

**CMA action in the remote  
gambling sector**  
**Overview for industry**

**Updated 29 August 2018**

# Overview

1. Our role and approach to enforcing consumer law
2. Why we decided to investigate the remote gambling sector
3. Promotions: Our announcement of the undertakings
  - Overview of key terms and practices of concern
  - Changes expected of operators and next steps
4. Withdrawals: Our announcement of the undertakings
  - Overview of key terms and practices of concern
  - Changes expected of operators and next steps

- UK's primary competition and consumer enforcement agency
- Key consumer legislation relevant to our investigation:

## **Consumer Protection from Unfair Trading Regulations 2008 (CPRs)**

- Unfair commercial practices, in particular misleading acts or omissions
- Behaviour contrary to the requirements of professional diligence

## **Consumer Rights Act 2015 (CRA)**

- Unfair contract terms in consumer contracts – terms must be fair and transparent
- Does a term create a significant imbalance, contrary to the requirement of good faith, to the detriment of the consumer?

# Fairness and Professional diligence

## Regulatory standards of conduct

### GC Statement of principles for licensing and regulation, para 4.2:

- *“the Commission expects operators to ...have due regard to the interests of customers and treat them fairly ... have due regard to the information needs of customers and communicate with them in a way that is clear, not misleading, and allows them to make a properly informed judgment about whether to gamble...”*

### Licence Conditions and Codes of Practice, para 5.1.1:

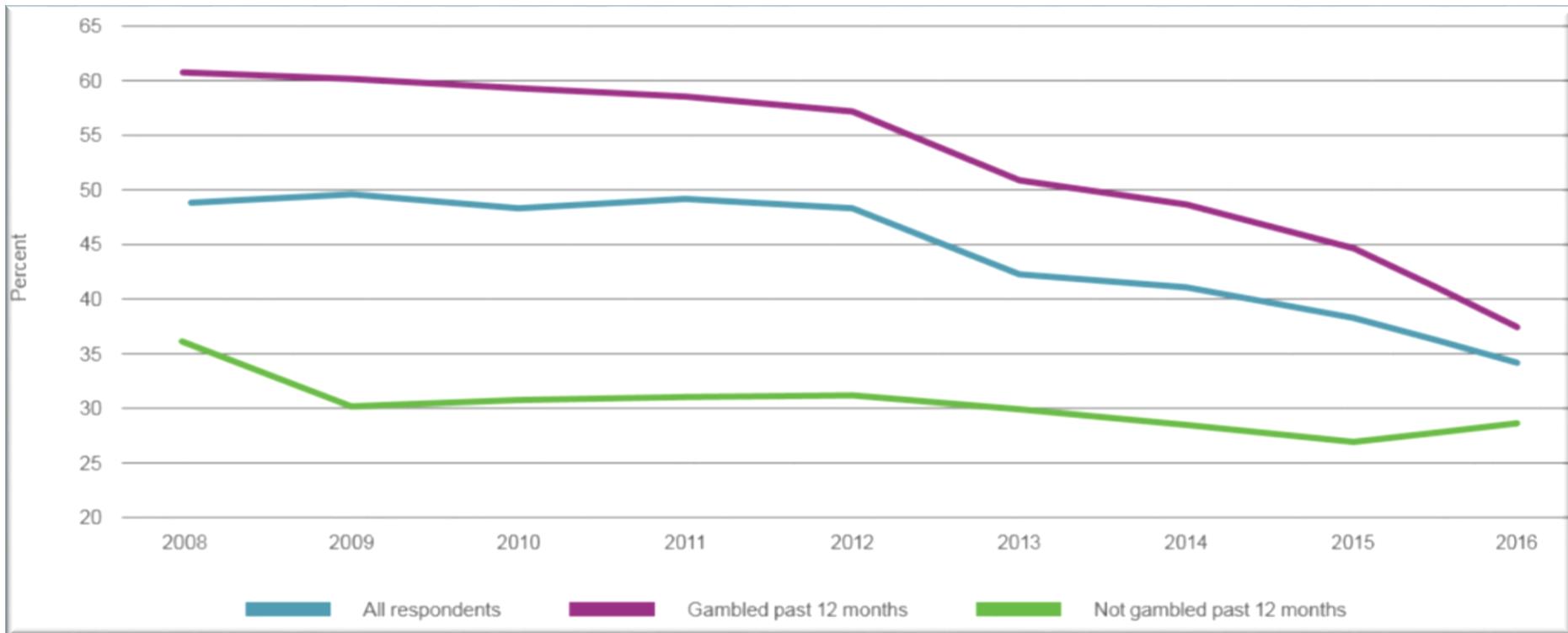
- *“neither the receipt nor the value or amount of the benefit is (i) dependent on the customer gambling for a pre-determined length of time or with a pre-determined frequency; or (ii) altered or increased if the qualifying activity or spend is reached within a shorter time than the whole period over which the benefit is offered”.*

### Remote Gambling and Software Technical Standards:

- *RTS 14 (Responsible product design) is designed to “...ensure that products are designed responsibly and to minimise the likelihood that they exploit or encourage problem gambling behaviour.”*
- *RTS requirement 14A states that: “Gambling products must not actively encourage customers to chase their losses, increase their stake or increase the amount they have decided to gamble, or continue to gamble after they have indicated that they wish to stop.”*

# Trust in gambling is in decline...

...operators need to act:



**Agree that gambling is conducted fairly and can be trusted** (Table 37, Gambling participation in 2016: behaviour, awareness and attitudes, Annual report, February 2017, Gambling Commission)

# Our investigation

- Focus on the remote sector:
  - Initial approach from the GC
  - Growing sector
  - Nature of online interactions
  - Particular impact of restrictive terms
- Focus on promotions:
  - Clarity / transparency
  - Imbalanced terms, *ex post* discretion, disproportionate sanctions
  - Behavioural biases
- Further work on withdrawals
  - Practices that may, more generally, unfairly stop people withdrawing their own money (whether as part of a promotion or not)

# Promotions undertakings

# The undertakings on promotions

- Formal commitments by 4 operators:
  - William Hill
  - Ladbrokes
  - PT Entertainment (trading as TitanBet & Winner)
  - BGO Entertainment Limited
- Provide a benchmark for the rest of the industry
- GC has made clear its expectations about wider sector compliance and timescales involved

# Promotions: Key concerns

1. Lack of transparency of significant promotion restrictions
2. Restrictions on withdrawing:
  - a) Deposit winnings
  - b) Unspent deposit funds
3. Fairness and transparency of play restrictions
4. Withdrawing free bets or reducing their value
5. Compulsory publicity
6. Terms allowing operators to vary promotions after players sign up

**The following slides summarise key points and are not a substitute for the detail of the undertakings, nor do they constitute legal advice**

# Key definitions

## Deposit Balance

Total funds in an account belonging to the consumer (other than the Bonus Balance) and always includes:

all unspent funds deposited/paid in by consumer

+

where consumer's deposit is converted into larger total balance containing a Bonus ('buy-in'), the portion equal to the value of the consumer's buy-in

+

all winnings from wagers made with the Deposit

+

for Mixed Wagers, the share of any winnings from them proportionate to the share of the stake from the Deposit Balance

+

winnings from any Bonus not/no longer subject to Wagering Requirements

## Bonus Balance

Total funds in an account belonging to the consumer

=

any Bonus not immediately withdrawable/redeemable

+

all winnings made with the Bonus subject to uncompleted Wagering Requirements

+

for Mixed Wagers, the share of any winnings from them proportionate to the share of the stake from the Bonus Balance and subject to uncompleted Wagering Requirements

# 1. Transparency of key terms

## The issue

- Inadequate communication of significant conditions / restrictions, e.g. wagering requirements applying to winnings, maximum stake restrictions, bonuses for wagering purposes only, play restrictions apply

## Underlying principles

- Failure to communicate information necessary for consumers to make an informed decision and understand the economic consequences of the terms
- Misleading action / omission under the CPRs
- CRA requirement of transparency

# 1. What operators need to do

Significant Conditions = key restrictions which apply to a Promotion, eg. who is excluded; time limitations; how to qualify; maximum stake size; Wagering Requirements (WR), etc. We would not expect operators to list all restricted games, but would expect them to explain, eg. that some games do not qualify for a bonus or that contributions to WR varies between games, and clearly link to the details. What amounts to a Significant Condition may evolve over time, dependent on new games and business models.



1. Ensure **all Significant Conditions** are provided
  - a. in a **clear, timely, intelligible, unambiguous, transparent, non-misleading and prominent manner**
  - b. in the **ad & headline offer** on all **relevant landing webpages** and **sign-up webpages** (or Equivalent) for that Promotion
  - c. in the **ad & headline offer** on **other advertising** - **except if impossible due to significant limitations on time and/or space** ...in which case give as much info about **Significant Conditions as possible in the ad** and headline offer plus a **link to a webpage** (or Equivalent) with all Significant Conditions & other terms.



The threshold for “impossible” is very high and relates solely to constraints imposed by technology, not to appearance. Where there are text limits, other options include using multiple numbered texts/ tweets or using a graphic image of the full Significant Conditions.

# 1. What operators need to do

In line with CRA / CPRs as well as LCCP and CAP Code, Undertakings 1 and 2 include 3rd party advertising carried out in operator's name / on its behalf and content and presentation of any contract terms included in such advertising.

2. Ensure **applicable T&Cs**, including terms applying to **all** Bonuses, are **accessible**
  - a. **before consumer signs up**, (i) on all relevant landing pages and sign-up pages and (ii) within single click (or Equivalent) from any other advertising where not possible to include T&Cs
  - b. **once play commences**, within a single click from bonus tab on account/home page

Undertaking 3 has a longer timescale – until 31 July 2018.

3. Ensure that **at all times** the consumer is **informed**:
  - a. when they are **playing with Restricted Funds**, and,
  - b. if playing with Restricted funds, the **nature of Promotional Play Restrictions/Wagering Requirements & the consequences of non-compliance**.

E.g. by telling consumers when they commence play with Restricted Funds and reminding them of the restrictions. See also page 44 in this slide pack.

## 2. Deposit winnings restriction

### The issue

- Consumers can't access winnings obtained using their deposit funds until Wagering Requirements are met, regardless of whether the consumer has 'touched' the bonus
- Deposit and bonus funds often 'co-mingled'

### Underlying principles

- Consumers legally entitled to winnings as an enforceable debt
- Consumers asked to risk an unknown amount of potential deposit winnings in return for the benefit of playing with bonus funds
- Consumers required to commit to an extended period of gambling

## 2. Unspent deposit funds

### The issue

- Express prohibitions on withdrawing unspent deposit funds
- Indirect restrictions where a consumer's deposit is used to purchase a fund, which is subject to withdrawal restrictions

### Underlying principles

- Consumers retain a legal right to their deposited funds
- Failure to respect consumers' legitimate interests in stopping play at the time of their choice (contrary to the licensing regime)
- No legitimate justification – operators can manage commercial exposure from offering bonus funds in a much less restrictive way

# 2. What operators need to do

Charges must not exceed a realistic estimate of the direct cost of processing a withdrawal. Excessive fees should not be used to deter withdrawals.

Players must be able to withdraw their full Deposit Balance, even where the total is below the limit on individual withdrawals.

- 4. Allow consumers to **withdraw Deposit Balance at any time** (incl when a Bonus is pending or active) **without restriction**, except to comply with **General Regulatory Obligations:**
  - a. amend T&Cs to clearly reflect right of withdrawal and for all future Promotions; and
  - b. clearly and prominently state right of withdrawal to consumers (i) during **sign-up** for Promotion and (ii) on their **account page**.

Does not prevent operator deducting **cost-reflective processing fee** for withdrawal or, where consumer **seeks to withdraw less than full Deposit Balance** reasonably to **limit size or number of separate withdrawals**, provided this has been **made clear to the consumer**.

Players must be able to withdraw deposit funds, even if allocated to a bonus.

This includes anti-money laundering and fraud prevention obligations.

Any charges or limits on the size or number of withdrawals must be clear to customers before they make a deposit.

## 2. What operators need to do

5. Ensure that **Deposit Balance** and (if applicable) the **Bonus Balance** are **always displayed separately** to the consumer in a **clear and prominent** manner.

6. Ensure **Promotional Play Restrictions** and Wagering Requirements (if applicable) **do not apply** to any play with **Deposit Balance** except where **in-game mechanisms** **automatically prevent** a consumer from placing a wager that contravenes the Promotional Play Restrictions.

Operators should not mix deposit and bonus funds together and display them to the customer as a single pot. See also page 45 in this slide pack.

Play restrictions can only apply to play with deposit funds when software stops the player from breaching them. For example, if there is maximum stake limit, they should not be able to exceed it.

# 3. Play restrictions

## The issue

- Operators deeming certain play strategies invalid / 'abusive' after the event
- Application of opaque and nebulous terms, conferring excessive discretion
- Disproportionate sanctions, with consequences for both bonus and deposit funds, yet nothing to stop consumers from breaching the restrictions

## Underlying principles

- Winnings constitute an enforceable debt – terms seeking to legally reserve an operator's liability are imbalanced
- Breadth of discretion afforded to operators, and nature of the sanctions are unfair

# 3. What operators need to do

7. Ensure **T&Cs** for Promotional Play Restrictions clearly **specify all prohibited types or patterns of play**, and **do not reserve sole discretion** to operator to (a) determine when play is prohibited, or (b) determine other forms of play breach T&Cs.

Operators should set out as comprehensively as possible the play strategies that could lead a consumer to find themselves in breach of an operator's terms, and not prohibit a form of play that was not clearly articulated to the consumer in advance.

8. Structure T&Cs to ensure **terms setting out prohibitions and sanctions** on account **fraud, collusion, use of multiple accounts, manipulation of software, exploitation of loopholes** or other technical forms of abuse or other behaviour which amounts to **deliberate cheating**, are contained in **separate terms** to those relating to any Promotional Play Restrictions.

We recognise the need to provide for firm action and sanctions in response to fraud, collusion, cheating etc, and that operators would be entitled to find a consumer in breach in such circumstances.

Undertaking 8 addresses these behaviours, and requires operators to clearly distinguish between terms intended to prevent fraud, collusion, cheating etc., and those which outline broader play strategies it wishes to prevent consumers from engaging in.

# 3. What operators need to do

9. Ensure that where a consumer is to lose winnings or be refused a withdrawal on the grounds of a **breach of Promotional Play Restrictions**, they are **given a full explanation** of the breach. This does not require disclosing to the consumer information that would breach any General Regulatory Obligation.

# 4. Free bets (sports betting)

## The issue

- Operators remove a consumer's entitlement to a free bet, despite the consumer having placed all or some of the necessary qualifying bets
- Restrictions imposed making it harder to complete remaining qualifying bets, or reducing the value of the free bet

## Underlying principles

- Inappropriate to unilaterally remove / alter obligations to provide substantive benefits promised under a contract

# 4. What operators need to do

10. Not to enforce/seek to enforce any Account Restriction against a consumer who has, **before being notified** of the restriction **made qualifying bets** in a Free Bet Promotion, where doing so would
- a. affect the consumer's ability:
    - i. to **receive any of the free bets**, or the full expected value of any of the free bets, from that Free Bet Promotion, **having placed all the necessary qualifying bets**;
    - ii. to receive any of the free bets, or the full value of any of the free bets, to which they would be entitled **upon placing the remaining qualifying bets required** by that Promotion; or
    - iii. to complete any Wagering Requirements associated with the Promotion; or
  - b. materially affect** the consumer's ability to complete the qualifying bets required by that Free Bet Promotion.

Operators must consider the effect restrictions will have and determine whether this is material. A restriction that significantly reduces the market or odds available to a player would be material.

This undertaking applies where a player has been notified of an account restriction after they have qualified, or started to qualify for a free bet promotion.

# 4. What operators need to do

11. Amend its T&Cs so that they provide for the **consumer to obtain the full number and value of any free bets** in the circumstances set out in paragraph 10, and ensure that the terms relating to future Free Bet Promotions make similar provision.

12. Ensure any **notification of an Account Restriction** tells the consumer (i) the Account Restriction is **without prejudice** to their participation **in full** in any Free Bet Promotion **for which they already placed qualifying bets;** and (ii) the **steps to take to receive the full benefit of any free bets otherwise altered or removed** by any Account Restrictions in **contravention of paragraph 10.**

It is important that players understand what the impact of any restrictions mean to them.

If they have started to qualify for the free bet promotion, they must be told how they can receive any free bets that have been altered or removed.

# 5. Compulsory publicity

## The issue

- T&Cs purporting to allow operators to use consumers' names, photos, locations and other personal data for promotional purposes without seeking their specific consent

## Underlying principles

- Data Protection Act 1998 (relevant at the time) required personal data to be processed lawfully and only where one of the legal conditions for processing is satisfied. Operators now must comply with obligations under GDPR
- Processing is solely for operators' commercial benefit of publicity
- Likely to be contrary to consumers' expectations and legitimate interests in personal privacy

# 5. What operators need to do

Players must be willing to participate in publicity and cannot be pressured or forced to take part.

**13. Not to use, enforce or seek to rely on any term in a consumer contract or notice which has **object or effect** of:**

- a. **obliging consumers to participate in publicity** promoting the operator or an associated business if required to do so, and/or
- b. **deeming the consumer**, by accepting and agreeing to the terms of such a contract or consumer notice, **to have consented to the use of any personal information** (including name) for promotional purposes.

Players must explicitly give their consent to participate in any publicity.

# 5. What operators need to do

14. Not to enrol a consumer in any promotion, without **first obtaining the consumer's express and informed consent** to accept the terms and conditions of that specific promotion.

# 6. Variation terms

## The issue

- T&Cs giving operators discretion to vary terms of promotions; exempt them from contractual obligations under a promotion; or determine if consumers are entitled to any promotion (or benefit under a promotion).

## Underlying principles

- Creates significant imbalance in parties' rights and obligations to consumers' detriment.
- Operators can *prospectively* change terms of promotions, but no general legal right to vary substance or terms / terminate contract once accepted or consumers have acted in reliance of the terms.
- Consumers have a right to resolve any dispute before the courts, and under LCCP operators must allow disputes to be settled by ADR. Any term that seeks to subvert this is likely to be unfair.

# 6. What operators need to do

**15. Not to use, enforce or seek to rely** on any term in a consumer contract or notice which has the **object or effect** of:

- a. permitting the operator to **vary or discontinue** a Promotion, or **any part of it**, in respect of a **consumer who has opted into the Promotion, made a deposit in expectation of receipt of a Bonus, and/or commenced play** in relation to the Promotion **prior to the date of the communication of the variation**, other than where necessary **to prevent fraud or other similar unlawful behaviour**;
- b. reserving **absolute discretion** to the operator to determine either (i) its **liability** to a consumer or (ii) a **consumer's legal rights** under the terms of a Promotion.

Operators have legitimate interest in being able to amend or remove a promotion before a consumer has signed up or acted upon it.

Operators have legitimate need to manage fraud and other unlawful behaviour.

# Withdrawals undertakings

# The undertakings on promotions

- Formal commitments by 2 operators:
  - Progress Play
  - Jumpman
- As with the promotions undertakings, these:
  - provide a benchmark for the rest of the industry; and
  - GC has made clear its expectations about wider sector compliance and timescales involved

# Withdrawals: Key concerns

1. **Maximum withdrawal limits** – Restrictions on the amount a consumer can withdraw within a certain period of time.
2. **Account inactivity** – Terms allowing operators to remove consumer funds if consumers don't access them for a period of time.
3. **Identity verification** – Terms allowing operators to remove consumer funds where a consumer has been unable to meet the operator's identity verification requirements within a particular period of time.

**The following slides summarise key points and are not a substitute for the detail of the undertakings, nor do they constitute legal advice**

# 1. Maximum withdrawal limits

## The issue

- Restrictions on amount consumers can withdraw within a certain period of time - eg *'Consumer can withdraw £x per day / £x per week / £x per month'*

## Underlying principles

- Consumers remain legally entitled to money which they have deposited in their account.
- When a consumer places a wager with their own deposited funds, they are legally entitled to winnings as an enforceable debt, payable in full and immediately (subject to any anti-money laundering or other regulatory requirements)
- These restrictions risk encouraging problem gambling
- No obvious legitimate justification (eg cashflow concerns)

# 1. What operators need to do

1. Not to:

a. Impose, or

b. use, enforce, or seek to rely on any term in a consumer contract or consumer notice which has the **object or effect of imposing,**

**any maximum limit** on the amount a **consumer may withdraw** from their Deposit Balance.

This does not prevent the operator from promptly conducting any identity verification or other checks prior to withdrawal as strictly necessary to comply with General Regulatory Obligations (including anti-money laundering and fraud prevention obligations).

## 2. Account inactivity

### The issue

- Removal of funds (by way of disproportionate charges or confiscation) from accounts after a period of inactivity – eg *‘After x months the balance in an inactive account will be forfeited’*; or *‘x% fees will be levied monthly’*.

### Underlying principles

- Consumers are legally entitled to money which they have deposited in their account, to winnings made with money they have deposited and gambled and winnings made from a bonus where the relevant conditions have been met
- Operators should avoid applying a sanction for inactivity: there is no duty to bet, and there may be many innocent reasons for non-use (eg illness, travel or a decision not to gamble for a while)
- No obvious legitimate justification (eg accountancy issues)

## 2. What operators need to do

### 2. Not to:

- a. **confiscate all or part of the funds in a consumer's Deposit Balance, or otherwise deduct any amount** therefrom, or
- b. **use, enforce or seek to rely on** any term in a consumer contract or consumer notice which has the **object or effect** of permitting the operator to **confiscate all or part of the funds** in a consumer's Deposit Balance, or otherwise deduct any amount therefrom,

on the grounds that the consumer's account has been inactive.



See note on next page

## 2. What operators need to do

### 3. Not to:

- a. **use, enforce or seek to rely on** any term in a consumer contract or consumer notice, or
- b. **act (or refrain from acting)** in a way,

which has the **object or effect** of, or **could be understood by consumers as, altering the legal status of funds** in a consumer's Deposit Balance, or of **altering the consumer's legal entitlement or rights to claim** such funds, on the grounds that the consumer's **account has been inactive**.

Where an account with a credit Deposit Balance has been inactive for at least 12 months, Undertakings 2 and 3 do not prevent operators from deducting a periodic fee/charge, until it is active again or the balance is exhausted, providing:

- a) The operator has tried unsuccessfully to repay the Deposit Balance to the last payment method used (subject always to compliance with General Regulatory Obligations), and
- b) The fee/charge is explained in fair and transparent term in the contract, and is no more than a reasonable estimate of the costs directly incurred by the operator for maintaining the account, and
- c) All reasonable steps are taken clearly to remind consumers a reasonable period (no less than 30 days) beforehand of the term and that the fee/charge will be imposed by a specified date if they do not access their account.

# 3. Identity verification

## The issue

- Confiscation of funds after a consumer has been unable to verify ID after a particular period of time – eg *‘Operator can seize funds in account if documentation not provided within x days’*.

## Underlying principles

- Consumers are legally entitled to money which they have deposited in their account, and to winnings made with money they have deposited and gambled
- There may be justifiable reasons for consumers not meeting ID deadlines.
- Operators need to fulfil anti-money laundering and other regulatory requirements – but although this may justify a *delay* in payouts, it does not justify confiscation

# 3. What operators need to do

## 4. Not to:

- a. **confiscate** all or part of the funds in a consumer's Deposit Balance, **or otherwise deduct** any amount therefrom, or
- b. **use, enforce or seek to rely on any term** in a consumer contract or consumer notice which has the **object or effect** of permitting the operator to **confiscate** all or part of the funds in a consumer's Deposit Balance, **or otherwise deduct** any amount therefrom, on the basis that the consumer has **failed to comply with any identity and/or age verification requirements** set by the operator (including, but not limited to, a request to provide specific documents or information).



This does not prevent the operator from:

- a) suspending / freezing an account to comply with any General Regulatory Obligations; or
- b) implementing terms and/or processes in event of inactivity for a specified period where this complies with **undertakings 2 and 3** (see previous slides), and at least 12 months have elapsed since the later of either:
  - i. its last request to the consumer to comply with a reasonable identity and/or age verification requirement, and
  - ii. the last attempt by the consumer to comply with any such requirement.

# Next steps

- CMA and GC expect that all operators should by now have reviewed against the principles in the promotions undertakings:
  - Their sites as a whole (including FAQs and other consumer notices for players)
  - Their advertising (including via affiliates)
- Operators should also now review their sites against the principles in the withdrawals undertakings
- Furthermore, operators should review their terms and practices more broadly for compliance with consumer law
- CMA will monitor compliance by operators who gave undertakings; GC will undertake consumer law compliance reviews across the whole sector
- See CMA's casepage for further information:

<https://www.gov.uk/cma-cases/online-gambling>

# Key questions

## **Are the undertakings only relevant to the operators who have given them?**

We are concerned that the practices we have identified, and which are addressed in the undertakings we are publishing, are common across the industry. The fact that the undertakings are common across the operators indicates that they are addressing common behaviours.

The undertakings themselves are formal commitments made by the operators who provided them. However, we (together with the GC) are requiring other operators to comply with the law. Where firms are engaging in these practices we consider they are likely to be breaching consumer law and so will need to make changes to their terms and practices to ensure they comply with their legal obligations.

Compliance with the principles and practices set out in the undertakings will help them do this. Operators are required by the licensing regime to satisfy themselves as to compliance with the CPRs and the CRA. The CMA's view, as set out in these undertakings, provides a clear benchmark about what is required in the context of gaming promotions to achieve compliance. If operators fail to make changes in line with those agreed by the operators giving undertakings, they risk facing regulatory action by the Gambling Commission.

## **Is it just the main firms that need to make changes, or do they have to make their affiliates do so too?**

The undertakings are designed to ensure that adverts and terms for relevant promotions comply with the CRA and the CPRs. This includes third-party advertising carried out in an operator's name or on its behalf, and the content and presentation of any contract terms included in such advertising. The License Conditions and Codes of Practice place responsibility on operators for affiliates' compliance with advertising regulation (Social Responsibility Code Provision 1.1.3) and the ASA's position is similarly that, as regards advertising by third-party affiliates the primary responsibility for observing the CAP Code lies with the operator: <https://www.asa.org.uk/news/gambling-on-your-affiliates.html>.

## **Are operators meant to be applying these principles to everything they do?**

The principles underpinning the undertakings have wider application, and also apply to non-promotional play. Operators should review their standard terms as well as terms applying to particular promotions in the light of the undertakings.

# Key questions

## Why should all operators implement changes to the same deadlines as those operators consulted by CMA?

Gambling firms, like all UK businesses, must carefully assess their behaviour against key consumer protection legislation like the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the unfair terms provisions of the Consumer Rights Act 2015 (CRA). This obligation is reinforced by the licensing regime, which requires licensees to satisfy themselves as to compliance with this important legislation. This is an ongoing obligation – firms need to continually assess their terms and practices against the law.

Against the backdrop of concerns from the GC that online terms were not ‘fair and open’, the CMA launched its investigation in October 2016. The CMA outlined on its website at that point its key areas of concern, in particular around the restrictions faced by players when they took part in online gaming promotions. In June 2017, when it began enforcement proceedings against individual firms, the CMA made a further public statement, again setting out its key concerns. In November 2017, at the Raising Standards conference, the CMA provided a more detailed outline of the CMA’s findings. The CMA’s presentation set out very clearly the CMA’s legal concerns arising from its enforcement action, and what operators needed to do to address these concerns. The CMA also highlighted its concerns in relation to withdrawals at the 2017 Raising Standards conference and the update on its [case page](#) on 1 March 2018.

The GC has made clear its expectation that the wider sector will make any necessary equivalent changes to the same timeframes agreed with the firms that have provided undertakings to the CMA. Firms that have not yet started to make any necessary changes to their online gaming promotions, despite these repeated and consistent warnings, are failing their customers. They face an immediate risk that consumers will call out their terms and practices as unfair. Unfair terms are unenforceable, and customers can challenge such terms directly in court. Moreover, firms that do not meet their consumer law obligations are also running the risk of action by the GC, CMA and other consumer law enforcers (including local Trading Standards Services).

Although the firms that have concluded undertakings with the CMA have a clear template about what they need to do next, the law itself hasn’t changed, and the undertakings simply reinforce these firms’ existing obligations under consumer law. The CMA’s concerns have remained consistent throughout its investigation. The CMA does not accept that compliance with consumer law carries a competitive disadvantage. However, the firms that have concluded undertakings with the CMA are rightly concerned to see that CMA and GC hold firms in the wider sector to the same standard.

We recognise that operators may need to reconfigure systems and software in order to embed permanent changes to their promotions to bring them in line with consumer law. We also acknowledge that operators may not be able to implement such permanent changes within the deadlines set out in the undertakings. However, we consider that there are practical and pragmatic steps that operators are able to take, in the interim, to ensure that their existing systems comply with consumer law. We note that a number of the issues reflected in the undertakings concern the provision of information to consumers, and are therefore unlikely to bound up with technical or system changes.

But the bottom line is that, if firms cannot make their offers compliant with consumer law, they should not run such offers until they can.

# Key questions

## **What if an operator cannot make the required changes in time?**

There are a number of ways that operators can address the concerns about the fairness of the terms. Both GC and CMA expect operators to consider all possible options to ensure they meet their obligations under consumer law. Whilst we hope to see a diverse competitive offering going forwards, if an operator cannot make its promotions and withdrawals practices (or wider terms and conditions) fair and transparent, it should not be relying upon or enforcing such terms against consumers.

As noted above, where there are genuine technical difficulties in making permanent changes to systems and software in a short timeframe, operators may be able to put in place temporary solutions that meet their consumer law obligations but within their existing systems. For instance, allowing players to get immediate information on their deposit balance via live chat or a call if it is technically not possible to display this online. These interim, manual solutions would only be appropriate if full, permanent, automatic solutions are put in place as soon as possible.

Ultimately firms are responsible for their terms and practices and need to satisfy themselves that these are compliant with the law. There are avenues for firms to obtain compliance advice, for instance by establishing a formal relationship with the relevant Trading Standards Authority. Additionally, independent legal advice or sector trade bodies may assist.

Please note: Whilst we can confirm the meaning and general requirements of the undertakings themselves, we are unable to offer more detailed or practical advice on how operators should implement the undertakings. This is particularly so where compliance is contingent on many contextual factors which we cannot know. Operators should review their practices and consider whether, if challenged, they could demonstrate that any changes they have made meet the principles in the undertakings.

# Key questions

## What sorts of interim solutions can operators put in place?

It is not for CMA to provide operators with interim solutions. The CMA cannot enter into detailed discussions with individual operators or provide tailored advice or comfort on specific suggestions. It is ultimately for firms to self-assess whether any interim solution meets an operators' obligations under consumer protection legislation. Operators should review the terms and conditions that are attached to promotional and non-promotional gameplay and the way that consumers experience gameplay on their websites (which may vary considerably between operators), and consider these against the published undertakings and consumer law more broadly to determine any necessary action.

However, for Promotions Undertaking 5 if it is not physically possible to display a player's Deposit Balance by the deadline, a potentially acceptable interim solution would be prominently to explain on the player's account page that they can withdraw it and that they can find out the amount withdrawable immediately by calling a specific number or via live chat.

If operators can show they are putting in place workarounds that meet their obligations under consumer law, they are less likely to be the subject of regulatory action. But we emphasise that:

- we think interim solutions would only be acceptable where operators genuinely face technical difficulties – we would not see them as being appropriate to address concerns relating to transparency of key conditions and restrictions on gameplay; and
- such solutions would only be acceptable for a short period. Operators should fully implement their solutions as soon as possible.

If operators conclude that their possible temporary solution will not meet these ends, then we would advise them to consider alternative approaches that will, if they wish to continue offering the promotion. Further, we have made clear that operators should work to move to permanent changes as soon as possible, particularly to avoid causing any unnecessary confusion to consumers.

# Key questions

**For Promotions Undertaking 3, at what point should the customer be notified that they are playing with Restricted Funds; and how will a customer know when they stop playing with these funds?**

The key principle embodied by Undertaking 3 is that operators should be proactive in informing consumers so they are aware when they are playing with Restricted Funds – as such, simply including the information in website terms and conditions is insufficient to comply.

As the CMA has stated, operators could comply with the undertaking by telling consumers when they commence play with Restricted Funds and reminding them of the restrictions. We consider consumers should be told this again whenever they start a new play session where they are playing with Restricted Funds. For example, if a consumer pauses play with Restricted Funds and logs out or their account times out, we consider operators should remind them when they next log in and play that they are playing with Restricted Funds and the implications of that. It is open to operators to determine how best to inform consumers when they are playing with Restricted Funds.

Operators should also note the requirement in the undertaking to inform consumers, if they are playing with Restricted Funds, about the nature of, and consequences of non-compliance with, the Promotional Play Restrictions or Wagering Requirements. Again, it is open to operators to determine how best to provide this information transparently – for instance in (or one click from) the notice or reminder to consumers that they are playing with Restricted Funds.

As we have explained, operators should ensure that they comply with consumer law and avoid misleading practices or practices that contravene the requirements of professional diligence. Whereas the key focus of Undertaking 3 is to ensure that consumers are aware when they are playing with Restricted Funds, and that restrictions apply, we expect operators to ensure that consumers do not mistakenly think they are still playing with Restricted Funds such as bonus funds if they are in fact playing with unrestricted funds. It follows that operators should consider carefully if it might be necessary to inform consumers that they are no longer playing with Restricted Funds and, if so, how to do so.

This may depend on how promotions are structured and how key account information is presented to consumers. However, we consider it unlikely that compliance with consumer law would require operators to inform consumers every time they start a new play session with unrestricted funds.

# Key questions

**Will operators be allowed to run promotions where wagering requirements are linked to winnings from bonuses as long as players can withdraw their full deposit balance at all times?**

The CMA considers that wagering requirements are unlikely to be unfair when they only attach to the bonus. Operators are free to require consumers to meet requirements for bonus winnings so long as they can withdraw winnings made with their own funds no matter how much or how little they have played.

**For Promotions Undertaking 5, do operators need to display balance and bonus pots within in-game view?**

No. The purpose of Undertaking 5 is to ensure that a consumer can easily determine how much they can withdraw at any point in time. We are satisfied this can be achieved by a consumer switching back to the account home page from the in-game view, provided that both balances are displayed clearly on the account home page. Accordingly, our view is that displaying both the Deposit Balance and Bonus Balance on the account home page, but not within the in-game view, would comply with the Undertaking.

**In Promotions Undertaking 10, what is meant in practice by “materially affect the consumer’s ability to complete the qualifying bets...”?**

The player should not find it significantly more difficult to complete the qualifying bets as a result of account restrictions that have been applied after they started to qualify for the free bet. For example, if stake factoring meant that a player would be restricted from making their remaining qualifying bets on the most popular selections on a major football market, then that player would be materially restricted. Conversely, a restriction which meant only that less popular markets or long shots were excluded would be less likely to do so.

# Key questions

## How can operators comply practically with Withdrawals Undertakings 2 and 3 (account inactivity)?

For Withdrawals Undertakings 2 and 3 (account inactivity) we understand that some operators may, for internal accounting purposes, currently reclassify the funds in inactive accounts. We consider that it is readily possible for operators to reclassify account balances for some internal accounting purposes *without appropriating consumer funds* held in them.

In our view, such reclassification would not necessarily be unfair or reflect an unfair practice where an account has been inactive for at least 12 months, provided that there is no prejudice to affected consumers' rights over the funds, it is clear to consumers that there are funds in their account that they can access, and consumers can access such funds easily.

Specifically, we consider that this would require at least that the following three conditions are met (if relevant):

- a) There is no reduction in any applicable protection afforded to these funds according to the Gambling Commission's "customer funds protection rating system".
- b) We also understand that some operators may remove accounts from view (i.e. not present the account or account balance to players who do log in). In such a case:
  - i. The operator contacts affected consumers at least 30 days beforehand:
    1. To remind them in a clear and transparent manner of the size of their balance, warn them that the funds will be reclassified by a specified date if there is no account activity by then, informs them that in the event their funds are reclassified that they may no longer see their account balance (if relevant),
    2. To tell them that their right to the funds would be unaffected, and how they could claim the funds.
  - ii) Affected consumers accessing their account but who do not see their balance are shown a message informing them that they have funds and how to contact the operator if they wish to claim their remaining funds;
- c) The operator's terms clearly state the possibility of the change in the classification of funds, that consumers' right to the funds would be unaffected, and highlight how they could claim them.