GAMBLING COMMISSION

Proposed amendments to the social responsibility provisions in the licence conditions and codes of practice for all operators (the LCCP)

Consultation responses template: summer 2014 **LCCP 14/20**

1.1 This template is provided for responses to the Gambling Commission's consultation on amendments to the social responsibility provisions in the licence conditions and codes of practice (the LCCP) for all operators. Please use this template if possible.

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

1.3 All responses should be sent by email to consultation@gamblingcommission.gov.uk by **Friday 31 October 2014**.

Alternatively, responses can be sent by post to:
Consultation
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:	**Richard Hayler**
Organisation:	**Independent Betting Adjudication Service (IBAS)**
Email address:	

1.3 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)	ADR Entity		

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

Specific measures for strengthening underage gambling controls

Q6.	What are your views, in terms of costs, benefits and feasibility, for introducing each of the following measures at gambling premises? (page 20) a. permanent door supervision b. maglocks c. audio alerts or 'door chimes' d. CCTV e. additional staffing levels?

IBAS has no strong views on this section, but it would be concerned that a) and b) would both negatively alter the public image of the gambling industry, and possibly leave customers feeling under some sense of obligation to gamble having troubled the operator to open the door for them.

Product information: gaming machines

Q12.	What simple, educational messages could be provided to players to allow them a better understanding of the gaming characteristics (RTP, volatility, odds of winning a jackpot) and how those characteristics may affect their experience of their own gaming sessions? (page 29)

The most common misunderstandings of gaming machine customers when presented to IBAS are:

a) How RTP applies to each bet/game rather than to a 'session' of gaming

b) That games determined by a RNG should be due to payout after a series of successive losing games, i.e. that they work on a compensatory basis

We believe that both of these points could be addressed in a prominent message to accompany the start of any gameplay session. From an IBAS perspective, it would be helpful if the message also clarified that if the customer's gameplay is interrupted by a power failure or technical issue that the game logs stored in the machine will be used to determine the outcome of the game and what funds if any were due to be paid to the customer.

One IBAS disputant argued that where the game of blackjack was offered, customers should be informed before playing the first hand whether the dealing of cards was wholly random or based on a certain number of packs of cards to be electronically shuffled upon exhaustion.

Chapter 7 of the consultation: Self-exclusion

The risk of proxies being used to break a self-exclusion agreement

Q36.	Do you agree that the Commission should introduce as social responsibility code provision a requirement that operators' have policies and procedures in place that effectively address the risk of proxies being used to breach a self-exclusion agreement and to clarify that a self-exclusion should cover exclusion both from gambling and from entering premises? (page 56)

Particularly in the context of 7.38-7.41, we would be interested to know the burden of proof required by an operator in order to classify a bet as having been placed by the proxy of a self-excluded customer. Without guidance to the contrary, IBAS would expect see overwhelming evidence of a proxy having placed a winning bet before they would consider adjudicating that the winnings should be confiscated.

On the subject of sections 7.38-7.41, although we understand the argument behind the approach advocated by the Responsible Gambling Council, we have substantial reservations about any system that confiscates winnings without returning stakes, even if it is demonstrated that the counter-party to the gambling transaction does not financially benefit themselves.

IBAS has always adjudicated on the basis that one of the conditions of a valid bet is that it must be able to both win and lose. It goes against that principle to say that any customer should be able to place a bet where they cannot win but they are not entitled to a return of stakes, whatever their personal circumstances.

Chapter 11 of the consultation: Marketing, advertising and fair and open terms

Fair and open terms

Q57. Do you consider that there are terms used by gambling operators which are inherently unfair? Please give examples of terms within gambling contracts which you consider to be unfair or unclear to customers? (page 74)

IBAS does encounter some examples of operators attempting to enforce unfair terms. In most disputes considered by our adjudication panel to be unfair, it is the application of the term that is considered unfair rather than the term itself.

For example, the consultation paper makes reference to late bets and maximum payouts among other areas of potential concern.

IBAS would consider it perfectly reasonable for betting operators to apply a cut off time to betting events and to impose a ceiling for maximum winnings. Where we have considered potential unfairness is each of these areas might be:

Late bets: Where customers have no way of being able to independently establish the cut off time for bets on their nominated event, without reference to the operator's employees. Ideally, a facility would be made available to allow customers to check for themselves whether bets have been placed beyond the cut off point, and all receipts and/or staff would remind them of the importance of checking. Although there are no grounds to suspect customers have ever been intentionally misled by operators' customer-facing staff, it can be both awkward and unsatisfactory for a customer to be required to check whether a bet placed that appears to have been unsuccessful is in fact invalid due to the time of transaction. Typically, the check is performed out of the sight of the customer who is required to accept the verbal assurance that the bet was valid.

Alternatively, without reference to these cut-off times, many customers may never realise that their bet may have been placed too late to valid and will throw away a receipt of an invalid bet considering it to be a loser when, in fact, had their selection 'won' they would have been entitled to nothing but a return of stake money.

Maximum payouts: We would not expect operators to train staff to make manual calculations about whether a bet presented could exceed the maximum winnings payable in those particular premises, or on that particular website, but where a bet is struck through a system, either a 'marksense' style coupon or through a device connected to a remote bookmaker, we consider it reasonable to expect the software to provide an alert to the customer to advise that if all of his or her selections are successful that they would (at the odds or on the terms accepted) exceed the maximum payout offered by the company for that particular type of transaction.

Other examples of contract terms that IBAS has considered to be unfair, include:

- making customers fully responsible for any discrepancies between their intentions and their receipt in cases where the receipt is not simply a facsimile of a written instruction (i.e. a printed, 'translated' receipt). IBAS recognises that the customer must take responsibility for checking that their receipt correctly represents their intentions but where there is incontrovertible evidence that the customer's original instructions have not been represented by the receipt, or where both parties accept this to be the case, we would consider it appropriate for the operator to routinely

offer some form of ex-gratia settlement to recognise that their staff or their technology was responsible for the problem.

- Disclaimers regarding live score data. Similarly, IBAS considers it unreasonable for remote operators to place the full burden of responsibility on the customer for checking that the data regarding a live, in-play betting event is accurate. For example, displaying a live basketball score as 70-80 when in fact the score is 80-70. In our view, the substantial majority of in-play betting decisions are made on the strength of such data, which is generally reliable. Where it fails, operators should have terms to deal with the settlement of disputed transactions which reflect their failings, or those of their suppliers.

- Obvious pricing error rules that do not take account of the market price. IBAS does not oppose the principle of correcting clear human inputting or marking errors or prices generated by demonstrably failed technology, but we feel that where the odds are displayed incorrectly, it is unreasonable to correct those terms without taking into consideration the market price available at the time of the disputed bet. If a price is displayed at 7/1, when the operator is able to satisfactorily demonstrate that the correct price should have been 7/4, some operators rules allow the bet to be settled at the price that the company intended. IBAS strongly prefers the equivalent rules of other operators, which say that such a bet will be settled a the best price available with any reputable operator at the time the bet was struck, i.e. that there can be no suggestion that the erroneous price was displayed intentionally to lure customers in and away from more generous, accurate competitive prices being offered on the same selection by other operators.

- Pejorative terms relating to the behaviour or betting patterns of customers. IBAS is concerned by the growing use of undefined terms distinguishing between 'recreational' or 'professional' customers. We recognise that operators are free to accept or refuse bets from customers at their own discretion, but we are concerned about clauses that entitle bonus winnings to be withheld, for example, because a customer is using them to place 'the wrong kind of bets'. If an offer is made, any terms governing it should be clear and specific; operators should anticipate that their customers will seek to be as successful as they can from any gambling transactions they enter into. If they wish to limit the potential scope of that success they must do so through terms that are reasonable and intelligible.

- Terms that allow customers to be excluded from promotions or special offers (including, typically, the 'best odds guarantee') without notice. IBAS has dealt with remote operators whose terms reserve them the right to exclude customers from promotional offers without any notification, such that the customer only establishes their lack of entitlement to these offers when their affected bet is settled in an unsatisfactory manner. IBAS considers this practice vehemently unfair and has adjudicated against operators on that basis.

Q58. To what extent do you consider that existing or upcoming consumer rights legislation already address possible concerns about unfair terms in gambling contracts? If you consider that there are still gaps in relation to gambling contracts, what action do you consider should be taken to address the possibility of unfair terms in gambling contracts? (page 74)

The requirement on licensed operators to appoint a nominated alternative dispute resolution entity addresses certain aspects of unfair terms, but in our view it is unreasonable for operators to expect an ADR entity to pass judgement on what that entity would consider to be a borderline case. In our capacity as an ADR entity, IBAS advises customers who remain dissatisfied following an IBAS adjudication that they should consider pursuing the matter through the courts. As such, refreshed and strengthened consumer rights legislation can only assist in helping to establish whether a term is properly described as unfair.

Beyond that, we consider that the gambling industry is entirely capable of introducing voluntary codes that could help avoid potentially unfair contract terms. We find fewer harsher critics of

individual operators; debatably unfair terms than the other operators in the market, which would suggest that peer-policing, with assistance from regulators and ADR entities, could be effectively in minimizing their damage.

Examples of measures that operators could voluntarily agree to offer include accessible 'no more bets' cut off times (as discussed above) and software to enable those progressing through minimum bonus 'churn' requirements to view precisely how much more wagering is required at any given point before the customer is entitled to apply for a cash withdrawal.

On a similar point, we would welcome a standard industry policy for the display of gambling rules. For example, IBAS has considered a number of disputes relating to insufficient terms explaining the settlement of certain bets offered on mobile gambling applications (apps). We recognise that the layout of mobile apps offers relatively little space to explain how certain bets work and the terms that govern their settlement, but the IBAS adjudication panel has rejected a number of arguments from operators that a customer should be expected to refer to their full website in order to read these key terms. It is our view that these must be made available within the app itself, even if as a direct link to the page on the main website that explains these terms.

Q59. How should gambling operators make consumers aware of changes to terms and conditions? Should only material changes be notified and if so, what do you consider to be material changes? (page 74)

We recognise that in the context of ever expanding terms and conditions, identifying 'material' conditions is difficult to achieve. Of course, from the perspective of an ADR entity, a material term is any term pertinent to the dispute in question. Ultimately this must come down to an assessment by the bookmaker about how fundamental the change is to the way in which customers gamble.

One example of a material change might be a particular type of bet that an operator might have accepted but which that operator no longer wishes to accept. Another would a change to a rule that gave customers a certain amount of leeway after the start of a race or event to place a bet, but which was later removed, rendering all bets struck after the start of any race void. IBAS would expect operators to use all of their display resources to communicate such changes to their customers, including notices, on-screen messages and audio messages. Again, IBAS feels that voluntary industry codes could be used to deal with such requirements, subject to review.

1.6 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. 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.

1.7 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.