funds may be held. However, specifying a location for those institutions would be extremely anti-competitive, would significantly increase costs for operators entering into the UK market and would make it very expensive for UK-based remote gambling businesses to grow outside the UK.

## The Commission's position

Having taken on board comments made during the consultation period, the Commission will not for the time being, set specific requirements for the financial institutions with which customer funds are to be held by licensed operators.

We will however require operators to be able to demonstrate that they have assessed the suitability of the financial institutions they have chosen to use. To enable this process to occur, the Commission will ask for information about banking arrangements at licensing stage, and similarly will require information about material changes in banking arrangements to be reported to the Commission as a key event. The Commission has the ability to impose conditions on one or more operators, where it has concerns about the operator's banking plans or simply where there is lack of assurance about those plans.

We would expect an operator's assessment of where funds should be held to include consideration of the ability of funds to be accessed in the event of insolvency and the ability of the regulatory regime in which the financial institutions operate to mitigate the risk of their insolvency.

## 7 Compliance and reporting requirements

### Consultation proposal

- 7.1 The consultation document outlined the Commission's priorities for the compliance and reporting requirements which would apply once the new licence conditions were finalised and had come into force. These were to introduce a formal mechanism for reporting on the level of customer funds and where possible introduce an element of external verification of those reports where appropriate. The consultation document explored some of the options for such reporting and external verification. These options included approaches taken by gambling regulators in other jurisdictions

### Direct access to operator systems

- 7.2 Some regulators have direct access to operator systems or require reporting which mirrors some of the information held by an operator on a regular basis. This enables live or almost live access to certain information held on the operators' systems. Such arrangements naturally carry a cost for the both the regulator and operators. Where such a system is in place, it is often used for a much broader range of regulatory functions, and protection of customer funds is not its primary function. An example of such a system is the Danish SAFE system.
- 7.3 The main disadvantage of such systems - in terms of protection of customer funds - is that even where they allow the regulator to understand the total value of customer funds which should be held by the operator (which is not always the case in the limited examples identified), they do not necessarily provide assurance that this total is matched in the bank accounts held by the company.

### Reporting via financial institutions or a trustee

- 7.4 An independent trust account (as set out in Option 4 earlier) often places reporting requirements on the trustee - both on a regular/ ongoing basis and as an urgent reporting requirement if the funds fall below a certain level. This reduces the risk that funds can be depleted over the medium or long-term. However, there are set-up and ongoing administration costs to the business, and such an arrangement would not be immune to fraudulent actions by an operator.
- 7.5 An alternative that was suggested prior to the consultation would be to combine the obligation on the operator to notify the regulator of any discrepancy between the amount held in the client accounts and the amount there should be with an obligation on the bank holding the client account to notify the regulator if the cash it holds is less than the amount the operator is telling the regulator and the bank that there should be. This could provide a tangible deterrent to 'borrowing' client funds in times of financial stress.
- 7.6 However, some operators have difficulties in securing appropriate banking arrangements and this additional information request to the banks could have a disproportionate effect on those operators who were already struggling to secure banking arrangements.

### Regular (audited) reports combined with exception reporting for remote operators

- 7.7 It is common for other gambling regulators to require a regular (most often monthly) report on the level and location of customer funds to be provided to the regulator by the operators.
- 7.8 In some cases, the regular report must be accompanied by a statement of truth or equivalent from an auditor/ financial institution etc. For example, Nevada, which requires



that any shortfall in customer funds is notified within 24 hours also requires monthly audited statements on the accuracy of the reconciliation of the funds held. As a result the regulator may demand that action is taken to correct any deficiencies.

- 7.9** The main value in any such reporting requirements is to provide a tangible deterrent to 'borrowing' client funds in times of financial stress. Such borrowing would be a direct breach of licence conditions and, unless the operator is willing to commit deliberate fraud, would be apparent in the operator's own records. The deterrent power can be increased by requiring a personal declaration by the finance position PML holder. However unless there is some fairly immediate system for policing the reporting of any discrepancy, an operator who was not deterred or who felt under too great financial pressure to resist would be able to put clients' funds at risks for some time before any audit revealed a problem.

### **Respondents' views**

- 7.10** Respondents generally considered that the Commission should receive regular reports about customer funds. Some respondents asked that the Commission do all possible to reduce duplication with other gambling regulators. Others suggested that reporting requirements should be risk-based for individual operators, as assessed at licensing stage.
- 7.11** One respondent suggested that the Commission should be notified of the amounts and locations of customer funds on a regular basis, and suggested that this report should be signed by a named individual with responsibility for its accuracy as well as audited regularly and supplemented by exceptional reporting where necessary.

### **The Commission's position**

The Commission has decided not to proceed with the more intrusive and onerous options of direct access to operator systems or an absolute requirement for reporting via financial institutions.

Instead, the Commission will introduce regular reporting by remote gambling operators on the level of customer liabilities and funds held in the customer account(s). The basis of this reporting mechanism will be:

- A monthly (or four-weekly) report will be appropriate for many operators, but a move to quarterly reporting could be considered for some operators once the reporting system has 'bedded in'.
- The Commission does not consider it appropriate to receive only the information about one single snapshot of the situation, because it could be considered too easy for the operator to simply make sure that the customer account held sufficient funds to meet liabilities only once a month, while at other times the account could be running at a deficit. We wish to see the flows of funds throughout the reporting period in order to deter such activity.
- Since the Commission expects reconciliation to be completed weekly at the minimum, the monthly report may be required to be broken down to demonstrate the week-by-week changes, and any discrepancy at those times.
- The key information for the report is: the amount of customer funds held in each of the relevant bank accounts, the location of those funds, and the total customer liabilities at that time.
- The report must be verified and approved by a PML if relevant, or equivalent where not applicable.
- A report will only be required if the operator holds customer funds.

The Commission will work with the industry to consider where existing reporting requirements - internally or to other gambling regulators - can be used or adapted to meet the Commission's needs in this area.

Similarly, the Commission will take all reasonable steps to align the reporting of customer funds in

the monthly report against the quarterly regulatory returns which operators are required to report to the Commission.

The Commission will also continue informal discussions with the industry about the exact format of the regular reporting to the Commission, and the mechanism for submitting the reports.

Reporting requirements will come into force one month after implementation of the Bill - ie the first report will be submitted at the end of the first month looking back at that period.

In addition, the key event proposed in the consultation that a deficit in the customer funds must be notified to the Commission will be included in the overall key events condition.



## 8 Licence conditions

8.1 The final licence conditions relating to the protection of customer funds are set out below:

### Licence conditions relating to customer funds

#### **Protection of customer funds**

##### **All remote operating licences, except gaming machine technical, gambling software, ancillary remote bingo and ancillary remote casino licences**

- 1 Licensees who hold customer funds must ensure that these are held in a separate client bank account or accounts.

#### **Enhanced disclosure to customers**

##### **All operating licences, except gaming machine technical, gambling software, ancillary remote bingo, ancillary remote casino licences**

- 2 Licensees who hold customer funds must set out clearly in the terms and conditions under which they provide facilities for gambling information about whether customer funds are protected in the event of insolvency, the level of such protection and the method by which this is achieved.
- 3 Such information must be according to such rating system and in such form the Commission may from time to time specify. It must be provided in writing to each customer, in a manner which requires the customer to acknowledge receipt of the information and does not permit the customer to utilise the funds for gambling until they have done so, both on the first occasion on which the customer deposits funds and on the occasion of any subsequent deposit which is the first since a change in the licensee's terms in relation to protection of such funds.
- 4 In this condition "customer funds" means the aggregate value of funds held to the credit of customers including, without limitation:
  - i. cleared funds deposited with the licensee by customers to provide stakes in, or to meet participation fees in respect of, future gambling,
  - ii. winnings or prizes which the customer has chosen to leave on deposit with the licensee or for which the licensee has yet to account to the customer, and
  - iii. any crystallised but as yet unpaid loyalty or other bonuses, in each case irrespective of whether the Licensee is a party to the gambling contract.

### Proposed amended licence condition for lottery managers (to be incorporated into a broader licence condition for lottery managers)<sup>4</sup>

#### *Protection of lottery proceeds*

##### **All lottery operating licences issued to external lottery managers**

- 1 Licensees must have arrangements in place to ensure separation between lottery proceeds they hold on behalf of non-commercial societies or local authorities and their own trading income and that such lottery proceeds are legally protected by means of separate bank accounts having trustee status or equivalent legal protection for each society or local authority

<sup>4</sup> To see this provision in the context of the wider provision relating to lottery managers, please see the consolidated LCCP which will be made available on our website shortly.

in the event of the licensee's insolvency, in which event the proceeds will be paid to the society or local authority.

- 2 Licensees must ensure that following the determination of a lottery all lottery proceeds are properly allocated between prizes, expenses and profits, and have procedures in place designed to ensure that lottery profits belonging to non-commercial societies or local authorities whose lotteries they manage in reliance on this licence are accounted for in a timely manner to the society or local authority.

#### *Reporting 'Key' and other reportable events – extract relating to protection of customer funds<sup>5</sup>*

##### **All operating licences, except ancillary remote licences**

- 1 A key event is an event that could have a significant impact on the nature or structure of a licensee's business. Licensees must notify the Commission, or ensure the Commission is notified, in such form or manner as the Commission may from time to time specify, of the occurrence of any of the following key events as soon as reasonably practicable and in any event within five working days of the licensee becoming aware of the event's occurrence<sup>1</sup>:
  - 15 Any change in the licensee's arrangements for the protection of customer funds in accordance with the general licence condition 4 relating to the protection of customer funds (where applicable).
  - 16 Where the licensee holds customer funds in a separate bank account, any deficit on reconciliation of such bank account.

<sup>1</sup> Key events can be reported securely online at the Commission's website at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk) or by email to [key.events@gamblingcommission.gov.uk](mailto:key.events@gamblingcommission.gov.uk)

**Gambling Commission April 2014**

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<sup>5</sup> To see this provision in the context of the wider key events licence condition, please see the consolidated LCCP which will be made available on our website shortly.

## **Annex A - List of respondents to the protection of customer funds consultation**

A total of 16 formal written responses were received during the consultation period and the consultation document was downloaded 411 times from the Commission's website during that period. A list of non-confidential respondents is set out below and the full responses are available on the Commission's website.

Betable UK  
Betfair Ltd  
Bingo Association  
Campaign for Fairer Gambling  
Done Bros, T/A Betfred  
National Bingo Game Association Ltd  
National Casino Forum  
Rank Group Plc  
Remote Gambling Association  
Richas.com  
Sportech Plc  
William Hill

## Annex B – Consultation questions

The consultation document posed a series of questions on the topics raised in the consultation on protection of customer funds. These are copied below.

### Consultation questions

- Q1. Do you agree that the Gambling Commission should prohibit remote gambling operators from co-mingling customer funds with company funds?
- Q2. Do you agree that non-remote operators, which typically hold customer funds on a lower level such as machine tickets or a small number of betting accounts, may be permitted to co-mingle customer funds with company funds as at present?
- Q3. Do you consider that non-remote operators which do hold customer funds, such as a non-remote casino should be permitted to co-mingle customer and company funds, as is currently the case?
- Q4. To what extent is it appropriate for remote gambling operators to be required to segregate customer funds into a separate customer account, but add no extra level of protection?
- Q5. How do you consider that operators can mitigate risks of a *Quistclose* trust being accidentally 'broken' for example by the use of inappropriate terms and conditions?
- Q6. Would you consider it appropriate for the Commission to require operators to use a *Quistclose* arrangement? Please explain your position.
- Q7. Do you agree that it would be inappropriate for the Commission to require all operators to protect customer funds by means of insurance?
- Q8. Do you consider that the Commission should encourage or require any category of remote operator to implement an independent trust account?
- Q9. Do you agree that the Commission should not require its licensees to create a reserve held by the regulator?
- Q10. Do you consider that more onerous rules are appropriate for poker products? Please explain what standard of protection you consider is appropriate for this product.
- Q11. Are there any other types of gambling products which you consider to carry greater risks to customer funds than most gambling products?
- Q12. Do you consider that the preferred option of requiring remote gambling operators to - at a minimum - segregate customer funds into a separate customer account is appropriate? If you do not agree, please explain which option you do consider to be appropriate and your reasons for this choice.
- Q13. Do you consider that there are some non-remote operators who should be required to segregate customer funds? Please explain your reasons.
- Q14. Do you agree that enhanced disclosure to customers is a vital tool to help customers assess the risk to their funds and to make choices about where and how much to gamble as a result?
- Q15. Do you agree that:
  - a) information should be available at a link from the home page?

b) information should be available at the point of depositing money to a website?

c) customers should be required to acknowledge information about protection of customer funds on the first occasion that they deposit funds, and again at each occasion that the operator's policy changes materially?

d) changes to the operator's policy should be notified in advance as a change to terms and conditions?

- Q16. Do you have any comments on the draft requirements for enhanced disclosure to customers in relation to restricted display devices such as mobile phones?
- Q17. Do you consider that enhanced disclosure to customers could indeed encourage customers to make risk-based decisions on where to play and the level of funds to hold with a gambling operator? We are also interested to hear whether such disclosure might naturally lead operators to offer greater protection as part of their brand and desire to be competitive.
- Q18. Do you agree that the B2C operator in a poker or other network should take responsibility for segregating all customer funds (and protecting those funds if they have made a commitment to do so), whether or not that operator has received settlement of those funds from a network operator?
- Q19. To what extent do you believe that poker raises specific risks for the protection of customer funds and that further minimum levels of protection should be applied to poker operators?
- Q20. What are your views on the draft definition of customer funds? Does the definition incorporate all relevant elements of customer funds?
- Q21. Do you believe that small-scale operators should be exempt from the Commission's requirements for the protection of customer funds? Please state your reasons if you consider that the costs would be disproportionate to this type of operator.
- Q22. Do you think that the frequency of reconciliation should be set by the Commission as a requirement? If so, is weekly reconciliation a reasonable minimum? Should some operators be required to reconcile more frequently?
- Q23. Do you agree that operators who participate in a common wallet system across remote and non-remote platforms should ensure that customer funds are held in an account for all funds held in the common wallet regardless of source? If you disagree with this approach, please set out the practical difficulties which would restrict the abilities of operators to implement this principle?
- Q24. Do you agree that information provided to customers must be accurate for all funds they hold in a common wallet?
- Q25. Do you have any comments on the proposed clarification of the licence condition to help protect society lotteries from the risk of fraudulent action by or the insolvency of their external lottery manager?
- Q26. Do you consider that there is a case for the Commission for setting a category of financial institution with which customer funds may be held, or the location of that financial institution? Please explain your views.
- Q27. What are your views on the appropriate level of reporting and any associated third party audit to enable the Gambling Commission to monitor compliance with protection of customer funds requirements?

- Q28. To what extent should reporting requirements vary for different products or size of operators?
- Q29. To what extent would the draft revised licence conditions above meet the stated aims of requiring segregation of funds by remote operators (option 1) and enhanced disclosure by all operators as the minimum approach the Commission would permit?

## Keeping gambling fair and safe for all

For further information or to register your interest in the Commission please visit our website at:  
[www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

Copies of this document are available in alternative formats on request.

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