

Information sharing

Consultation document, March 2007

Executive summary

- i. This document sets out a consultation by the Gambling Commission (the Commission) for proposals on information sharing and collecting information relating to customers' betting.
- ii. In 2006 the Commission consulted on information sharing between the relevant sport governing bodies and the betting sector as a part of its consultation on its licence conditions and codes of practice. Whilst some betting businesses and a trade association have entered into Memoranda of Understanding (MoUs), these agreements must accommodate the data protection principles and so are limited in the scope of information that can be shared.
- iii. To help overcome this limitation on the information that can be shared between the betting sector and the sport governing bodies, the Commission is consulting on its proposal to amend condition 15 *Requests for information*. This amendment will be to include sport governing bodies as persons to whom licensees might be required to provide information that they suspect may relate to a breach of a rule applied by a sporting or other body.
- iv. The Commission does not consider it appropriate to require through a licence condition that betting licensees make it a condition of business that a customer must agree to personal information being made available to the sport governing bodies. However, it considers there may be advantages for licensees in including such terms as a condition of business.
- v. The information that may be provided to the Commission and the sport governing bodies under condition 15 *Requests for information* depends on what information is collected by licensees. The Commission has considered whether it should require licensees to track and record personal information related to customers' betting, given that non-remote betting licensees do not currently track or record all of this information. Our proposal is that we should introduce a licence condition that would require licensees to take a risk-based approach with all reasonable steps to identify customers who place bets over a significant threshold limit, either in one bet or over a number of transactions in one day.

1 Introduction

1.1 In March 2006, the Commission published a consultation paper, *Licence Conditions and Codes of Practice* (LCCP), seeking views on proposals about licence conditions and codes of practice under the Gambling Act 2005 (the Act). Those proposals were aimed at promoting the three statutory licensing objectives, which are to:

- prevent gambling from being a source of crime and disorder, being associated with crime or disorder or being used to support crime;
- ensure that gambling is conducted in a fair and open way; and
- protect children and other vulnerable people from being harmed or exploited by gambling.

1.2 The document *Conditions and Codes: Responses* (CCR), published in November 2006, set out a summary of the responses received to the LCCP consultation.

1.3 The document *Licence Conditions and Codes of Practice*, setting out the final licence conditions and codes of practice, was published in November 2006 to enable those who wish to apply for licences under the Act from January 2007 to have reasonable certainty about the requirements with which they will need to comply.

1.4 Copies of these documents are available on our website: www.gamblingcommission.gov.uk.

2 Purpose of this consultation

2.1 We set out in the CCR document our intention, following further work in this area, to consider additions or amendments to the published conditions and codes of practice. This included conditions relating to the making available of certain data held by betting operators to the Commission and the sport governing bodies. The purpose of this consultation document is to take this work forward.

2.2 This consultation falls within the Commission's work on Integrity in Sports Betting. In summer 2007 the Commission will also publish an Issues Paper on Integrity in Sports Betting.

3 Information sharing

Background to this consultation

Licence Conditions and Codes of Practice consultation

3.1 In March 2006, the Commission published the LCCP consultation paper seeking views on proposals about licence conditions and codes of practice under the Act. The LCCP consultation paper raised the question whether existing voluntary arrangements under which betting businesses provided betting data to some sport governing bodies should be replaced or reinforced by a binding obligation imposed by way of a licence condition.

3.2 Some sport governing bodies have voluntary agreements with a number of betting businesses to obtain betting data. The Commission expressed some concern that the non-binding nature of these agreements may mean they provide an insecure basis for pursuing individual cases, particularly where the betting operators' customer refuses to give permission for the disclosure of data relating to them.

3.3 The LCCP consultation paper said that the Commission was considering whether it would be appropriate to make it a licence condition for all types of betting operators to make it a term of business that customers agreed to details about their betting being shared with the Commission and the relevant sport governing bodies where there was a legitimate justification for its use. The Commission sought views on whether the idea of legally required information sharing on individuals' betting was a reasonable one, and if so how such an arrangement would best be framed in a licence condition.

Conditions and Codes: Responses

3.4 Having carefully considered the responses to the LCCP consultation, the Commission published the CCR document in November 2006, setting out a summary of the responses received to the LCCP consultation. The Commission acknowledged that, as set out in section 352 of the Act, any requirement that betting customers must agree to details about their betting being shared with the Commission and the sport governing bodies must comply with the Data Protection Act (DPA) 1998.

3.5 The Commission also noted that there is considerable non-personal information that can be shared between the licensee and the sport governing bodies. When it comes to dealing with specific instances or allegations of criminal activity, betting operators would normally be in a position to provide the Commission with information which included individual customers' personal data, without risking breaching data protection principles. The Commission expressed the view that the DPA provides more than sufficient scope for this to be lawfully achieved.

3.6 However, the Commission explained that the position is less clear cut in relation to any condition compelling betting licensees to make it a condition of business that a customer must agree to personal information being made available to the sport governing bodies. In particular, the Commission wished to consider further the concerns raised by respondents on the legal and operational problems such a condition may cause.

Data Protection Act

3.7 The DPA requires all organisations which handle personal information relating to living individuals to comply with a number of important principles. The first of these principles requires that information is processed fairly and lawfully and that at least one of a number of conditions set out in the DPA is satisfied. One of these conditions is that the individual to whom the information relates has given their consent for the processing to take place. In the case of “sensitive personal data” (which would include information as to an individual’s alleged commission of an offence) such consent must be “explicit”. However, consent is not the only condition available and so consent is not always required. For instance, a disclosure by a betting operator to the Commission for the purposes of regulating the betting industry is likely to satisfy a condition related to processing necessary for the exercise of functions conferred by or under any enactment and accordingly would not require consent.

3.8 There are also exemptions to certain requirements of the DPA that operate regardless of whether an individual has consented to the processing. For instance, there may be circumstances where not disclosing certain information would be likely to prejudice the prevention or detection of crime. Such circumstances permit a disclosure without consent.

4 Licence condition: *Requests for information*

Current position

4.1 Since 2003, some betting businesses and a trade association have entered into MoUs with the sport governing bodies to share betting data, primarily to facilitate investigation in cases where there is a suspicion of event rigging for cheating purposes. However, these agreements must accommodate the data protection principles and so are limited in the scope of the information that can be shared between the licensee and the sport governing bodies.

4.2 As indicated above, betting operators would normally be able to disclose to the Commission individual customers’ personal data if necessary to facilitate the Commission in investigating specific instances or allegations of criminal activity. As provided for in section 88 of the Act, the *Licence Conditions and Codes of Practice* document contains a condition in relation to requests for information, which states:

15 Requests for information

All operating licences

Licensees must provide the Commission with any information that they suspect may:

- relate to the commission of an offence under the Act, including an offence resulting from a breach of a licence condition or a code provision having the effect of a licence condition;
- relate to a breach of a rule applied by a sporting or other body; or
- lead the Commission to consider making an order to void a bet.

The Commission's approach

4.3 The Act does not give the sport governing bodies a gateway to provide information to the Commission. To overcome this would require the use of information sharing agreements that accommodate the data protection principles. However, section 30 of the Act provides that the Commission may provide information received by it in the exercise of its functions to any of the persons or bodies listed in Schedule 6. Part 3 of this schedule lists ‘Sport Governing Bodies’ and provides that the Commission may provide information for use in the exercise of such a body's functions, for which it may charge a fee, or for the purpose of a function of the Commission. It was therefore envisaged under the Act that information may flow from the Commission to those sport governing bodies.

4.4 In considering what would be the most appropriate approach for the sharing of information between the sport governing bodies and the betting industry, the Commission has looked at different options.

4.5 One option would be for the Commission to be the gateway for information between the sport governing bodies and the betting industry. However, with the Commission's work funded through licence fees paid by the gambling industry, including the betting sector, we do not consider this option as the most appropriate.

4.6 Another option would be information sharing directly between the betting industry and the sport governing bodies. This option would provide cost savings, compared to the option set out in paragraph 4.5, and we therefore consider this to be a more appropriate approach. But there is still the matter of how best to provide this, and overcome the limitations on information that can be shared as outlined in paragraph 4.1, whether by means of voluntary arrangements such as those currently in place or by means of a licence condition.

4.7 The Commission has looked in some detail at the issue of how to widen the scope of the information that can be shared between the licensee and the sport governing bodies. The Commission considers that, under certain circumstances and with appropriate amendments to the existing licence condition 15 *Requests for information*, the betting industry can share personal customer information directly with the sport governing bodies without customer consent.

4.8 The Commission considers that conditions in Schedules 2 and 3 of the DPA would, under certain circumstances and without the consent of the customer, permit the disclosure of personal data pursuant to an operating licence condition whether or not the circumstances of the case also fell within one of the exemptions set out within the body of the DPA.

4.9 Section 88 of the Act provides that general conditions imposed by the Commission or a condition imposed by the Secretary of State may require the provision of information of a specified kind to the Commission *or another specified person or class of person*. As such, section 88 allows the Commission to impose a condition requiring betting operators to share information with the sport governing bodies.

4.10 The requirement that betting operators and the sport governing bodies accommodate the data protection principles creates a limit in the scope of information that can be shared between the licensee and the sport governing bodies. However, the Commission considers this limit can largely be overcome through a licence condition which includes the sport governing bodies as persons to whom licensees are required to provide information.

4.11 We therefore propose to amend condition 15 *Requests for information* to include sport governing bodies as persons to whom licensees might be required to provide information. We propose to do this in one of two ways, set out as separate options below:

Option A

15 Requests for information

All operating licences

Licensees must provide the Commission, with any information they suspect may:

- relate to the commission of an offence under the Act, including an offence resulting from a breach of a licence condition or a code provision having the effect of a licence condition;
- lead to the making by the Commission of an order to void a bet; or
- relate to a breach of a rule applied by a sporting or other body.

Where the information falls within 2 or 3 above and relates to a bet made or accepted on the outcome of a horse race or other sporting event governed by one of the sport governing bodies for the time being included in Part 3 of Schedule 6 to the Gambling Act 2005 licensees must also provide the information to the relevant sport governing body.

Option B

15 Requests for information

All operating licences

Licensees must provide the Commission, with any information they suspect may:

- relate to the commission of an offence under the Act, including an offence resulting from a breach of a licence condition or a code provision having the effect of a licence condition; or
- lead to the making by the Commission of an order to void a bet.

Licensees must also provide any sport governing body for the time being included in Part 3 of Schedule 6 to the Gambling Act 2005 with any information the licensee suspects may relate to a breach of a rule applied by that body, whether or not the information is also provided to the Commission in compliance with the obligation at 1 above.

4.12 We propose that information provided under the amended condition 15 *Requests for information* would be shared through a single point of contact within each organisation.

4.13 The Commission has entered into agreements with several sport governing bodies, setting out protocols for how we will work with each other, including the points of contact for information sharing, and how the information will be shared.

4.14 The Commission would expect licensees to keep records of information provided to sport governing bodies, to be made available to the Commission upon request.

5 Betting licensees requiring customers to agree to share their personal data with the sport governing bodies

Current position

5.1 Some betting businesses and a trade association have entered into MoUs with the sport governing bodies to share betting data, primarily to facilitate investigation in cases where there is a suspicion of event rigging for cheating purposes. As these agreements must accommodate the data protection principles they are limited in the scope of the information that can be shared between the licensee and the sport governing bodies.

5.2 The Commission outlined in the LCCP that it was considering whether it would be appropriate to make it a licence condition for all types of betting operators to make it a term of business that customers agree to details about their betting being shared with the Commission and the relevant sport governing bodies where there was a legitimate justification for its use. The Commission stated in the CCR that it wished to consider further the concerns raised by respondents on the legal and operational problems such a condition may cause.

The Commission's approach

5.3 The Commission does not consider it appropriate to require that betting licensees make it a condition of business that a customer agrees to personal information being made available to the sport governing bodies. However, customer consent could fulfil a condition in Schedule 2 and Schedule 3 of the DPA, subject to the precise terms of the consent.

5.4 Customer consent would offer comfort to licensees complying with the proposed amended licence condition 15 *Request for information*, in the event that disclosure happened when other exemptions did not apply. A declaration on customer documentation of the circumstances in which data might be shared would perform the function of informing customers as to the purposes for which their personal data might be processed. Requiring each customer to agree to data sharing in the event of suspect activity may provide a deterrent effect on customers.

5.5 We therefore suggest that, whilst we will not require, through a licence condition, that betting licensees make it a condition of business that a customer must agree to personal information being made available to the sport governing bodies, there may be advantages for licensees in including such terms as a condition of their business.

6 Betting licensees collecting information relating to customers' betting

Current position

6.1 The information available to be provided to the Commission and the sport governing bodies under condition 15 *Requests for information* depends on the information collected by licensees. Different sectors of the gambling industry and different sub-sectors of the betting sector collect different levels of information related to customers' betting.

6.2 The casino sector falls under the Money Laundering Regulations (MLR) 2003, with the Commission as the relevant Supervisory Authority charged with ensuring that casino operators comply with the MLR and any guidance issued in respect of them. Casinos therefore already have procedures in place to identify customers, to record transactions above the level set by Commission guidance, and to keep such records as required by the MLR.

6.3 General betting operators, pool betting operators, betting intermediaries, bingo, football pools, adult gaming (machine) centres and licensed family entertainment centres are not part of the regulated sector under the MLR and thus are not bound by its requirements. However, they should have procedures for compliance with the requirements in respect of the prevention and detection of money laundering in the Proceeds of Crime Act 2002 and the Terrorism Act 2000 and, like other businesses, have an obligation in certain circumstances to report suspicious activity.

6.4 Within the betting sector, betting exchanges and licensed betting offices that accept telephone betting, due to the nature of their remote gambling business, already have systems in place to capture personal information related to customers' betting. However, we understand that non-remote operators of licensed betting offices and on-course bookmakers do not track or record this information.

The Commission's approach

6.5 As provided for by section 88 of the Act, the *Licence Conditions and Codes of Practice* document contains a condition in relation to requests for information, which states:

On request, licensees must provide the Commission with such information as the Commission may require about the use made of facilities provided in accordance with this licence, and the manner in which gambling authorised by this licence and the licensee's business in relation to that gambling are carried on, including in particular information about:

- the numbers of people making use of the facilities and the frequency of such use;
- the range of gambling activities provided by the licensee and the numbers of staff employed in connection with them; and
- the licensee's policies in relation to, and experiences of, problem gambling.

6.6 As outlined in 6.1 the information available to be provided to the Commission and the sport governing bodies under condition 15 *Requests for information* depends on the information collected by licensees; and information collected by licensees varies across sectors of the gambling industry and sub-sectors of the betting sector. Should the Commission require licensees to track and record personal information related to customers' betting, given that non-remote betting licensees do not currently track or record all of this information? However, we are aware that non-remote betting operators do encourage staff to find out who their customers are. The reasons for, nature of and content of customer information is based on trading principles aimed at managing commercial risks.

6.7 We have considered whether non-remote betting operators should be required to obtain basic customer information. We propose to introduce a licence condition that would require licensees to take a risk-based approach with all reasonable steps to identify customers who place bets over a significant threshold limit, either in one bet or over a number of transactions in one day. We accept that the on-course bookmakers operate in a different environment to the off-course market and would want to consider whether separate approaches to identifying customers is necessary given the different environments.

Consultation questions

1. Is it reasonable for the Commission legally to require information to be shared about individuals' betting?

2. Do you consider that licence condition 15 *Requests for information* should be amended to require betting licensees to provide information to the sport governing bodies? If so, which option do you favour?

3. Should the Commission be the central point of exchange between the sport governing bodies and licensed betting operators on betting data?

4. Should the Commission introduce a licence condition compelling betting licensees to make it a condition of business that a customer must agree to personal betting data being made available to the sport governing bodies? Or do you consider it should be left to the individual betting operators to decide?

5. Should the Commission require non-remote betting licensees to track and record personal information related to customers' betting?

6. Is the Commission's proposal to introduce a licence condition that would require licensees to take a risk-based approach with all reasonable steps to identify customers who place bets over a threshold limit, either in one bet or over a number of transactions in one day, the right one? Do you have an alternative to suggest?

7. Do you have any other comments?

7 Responses to this document and further information

This is a six week consultation.

7.1 To enable the Commission to explore all of the issues in this area we will be holding a workshop with the industry and other interested organisations during the consultation period. We will consult with stakeholders through formal responses to the consultation and will also at the same time consult with the Information Commissioner.

7.2 This consultation is issued subject to advice the Commission may receive from the Information Commissioner, whose website address is <http://www.ico.gov.uk>.

7.3 The output from these consultations will be analysed and a consultation responses document and policy will be published by the end of May 2007. This will allow a three-month period in which any arrangements can be put in place ahead of 1 September 2007.

7.4 Responses should be sent by **Tuesday 1 May 2007**. Responses received after this date may not be considered, due to the short period of time before any new or amended licence condition needs to be in place.

7.5 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make clear who that organisation represents. If responding as an individual, please mention your own interest.

7.6 The Commission would prefer to receive responses by email. Please send them to: consultation@gamblingcommission.gov.uk.

7.7 If you would prefer to post your comments, please send them to:

Consultation Co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Gambling Commission, March 2007

The Gambling Commission regulates gambling in the public interest. It does so by keeping crime out of gambling, by ensuring that gambling is conducted fairly and openly, and by protecting children and vulnerable people from being harmed or exploited by gambling. The Commission also provides independent advice to government on gambling in Britain.

For further information or to register your interest in the Commission please visit our website at:

www.gamblingcommission.gov.uk

Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

T 0121 230 6500

F 0121 233 1096

E info@gamblingcommission.gov.uk