GAMBLING COMMISSION

Proposed changes to licence conditions and codes of practice linked to the fair and open licensing objective

Consultation response form

1.1 This template is provided for responses to the Gambling Commission's consultation on *Proposed changes to licence conditions and codes of practice linked to the fair and open licensing objective*. Please use this template if possible.

1.2 The template leaves space for responses to all the questions asked in the consultation. However, we understand that you may wish to answer only those questions which are relevant for your business, organisation or interests.

1.3 All responses should be sent by email to consultation@gamblingcommission.gov.uk by **5pm on Sunday 22 April 2018**.

Alternatively, responses can be sent by post to:
Proposals linked to Fair and open consultation
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:	**Richard Hayler**
Organisation:	**IBAS**
Email address:	**richardh@ibas-uk.co.uk**

1.4 If you are responding on behalf of an organisation, please indicate which type of organisation:

Industry body		Regulatory body	
Government body		Charity	
Local authority		Help group	
Academic institution		Faith group	
Other (please specify)	Alternative Dispute Resolution Service (ADR)		

1.5 If you are responding as an individual, please indicate your own interest:

Section 2.1 – 2.10 of the consultation:

Compliance with the UK advertising codes

Q1. What are your views on elevating compliance with the UK Advertising Codes from an Ordinary code provision to a Social responsibility code provision?
We are supportive. The important point is that these codes are enforced as a meaningful deterrent against the production/publication of adverts which fall short of the CAP/BCAP minimum standards.

Q2. Are there any particular aspects of the UK Advertising Codes which would benefit from additional advice or guidance?
Dependent on the outcome of the ongoing review of the role of ADR in complaints management, it would be helpful to clarify the extent to which the Commission might expect ADR services to consider potential infringement of these codes a factor in reviewing customer disputes.

Section 2.11 – 2.14 of the consultation:

Marketing of offers

Q3. What are your views on the re-drafting of SR code provision 5.1.7?
We are wholly supportive. We would further welcome accompanying advice expanding on the Commission's view of what they would typically consider to be a) 'significant conditions' in offers and incentives and b) reasonable evidence that limitations of space made it impossible for these to be displayed in an advertisement.

Section 2.15 – 2.22 of the consultation:

Electronic marketing consent

Q4. What are your views on the proposal to introduce a new SR code provision regarding direct e-marketing consent?
We are supportive.

Q5. What are your views on broadening the proposed provision beyond direct e-marketing to include all forms of direct marketing?
N/A

Section 2.15 – 2.22 of the consultation:

Responsibility for third parties

Q6. What are your views on the proposed amendments to SR code provisions 1.1.2 and 1.1.3 (Responsibility for third parties) which reduce duplication between provisions and further clarify our position that operators are responsible for third parties with whom they contract, such as affiliates?

We are supportive. Typically 30-40 disputes in each year are the result of an advertisement placed by an affiliate which fails to highlight the key terms of an offer which it promotes, or provide a link to where they can be found. It is not always impossible, but often difficult, to ascertain whether an advert has been placed by an affiliate or the operator itself.

We recognise that some of the complications caused in disputes which involve affiliate sites are the result not of the banner adverts supplied by the operator but the accompanying editorial supplied by the affiliate. While it may be unfair to make the operator responsible for this, there is no question that the operator is better placed to monitor what has been written by the affiliates with whom they contract than any other party.

Section 3.1 – 3.16 of the consultation:

Unfair terms

Q7. Do you have any comments on the inclusion of consumer notices to licence condition 7.1.1?

We welcome the strengthening of this condition and the end to the requirement only that operators satisfy *themselves* of the fairness of their rules and terms. Given that much of the focus of recent consumer rights legislation is on the clarity and transparency of consumer notices, it is logical that they should be specifically referred to here.

We would welcome further clarity about what the Commission expects of non-remote operators when requiring that contractual terms must be '*made available to consumers*'. Minimum standards of accessibility would be helpful. For example, are contractual terms in a betting shop sufficiently available to consumers if they are stored in a booklet behind the counter?

Q8. What are your views on the proposal to include a requirement to ensure compliance with the Consumer Protection from Unfair Trading Regulations 2008, at all stages of the consumer journey?

We note that many of the consumer disputes that reach us concern not just the fairness of rules and terms, but issues relating to the way that they are advertised prior to acceptance or communicated to them and their accessibility after they have been accepted; for example, a consumer who subscribes to a particular offer or promotion may subsequently complain that the terms of the offer were removed from the operator's website and consequently no longer accessible for reference.

On this basis, we strongly agree that the responsibility to act fairly extends beyond ensuring that rules and terms are fair and reasonable.

Q9. What more could be done to ensure licensees' terms and practices are not unfair and do not mislead? Please give examples.

The first point we would like to consider is how unfair or misleading terms and practices are detected. What is the process for identifying and determining that they are indeed unfair? Would an adverse ruling by an ADR entity be sufficient to trigger a regulatory investigation? Will the Commission instead or also rely on direct consumer complaints, ASA rulings, CMA expertise, court decisions or a combination of these?

IBAS will of course be willing to provide details of its decisions and other outcomes to the Commission but we are conscious that these decisions will represent only our own view on whether a term is unfair. We also recognise that – necessarily – by the time an IBAS ruling is produced, the term, rule, advertisement or practice will have been exposed to a wider audience.

That being so, is there any scheme or system that can be implemented to detect and deal with potentially unfair practices sooner, to limit the risk of damage they may cause to consumers? Would operators be willing to subscribe to some form of independent/impartial checking service if it further limited the risk of later regulatory sanction?

Additionally, we would welcome seeing good practice guides and tools such as the Commission's Remote Technical Standards used to highlight areas where complaints and disputes are most prevalent. |In submissions to previous Commission consultation exercises IBAS has recommended, for example:

- Retail betting operators should be required to display the cut-off times ('no more bets times') for valid bets on specific races and events to help consumers identify where they are entitled to a refund of stakes on late/invalid but otherwise apparently losing bets.
- Betting websites and shop till systems should employ software that alerts customers where bets requested have the potential to breach the licensee's maximum payout limits.
- Websites offering casino and sports betting bonuses, the terms of which impose a maximum or minimum permissible stake per bet, must automatically reject bet requests which would breach the terms of the offer.

Section 4.1 – 4.20 of the consultation:

Complaints and disputes

Q10. Do the changes to SR code provision 6.1.1 make it clear that our focus is on complaints and disputes being handled in a fair, open, transparent, accessible and timely manner, in line with the licensing objectives? If not, how could we improve this?
Yes.

Q11. Do the changes to SR code provision 6.1.1 make the general requirements for reporting information to the Commission easier to understand and follow? If not, what would improve this?
We have no strong view, but we find them easy to understand and follow.

Q12. Please provide any feedback on the new requirement to have regard to the Commission's advice/guidance when designing complaints policies and procedures. Can you see any problems with this approach?
Whether the Commission's guidance or any other is recommended, it would be preferable for consumers to have broadly the same experience when raising a complaint against any individual licensed operator.

Q13. Please provide any feedback on the proposals to introduce time limits for complaints and disputes handling, and a requirement to provide a 'deadlock letter' as part of the advice. Do you agree with the proposed approach? If not, please explain why?
Ideally, the 'deadlock letter' would include some form of reference code that could be quoted to the ADR entity and used to cross-reference with operators and check that the complaints process has indeed been exhausted. We feel that an eight week time limit for the original complaint to be investigated is reasonable for the majority of complaints and disputes. There are some cases where a satisfactory conclusion

may not be achievable within that timescale. An example of this might be where the dispute relates to an allegation of crime (including alleged match fixing) and where investigations by external agencies might delay the process. Perhaps exemptions could be permitted in such cases and in situations where the completion of the complaints process requires additional information from the consumer which is requested but not received.

On the question of timescales, we also warmly welcome the recommendation in section 4.5 of the proposed *Appendix 1* that requires operators to respond to requests from ADR entities for information about disputes within ten working days.

Again, we recognise that some complex cases or disputes with an alleged criminal aspect may require more detailed preparation of evidence, but we anticipate that once complainants have exhausted the operator's dispute process and received their deadlock letter, there should be no reason for the operator not to be prepared to supply the information necessary for the ADR entity to reach an informed decision within a working fortnight.

It would be helpful to understand the Commission's view on what approach an ADR entity should take if an operator failed to respond to questions about a specific dispute within ten working days, without reasonable explanation.

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We would be slightly concerned with one aspect of the approach set out in 6.1.1; that it effectively places responsibility for directing unresolved complaints and disputes to the correct next stage fully with the operator. Operators are effectively making judgement about whether a dispute or complaint is suitable for consideration by an ADR entity, the regulator or another agency. There have been occasional examples where we have disagreed with the assessment of an operator that a particular dispute is unsuitable for consideration by IBAS.

For example, an operator may indicate to a consumer that a dispute cannot be considered by an ADR service because it is deemed by them to be a responsible gambling complaint, which would typically be directed to the Gambling Commission instead. However, that assessment may be based on the operator's belief that an account in one party's name is being controlled by a third party who has previously self-excluded from their site(s). We would usually consider that it was appropriate for our Adjudication Panel to at least examine the evidence that caused the operator to link the account holder with the self-excluded third party.

To some extent this is unavoidable if the deadlock letter scheme is to be implemented. Perhaps the deadlock letter should offer the consumer the opportunity to seek a second opinion from an independent source if he or she feels they have had their complaint misdirected.

Q14. Do you have any further comments or feedback on the proposed changes to SR code 6.1.1? What would be the impact of such proposals in terms of resource or cost?
We have no substantial concerns.

Q15. Do you have any further comments or feedback on the content of the proposed advice? What would be the impact of the proposals in terms of resource or cost?
N/A

Section 4.21 – 4.25 of the consultation:

Future changes – improving the ADR processes

Q16. Do you have any views on the outlined content of the future framework of standards for ADR providers, or our direction of travel in this area?

We have been happy to engage with the Commission in its review of the ADR requirements of the sector and we look forward to seeing how proposals for the future of gambling ADR develop in the coming year. There is clearly some important detail to be discussed.

We agree with the focus on the areas detailed in 4.23, including customer service standards, clarity of the remit of decision making, transparency, independence, consistency – particularly with other interested agencies such as the ASA – and mutual exchange of information on emerging trends.

It is important to remember that ADR is 'alternative dispute resolution' – a low cost and less complex alternative to legal action.

So, while IBAS and other ADR services aspire to make judgements that reflect current legal approaches to similar situations – judgements that would stand up to legal scrutiny if reviewed in court – we cannot realistically aspire to *fully* reflect the experience that two disputing parties would receive if their dispute was being heard by a court. ADR entities in the gambling sector are already being asked by the Commission to pass judgement on the fairness or otherwise of operators' terms and practices. We are aware that some experienced legal practitioners have expressed surprise that such judgements should be expected within the ADR sector.

We have recently updated our website with a view to providing more information about our decision making processes, our complaints and appeals procedures and our accessibility policies, among others. Later in 2018 we aim to introduce a new disputes database designed to further improve the information flow about the progress of individual disputes to both parties, simultaneously. The new database will also allow to provide regularly updated statistical information to the website as well as to the Commission.

We support the call for more careful consideration of the 'balance of power' in disputes. We agree as part of that process that we should allow both parties access to and opportunity to respond to any new arguments made by the counterparty about which they were not previously aware. On the question of whether it is always legally appropriate to share the submissions of each party, we intend to seek best practice data protection guidance from established Ombudsman services in other sectors, but we agree with the spirit of what the Commission is seeking to achieve.

We recognise that the Commission has publicly stated its ambition to reduce the number of ADR services operating in the sector; and that the outgoing Chief Executive has gone further in calling for a single industry ombudsman. We are bound to observe that the Commission chose itself to approve the current number of ADR entities operating in the sector, but we are happy to repeat our commitment to achieve at very least the reasonable standards that might be expected of ADR services in the future.

We recognise that we have in the past been subject to criticism in some quarters but it is the inevitable nature of adjudication on irresolvable commercial disputes that in almost all cases, one party in every dispute will consider that the process has reached the wrong conclusion. Satisfaction levels with ADR services must be considered in that context. We remain of the view that ADR in the gambling sector – from an IBAS perspective at least – has been generally successful and we are keen to work with the Commission to build on that success.

Section 3.32 – 3.34 of the consultation:

General – 'readability' of consumer information

Q17. What are your views on introducing a required readability standard for customer facing documents in the future? What might such a standard look like? What would the impact of such a requirement be for licensees or for customers?
This appears to be a question aimed primarily at gambling operators, although we would take note of any conclusions reached with a view to delivering the same standards at ADR level.

1.6 Please note that responses may be made public or published in a summary of responses of the consultation **unless you state clearly that you wish your response or name to be treated confidentially**. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.

1.7 Any information or material sent to us and which we record may be subject to the Freedom of Information Act 2000 (FOIA). The Commission's policy on release of information is available on request or by reference to our website at www.gamblingcommission.gov.uk.

1.8 The Commission will treat information marked confidential accordingly and will only disclose that information to people outside the Commission where it is necessary to do so in order to carry out the Commission's functions or where the Commission is required by law to disclose the information. As a public authority the Commission must comply with the requirements of FOIA and must consider requests for information made under the Act on a case-by-case basis. Therefore when providing information, if you think that certain information may be exempt from disclosure under FOIA, please annotate the response accordingly so that we may take your comments into account.

1.9 All information provided to the Commission will be processed in accordance with the Data Protection Act 1998. However, it may be disclosed to government departments or agencies, local authorities and other bodies when it is necessary to do so in order to carry out the functions of the Commission and where the Commission is legally required to do so.