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U.K. Gambling Commission Imposes Tighter Controls on Customer Incentive Schemes Targeting “High Value Customers” and “VIPs”

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Speed Read

The Gambling Commission of Great Britain has updated the Social Responsibility Code in the LCCP in relation to incentive schemes targeting high value customers, often referred to as “VIPs”. The changes will come into effect on 31 October 2020 and require:

- *Heightened KYC checks: operators must assess a customer in terms of (i) their affordability, (ii) safer gambling (including considering whether a customer is vulnerable) and (iii) enhanced due diligence. Checks are to be carried out on a quarterly basis;*
- *Assurance that commercial motivations do not conflict with an operator's compliance obligations. To increase oversight, a PML holder should be assigned to each scheme and governance of the schemes should be overseen by the board or executive committee;*
- *Appropriately trained staff dealing with high value customers to minimise the risk that they are exploited and to ensure safer gambling practices as well as AML compliance; and*
- *Careful review of incentive schemes to ensure that they do not encourage risky behaviour.*

The Gambling Commission has stated that it will closely monitor compliance and may ban the use of incentive schemes if further improvements are not made by the industry.

Operators should design and implement appropriate policies and procedures to ensure compliance with the new provisions by 31 October 2020. Collating and processing such an extent of sensitive customer information will give rise to significant further challenges in terms of data security and GDPR compliance, particularly if records need to be accessed or shared between teams and across borders. Increased accountability for designated PML holders and Boards must not be overlooked. Dedicated training and significant enhancement of compliance functions and relevant skills is vital. Operators should be astute to unscrupulous customers who seek to ‘game’ the system and make threats and complaints in an attempt to recover losses. Competitive advantage is available to operators who interpret the requirements well and are able to adapt efficiently. Significant risk lies ahead for those who are unable or unwilling to do so.

Introduction

From 31 October 2020, the Gambling Commission of Great Britain (“GC”) is updating the LCCP to include a new Social Responsibility Code (“SRC”) provision which requires that if a licensee offers “incentives or reward schemes for customers, designated by the licensee as ‘high value’, ‘VIP’ or

equivalent" this must be done in a "manner which is consistent with the licencing objectives". The GC has published related [guidance](#) (the "Guidance") which generally refers to these customers as high value customers ("HVCs") (rather than "VIPs" as they tend to be referred to in the industry).

The Guidance makes clear that responsibility for assessing and managing the risks of incentivising HVCs falls upon licensees, and sets out "the minimum standards we expect licensees to adopt and evidence in policies, procedures, and practices to mitigate those risks". It is to be noted that these are expressed to be minimum standards. The Guidance sets out a range of requirements designed to minimise the risk that HVCs are exposed to the risk of gambling related harm as a result of an "**Incentive Scheme**" (e.g. a VIP programme or equivalent).

These changes will apply from 31 October 2020 and operators are expected to be compliant from that date.

What is new?

The addition to the SRC at provision 5.1.1(2) reads as follows:

"If a licensee makes available incentives or reward schemes for customers, designated by the licensee as 'high value', 'VIP' or equivalent, they must be offered in a manner which is consistent with the licensing objectives".

The insertion of this paragraph is expanded upon in the Guidance. The Guidance can be broken down into four areas which will be examined in turn below: (i) Know Your Customer, (ii) Oversight and Accountability, (iii) Relationship Management and (iv) Use of Incentives.

1. Know Your Customer

The Guidance starts from the premise that:

- i. HVCs are more heavily engaged gamblers by spend, frequency or both. Heavily engaged gamblers are at greater risk of gambling related harm.
- ii. The disproportionate financial value of HVCs leaves licensees vulnerable to the accusation they are placing commercial objectives over regulatory compliance.

As such, the Guidance requires that:

"Licensees should be taking steps to ensure all customers are gambling with money they can afford to lose (lawfully acquired disposable income) and without experiencing harm".

In order to help achieve this, before an operator designates a customer as an HVC, the Guidance requires that operators carry out the following checks:

- **Affordability** - establishing that the HVC's spend is affordable and sustainable as part of their leisure spend;
- **Safer Gambling** - assessing whether there is evidence of gambling related harm, or heightened risk of such harm linked to vulnerability; and
- **Enhanced due diligence** - ensuring that operators have up to date evidence relating to the customer's identity, occupation and source of funds.

Subject to their assessments, operators must consider whether additional controls should be imposed on an HVC. In addition, the operator must consider the following types of vulnerability, as set out in the customer interaction guidance:

1. personal vulnerability, i.e. physical or mental health or impairment;
2. situational vulnerability, i.e. financial difficulties, domestic abuse or a sudden change in circumstances; and
3. behavioural vulnerability, i.e. where the individual has a higher than average appetite for risk or level of trust.

Whilst the Guidance leaves open the possibility of designating a customer who has previously self-excluded as an HVC, the tone of the Guidance makes clear that it will be very difficult to justify this in practice. In our view, licensees would be well advised to exercise particular caution in this space.

The Guidance provides that "source of funds checks should provide clarification over the actual source of the funds used to gamble rather than an open source assessment of potential income/wealth", and operators will therefore need to receive actual evidence of source of funds from customers, rather than just relying on open sources as is often the case in relation to other customers.

Notably, the Guidance requires that:

"In verifying a prospective HVC's affordability, licensees should be cautious when considering funds derived from an unplanned financial windfall from gambling or other sources, such as redundancy or inheritance. It is important that licensees can demonstrate that they have considered the sustainability of a customer's leisure spend, not just their access to immediate funding".

This suggests that the operators ought to think carefully before designating a customer as an HVC or promoting them within an Incentive Scheme merely because of sudden or unusual access to funds; likewise, it may not be appropriate to maintain that status if it is clear that access to such funds and their level of spend is not sustainable as part of a broader assessment of their overall wealth and disposable income.

The Guidance sets out a range of checks which should be conducted in relation to HVCs on a quarterly basis. Where insufficient information is received to help the licensee ensure that the customer is (i) able to afford their gaming activity within their leisure spend; and (ii) not otherwise at risk of gambling related harm, the Guidance states that their HVC status should be suspended and the operator must consider the regulatory impact of continuing the customer relationship.

2. Oversight & Accountability

Compared to the wider customer base, HVCs typically generate disproportionate levels of revenue for operators, relative to activity level, average spend or both. The Guidance notes that it is therefore fundamental that operators ensure that commercial motivations do not conflict with their regulatory compliance obligations.

Operators must have implemented effective policies and procedures to manage Incentive Schemes, which policies must include ensuring appropriate oversight of the schemes. According to the Guidance, each Incentive Scheme should be allocated to a named individual at senior executive level who holds a personal management licence ("PML Holder"). The PML Holder should be responsible for ensuring that the Incentive Scheme complies with the Guidance. In addition, the Guidance also requires board or executive committee oversight of the governance of Incentive Schemes, including periodic review of the schemes. However, the Guidance ultimately leaves it open to each operator to depart from the requirements laid down as long as the objectives for the new rule at 5.1.1(2) are met and they can explain their rationale for departure and evidence how alternative measures are equally as effective.

In short, therefore, the Guidance does not prescribe that the PML Holder(s) that are assigned to oversee and ensure compliance of Incentive Schemes are from a particular department or team. Instead, paragraph 2.16 of the Guidance merely requires that the relevant individual is senior enough (“at senior executive level or equivalent”).

Given the emphasis on oversight and accountability, including the involvement of “key decision making”, we would recommend that the PML Holder(s) that are assigned to oversee Incentive Schemes are those who are best placed to ensure compliance in practice, which may well be individuals from compliance or marketing - or both. In devising related policies and procedures to ensure compliance with the Guidance, it would be prudent to consider input from a range of different staff involved in compliance, marketing and customer care.

In addition, training is required for members of staff handling customer care. For the sake of good order, PML Holders should also receive training on the new rules and related policies and procedures. If the PML Holders are trained appropriately, it should not matter what their primary job function is. However, similar to customer care staff looking after HVCs (who the Guidance suggests should be rotated to ensure objectivity and compliance), operators may wish to consider assigning two or more PML Holders to oversee the relevant Incentive Schemes and rotating them periodically, as appropriate. Further or alternatively, a PML Holder for one department could be appointed to take responsibility for another PML’s area of responsibility and vice versa. Consideration should also be given to assigning deputies to cover periods of absence, annual leave, etc.

Full audit trails should be maintained detailing the management of HVCs and Internal Audit or assurance functions should be used where appropriate to ensure compliance.

3. *Relationship management*

Operators need to ensure that their staff are appropriately trained to deal with and manage HVCs. The Guidance suggests that, to achieve this, operators should take certain measures, such as:

- rotating staff looking after HVCs, to avoid individual members of staff forming inappropriately close relationships with particular HVCs;
- ensuring staff retain the ability to assess individual risk if they manage multiple HVC accounts (in practice this will likely be the case for all members of HVC teams);
- empowering staff to escalate regulatory concerns in regard to HVCs;
- providing enhanced training on safer gambling and AML risks to those involved in managing HVCs; and
- ensuring that staff are not incentivised or remunerated on the basis of HVCs loss, spend or activity.

The Guidance also notes that operators should be aware that HVCs may take longer to access support if they are at risk of gambling related harm on the basis that this could lead to them losing their HVC status. Operators are therefore required to provide HVCs with regular information on the tools available to them to manage their gambling and related resources. An over-reliance on the use of ‘pop ups’ has attracted criticism from the GC in the past so operators should consider a range of different communications and interactions.

4. Use of Incentives

Operators should ensure that Incentive Schemes are not used to exploit vulnerable HVCs or to encourage problematic behaviour. As stated above, the GC requires that a PML Holder is assigned to each Incentive Scheme. The responsible PML Holder must have assured themselves that:

- their Incentive Schemes do not encourage risky behaviours, such as chasing losses;
- the timing of incentives being offered is not linked to periods of excessive play or significant losses; and
- Incentive Schemes are proportionate to the HVC's spending pattern and their affordability assessment.

Whilst the GC recognises that an operator can only be held accountable for information they knew, or ought to have reasonably known, the tone of the Guidance is clear as to the nature and extent of the checks that the GC expects operators to undertake in relation to HVCs.

Next Steps for Operators

The changes come into effect on 31 October 2020 and operators are expected to comply from that date. The GC published the Guidance on 30 September 2020 and notified licensees on the same day, giving operators just one month to prepare for the new rules.

The new rules will require changes to operators' policies, procedures and staff training. Depending on how many Incentive Schemes an operator runs, and their current level of KYC, the extent of the change and level of engagement required (particularly as checks ought to be carried out at least quarterly) may be significant. Operators are well-advised to implement the changes without delay. More significantly, the Guidance requires that a PML Holder oversees each Incentive Scheme and is responsible for it—making individuals personally accountable for any related failures.

The GC has announced that it will be launching a consultation on customer interaction which will include the assessment of affordability, identifying vulnerability and how to take preventive and reactive action when there are risk indicators. Operators are encouraged to engage proactively in this consultation as it may represent the last opportunity to shape or moderate changes that appear increasingly inevitable.

Observations

Whilst many of the features contained in the Guidance have long been a feature of Incentive Schemes run by operators, it is clear when stepping back from the Guidance that the GC expects operators to significantly 'up their game' in relation to protecting HVCs from gambling related harm. The nature and extent of the information that the GC expects operators to seek in relation to HVCs is clearly very burdensome, particularly to the extent that the GC requires operators to investigate HVC's *situational* and *behavioural vulnerability*. These are of course matters which are likely to be extremely difficult to establish in practice, and for which many operators will not be equipped in terms of specialist skills, relevant training or access to third party support—especially at such short notice.

In addition, collating and processing this very sensitive information will give rise to significant challenges in terms of data security and GDPR compliance, particularly if information needs to be accessed or shared between teams and across borders. It will also inevitably be very invasive for players. This is likely to lead to significant pushback from customers and an increase in related complaints. It is therefore important that, in addition to having appropriate policies and procedures

in place, operators ensure that staff handling these enquiries have appropriate skills, keep proper records and process data in accordance with relevant GDPR requirements and security protocols.

Operators should also be astute to unscrupulous customers who seek to 'game' the system and make threats and complaints in an attempt to recover losses. Most operators have noticed a very significant uptick in opportunistic claims and complaints and will therefore need to be vigilant to the risk of being set up by customers who might know the rules better than they do.

The exceptional nature of some of these changes is particularly acute when accompanied by the implicit threat of licence reviews and possible sanctions against the individual PML Holders designated as being responsible for compliance with the Guidance in the event of deficiencies.

Whilst the use of Incentive Schemes has led to a number of unfortunate incidents throughout the industry, they remain a legitimate method by which operators can reward and thank their most loyal players for their custom, in the same way that many other retailers or service providers seek to engage with their most valuable customers. However, in light of the uncompromising stance that is evident from the Guidance and related comments from the GC, many operators may be forced to take a view as to whether the significant costs, practical difficulties and regulatory risks associated with running such schemes are worthwhile. Indeed, the GC has observed that, since it first launched the consultation which resulted in the new SRC and related Guidance, the number of customers signed up to Incentive Schemes has reduced by 70%. This may seem like a positive development but the GC will no doubt wish to understand where disenfranchised or disaffected HVCs may end up if Incentive Schemes are abandoned by mainstream operators—anecdotal stories of committed gamblers seeking out black market operators and reward schemes may, ironically, result in greater harm to those customers than if they had been serviced in a more conventional environment. It is to be expected that the GC will take forceful action against any operator under its jurisdiction that seeks to deliberately circumvent the rules.

Whilst it is not explicitly stated, the tone of the Guidance will likely suggest to many readers that the GC is not in favour of Incentive Schemes and considers that they constitute a significant threat to operators' abilities to achieve the licencing objectives. Whilst the GC notes that the Guidance is aimed at eradicating "irresponsible incentivisation", it states clearly that it expects "significant improvements" to be made—otherwise it will have no choice but to ban Incentive Schemes completely.

In combination with the broader shift in tone and direction from the GC over recent years, resulting in notably stricter rules relating to source of funds, affordability and safeguarding vulnerable players generally, it is likely that the days of the old-fashioned "VIP" are numbered. In the meantime, only the most innovative and adaptable operators will be able to secure a competitive advantage. For the rest, the odds appear to have shortened significantly.



If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings London lawyers:

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