

GAMBLING COMMISSION: RENEWED FOCUS ON TERMS AND CONDITIONS

The Gambling Commission has confirmed that one of its main focuses for 2016 will be on online operator's terms and conditions, ensuring that these are both fair and transparent without being overly complex. **Tom Edmonds** and **Dhruti Gore** from Harris Hagan run through what operators should consider as part of a review aimed at ensuring compliance.

Gambling Commission CEO Sarah Harrison briefed industry stakeholders gathered at ICE in February on the importance of operators' terms and conditions being fair/open and not being overly complex. She also confirmed that this will be one of the Gambling Commission's main focuses in the year ahead. A transcript of her full speech, including the section regarding terms and conditions, can be found on the Gambling Commission website.¹

Sarah Harrison explicitly noted that the Gambling Commission is aware that operators' terms and conditions need to cover a range of eventualities and must protect the operator from being exposed to risks of fraudulent behaviour. However, she also stated that the Gambling Commission is not convinced that the gambling sector has widely implemented terms that are both comprehensive but also concise.

She therefore urged the industry to improve its approach to terms and conditions after stating that some operators' terms are so lengthy and complex that: "Most of my colleagues scratch their heads trying to make sense of them, never mind consumers. Such excessively long and complex terms and conditions cannot be effective".

Below we have set out below some key requirements from the Gambling Commission's Licence Conditions and Codes of Practice ("LCCP") regarding terms and conditions which operators should ensure are addressed in their terms and conditions.

1. Unfair terms

- Terms must not be included which would be deemed "unfair" under the Consumer Rights Act 2015, as:

- (i) an "unfair" term will not be enforceable; and
- (ii) this could represent a breach of licence condition 7.1.1.B.1 of the LCCP.

2. Protection of Customer Funds

- Terms must clearly set out the level to which 'customer funds' are protected: Basic, Medium or High.
- See licence condition 4.2.1 of the LCCP.

3. Complaints procedure

- Terms must include a complaints procedure which is compliant with social responsibility code provision
- See licence condition 6.1.1 of the LCCP.
- Operators must also consider the requirements regarding signposting customers to the new online dispute resolution platform, see here.

4. Self exclusion

- Terms must include details of how a person may self-exclude.
- The self-exclusion procedures must be compliant with ordinary code provision 3.5.4 of the LCCP.

5. Variation

- Terms should not state that an operator can vary its terms unilaterally without notice to a customer. If customers have not been advised of a variation before it comes into effect, this could represent a breach of licence condition 7.1.1.B.3 of the LCCP. There are also some other guidelines which are not set out in the LCCP as being

expressly required, but that an operator would be well advised to follow, as they can assist with a customer's understanding of an operator's terms and conditions, and in turn satisfy the Gambling Commission that an operator's terms and conditions are both fair and transparent. These include using clear formatting, numbering paragraphs, using consistent definitions and avoiding repetition.

It is clear that the Gaming Commission will be intensifying its focus on operators' terms and conditions over the coming months. Sarah Harrison emphasised its importance during her speech and stated: "Consumer clarity and understanding on terms is key to confident engagement in competitive markets, and in gambling this is crucial to ensuring consumers are fully protected and that licence objectives to ensure fairness and openness are met."

We strongly advise that you use this as an opportunity to review your terms and conditions to ensure they are compliant with the LCCP.



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¹ <http://www.gamblingcommission.gov.uk/pdf/Speeches/World-Regulatory-Briefing-at-ICE-2016.pdf>