

Response of the Information Commissioner's Office to the DCMS Select Committee's inquiry into Gambling Regulation

About the Information Commissioner's Office

The Information Commissioner's Office (ICO) has responsibility in the UK for promoting and enforcing the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018), the Freedom of Information Act 2000, and the Privacy and Electronic Communications Regulations 2003 (PECR), among other legislation.

The Commissioner is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations and taking appropriate action where the law is broken.

Introduction

The ICO welcomes the opportunity to respond to the committee's inquiry on gambling regulation. Objective one of our three year strategic plan, ICO25, is to safeguard and empower people. We want to help make the UK the safest place to be online, we want individuals to be better informed of their rights and it is one of our key priorities to protect those at heightened risk of harm, including those who are at risk from the consequences of 'problem gambling'.

Much gambling now takes place online. Online gambling necessitates the use of personal data, and so operators who target UK customers need to comply with the UK GDPR and DPA 2018. The ICO as the regulator for this legislation retains a strong interest in this area. We have dealt with 98 complaint cases about gambling operators this financial year (2022-23) and have engaged with the government, wider public sector and industry in a range of areas.

Regulatory cooperation is important to the success of tackling gambling harms. We have worked closely with the Gambling Commission and are currently assisting with proposals to introduce a code of practice in Northern Ireland¹ (gambling is overseen by the Department for Communities in Northern Ireland).

¹ [doc-gambling-codes-response-20220325.pdf \(ico.org.uk\)](#)

Some of our ongoing work and reflections for the committee's inquiry are below.

Data protection and online gambling

We understand the government is considering the case for policies which would see personal data used in new ways to reduce the risk of harm to individuals. We have worked with government and the Gambling Commission as they considered the case for some of these prospective policy proposals, in particular advising on the data protection compliance issued related to Single Customer View and Affordability (Financial Risk) checks via our Sandbox and Innovation Hub teams. This work has given us, as the data protection regulator for the UK, an insight into the risks and opportunities these prospective policies present.

In data protection law, data protection principles guide organisations on how to use personal data and signal the limits of this use where it is likely to cause undue harm. The law demands, among other things, a clarity of purpose for the intended processing (fair and lawful), that no more personal data is processed than is necessary to achieve this purpose (data minimisation), and that data processed is accurate (accuracy). Where personal data is collected for one purpose but used for another it must be compatible with the original purpose (purpose limitation). To fail to meet these standards, or fail to demonstrate them (accountability) is to fail to comply with the law.²

To process personal data for new and novel purposes such as online safeguarding it is imperative that the methods used are fit for purpose and embed privacy into every stage of their processing (data protection by design and default). To fulfil their purpose, online safeguarding instruments must ensure that they achieve the intended benefits stated in their original purpose and do not cause further harm. If the purpose of processing is safeguarding, the method must be deployed before the harm has taken place.

We have provided advice to government on the data protection implications of proposed changes to gambling regulation, and will provide further advice as and when we are required. It is also worth highlighting that any change to gambling law may lead to the requirement under Article 36 (4) of the UK GDPR for the relevant government department to consult with the ICO on the implications of its proposals for the processing of personal data.

² <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/>

Below we set out more detail on our work and priorities in these areas, as well as other topics within scope of the government's call for evidence.

1. Enabling data sharing for prevention of gambling harms

In February 2020, the Gambling Commission challenged the gambling industry to explore and develop a 'Single Customer View' (SCV), a proposal to provide a cross-operator view of a customer's gambling behaviour, enabling timely interventions to reduce gambling harms.

The Gambling Commission engaged our regulatory sandbox to explore the concept of a SCV. One of the objectives of the sandbox was for the ICO and the Gambling Commission to work together to establish which lawful bases could be relied upon by operators to process this personal data via the SCV. We found that there were two lawful bases that could be relied on by operators in order to share personal data depending on the SCV solution ultimately developed by the industry.³

Separately, we understand that the government and the Gambling Commission are considering the case for 'affordability checks', whereby steps are taken to understand a customer's financial situation so operators may more effectively safeguard them from financial harm due to unaffordable losses.

Data protection enables the responsible sharing of personal data for the purpose of harm prevention. It should be seen as much as a guide on how to share data, as how not to use information. The ICO stands ready to provide advice to the Gambling Commission or industry to help ensure any rollout of SCV or affordability checks are conducted in ways which comply with the data protection principles, including to process data in a fair and lawful manner, to minimise the amount of information needed to achieve the purpose (of preventing harm) and to ensure there are robust safeguards against the potential for information intended for the prevention of harm to be misused for commercial purposes.

2. Preventing the misuse of personal data to target gamblers

As we announced in our ICO25 3-year strategic plan⁴, the ICO is currently undertaking work to explore the use of targeted advertising (AdTech) and personal data within the gambling sector. We are particularly interested in

³ <https://ico.org.uk/media/for-organisations/documents/4018589/official-sensitive-gambling-commission-regulatory-sandbox-report-phase-1-outcome-final-pdf.pdf>

⁴ <https://ico.org.uk/about-the-ico/our-information/our-strategies-and-plans/ico25-strategic-plan/>

understanding whether the misuse of users' personal data may contribute to problem gambling.

Separately, we note that Gambling Commission research suggests some people are motivated to self-exclude from an operator to stop gambling-related marketing.⁵ Under the UK GDPR, individuals have the absolute right to stop their personal data being used for direct marketing, independently of self-exclusion schemes. We are examining whether the right to object provided under the UK GDPR is being made available by operators in a sufficiently clear and accessible way.

3. Protecting children online

We are aware that there has been some consideration of 'loot boxes' in video games, and whether these should be regulated as a gambling product. Whilst it is not for the ICO to define what is or is not gambling, activities that involve the processing of personal data do fall within our purview.

In the ICO's work on the Age Appropriate Design Code (AADC) we considered loot boxes and advised on the government's recent call for evidence⁶. We expect to see the games industry incorporating AADC standards into its products, including to avoid the detrimental use of children's data, and we will continue to monitor compliance with the code.

Following the outcomes of the loot box call for evidence, DCMS has been convening a technical working group with industry and other relevant stakeholders. This is aimed at agreeing industry-led measures to mitigate the risk of harms to children, young people and adults from loot boxes. The ICO has been involved in this process, with a focus on ensuring data protection considerations and AADC standards are embedded in this work.

Conclusion

As a regulator, the ICO wants to ensure gambling operators have the confidence to share personal data for the purposes of preventing gambling harms, however many of these involve large volumes of personal and it is important that these steps comply with data protection law. In order to achieve this, any methods used should be proportionate and necessary to achieve their objectives and have

⁵ <https://www.gamblingcommission.gov.uk/statistics-and-research/publication/consumer-protection-throughout-their-gambling-journey>

⁶ <https://www.gov.uk/government/consultations/loot-boxes-in-video-games-call-for-evidence/outcome/government-response-to-the-call-for-evidence-on-loot-boxes-in-video-games>

data protection built into the design and implementation. Where the ICO as the regulator of data protection is made aware of potential misuses of personal data then we will act swiftly, using our technical expertise, to ensure harms are minimised or prevented.