

The Lord Grade of Yarmouth CBE
Chair
Gambling Industry Committee
House of Lords
London
SW1A 0PW

21 January 2021

Dear Chair,

The Information Commissioner's Office response to recommendations by the House of Lords Gambling Industry Select Committee in their Report on the Social and Economic Impact of the Gambling Industry

I write in response to the Gambling Industry Committee's report of July 2020 titled 'Gambling Harm – Time for Action'¹ in which the Committee makes a number of recommendations, some of which are directed at the Information Commissioner's Office (ICO). I would like to take this opportunity to advise you of our work in this area.

Overview

The Committee has recommended that the ICO work with the Gambling Commission, the Betting and Gaming Council and UK Finance, to resolve perceived data protection barriers to sharing personal data in order to protect customers from harm related to gambling. (See recommendations 30 and 33 of the Select Committee's report).

The Select Committee recommended an approach based on affordability – i.e. can the customer afford the amount of money they are spending when they gamble. With data protection considerations borne in mind, we can see the benefits of carrying out affordability checks both as part of the onboarding process when a customer opens a new account with an operator, and over the duration of that customer's account activity with the operator. We are, of course, open to working with the relevant bodies in the development of a safe and secure method for the proposed data sharing.

It is worth noting, however, that affordability checks are not the only solution that is being considered in relation to this issue. We have been made aware, in

¹ House of Lords Gambling Industry Committee report Gambling Harm – Time for Action:
<https://committees.parliament.uk/publications/1700/documents/16622/default/>

discussions with both the Gambling Commission and technology companies in the sector, that behavioural data is a better indicator of whether a customer is at risk of harm than affordability data alone. This is because, by the time affordability is an issue for a customer, the harm has already been done. Steps currently being considered by the sector aim to prevent harm by intervening early.

Single Customer View (SCV)

Currently, decisions on interventions to prevent harm to a customer are made unilaterally by operators, with no awareness of the customer's behaviour on accounts they hold elsewhere, resulting in a limited understanding of whether a customer is at risk of harm or not.

A solution has been suggested by the Gambling Commission in relation to its proposals for a Single Customer View (SCV). SCV proposes that standardised data points about a customer are collected by operators, measured against an industry-agreed standardised risk score, to produce an accurate, real time assessment of whether a customer is at risk of harm. This proposed approach would utilise data already routinely processed by operators when managing relationships with their online customers.

The innovation within SCV is the intention to identify multiple accounts held by the same individual - across all operators - enabling the risk score to reflect a 360 degree view of an individual's activity. The Gambling Commission has made it very clear to the ICO in our discussions that the identification of multiple accounts is crucial to the prevention of harm related to gambling. Most customers hold five or more accounts with a range of operators, who base their decisions on a limited view of the customer's account activity. A customer at a high level of risk may have an account restricted with one operator and another opened or raised to VIP status with another. This communication failure between operators regarding their customers currently has had tragic, even fatal outcomes, for customers, their families and their communities.

All gambling operators routinely share their customers' data to a third party to meet their anti-money-laundering and fraud prevention obligations. Data sharing to protect their customers from harm should therefore not be a lower priority, nor more controversial, than fraud prevention measures.

An innovation of this nature merits careful consideration of data protection compliance and a public conversation regarding why the processing is being considered. The Gambling Commission has informed the ICO that the reasons

why these steps are being considered will be presented to the public. Their current consultation on affordability² is a part of this dialogue.

GDPR and the DPA 2018 have been cited as the reason personal data cannot be shared for measures such as Single Customer View. As stated in the evidence³ the ICO previously gave to the House of Lords Select Committee, this is not the case. Data protection law should not be considered a barrier to sharing, instead it should be viewed as a framework of safeguards to ensure fair, lawful and proportionate data sharing. Data protection law should not, for example, be cited as a barrier to sharing when it is necessary to protect the vital interests of an individual.

ICO work in this area

Engagement with the Gambling Commission and others

Since late 2019 the ICO has been in discussions with the Gambling Commission regarding the sharing of personal data to prevent harm from gambling. This includes a workshop given by the ICO at the Gambling Commission's event in February 2020, which looked at the data protection considerations specific to the proposed Single Customer View. Gambling operators, technology companies and the Betting and Gaming Council attended this event. During the workshop, the ICO made a recommendation for an industry-agreed Code of Conduct to be developed if Single Customer View is to be deployed. The Code would be subject to an approval process by the ICO under the GDPR, an approach other sectors, including the direct marketing sector, are also pursuing.

For the Code of Conduct we would recommend including an industry commitment to:

- standardised data points which all operators can collect regardless of the size of operator, with the minimum amount of data collected to achieve the desired goal (but with sufficient detail to ensure customers at risk are not missed);
- standardised risk scores to ensure a customer is handled consistently across all operators;

² <https://www.gamblingcommission.gov.uk/news-action-and-statistics/Consultations/remote-customer-interaction-consultation-and-call-for-evidence> - Remote customer interaction - Consultation and Call for Evidence

³ <https://committees.parliament.uk/writtenevidence/739/html/> - ICO submission

- standardised approach to interventions, whether by an operator or independent body, once a customer has been identified as at risk;
- an agreed procedure for responding to customer complaints regarding the processing and when exercising their data protection rights such as the right of access. If GDPR Article 22 (automated decision-making) is engaged, operators will need to be able to explain their decisions to customers in sufficient detail.

ICO Innovation Hub and Sandbox⁴ addressing a key issue: lawful basis for sharing data between operators

From the ICO's discussions with stakeholders in the gambling sector, it is clear that the industry is divided on whether their current legislation and licensing codes provide a strong enough legal imperative to share customer data for SCV. The industry is uncertain regarding the appropriate lawful basis for sharing customer data between operators and whether the data should be considered special category data (requiring extra care for compliance). Whilst these issues remain, the industry is hesitant to develop or deploy SCV, despite the potential benefits SCV could give for meeting their social responsibility obligations under current gambling sector legislation and licensing codes.

To resolve these issues, the ICO Innovation Hub has been in discussions with the Gambling Commission regarding how SCV would operate and the data sharing necessary for it to function.

As a result of these discussions, the Gambling Commission has now made a successful application to the ICO Sandbox. Whilst the ICO Sandbox does not ensure or certify compliance regarding the deployment of a new technology, it provides expert regulatory advice for organisations, developers and innovators. The ICO has committed to support the Gambling Commission by undertaking a detailed consideration of lawful bases and data protection compliance for Single Customer View. A formal announcement⁵ to this effect has been made today.

The Age-Appropriate Design Code (AADC)

Another important area in which the ICO is engaged with the gambling sector is our work on the AADC (also known as 'The Children's Code'). The Children's

⁴ <https://ico.org.uk/sandbox>

⁵ <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2021/01/ico-supports-innovative-data-sharing-projects-to-protect-vulnerable-people/>

Code has completed its Parliamentary passage and will come into full effect, following its one year transitional period, in September 2021. Our work has included discussions with the Advertising Standards Agency on steps to prevent gambling advertisements being viewable by children online and the role of children's data.

We will be considering the use of children's data in ways which are detrimental to their wellbeing this year, which will include looking at standards for nudge techniques, age verification, and age-gating.

Future ICO work in this area

Proposed trials of SCV

The ICO is aware that the Gambling Commission is keen for trials of SCV to take place and that a number of technology companies are keen to deliver potential solutions. The ICO Sandbox may be a helpful environment to support consideration of data protection risks and compliance questions as part of the early trials of SCV once technology provider/s have been selected.

Data for research and insight into customer behaviour

Throughout the Select Committee's report, a lack of data for the scrutiny of independent researchers is highlighted (paragraph 598) - and the need for operators to better identify customers at risk of harm (recommendation 13). As previously stated, this data is already held by operators but is not readily shared. Those concerned about gambling-related harms argue that this lack of sharing hinders harm identification, insight into customer behaviour, research and ultimately the resourcing, allocation and effectiveness of treatment. Better channels for accessing data have the potential to redress this.

Data from Single Customer View could be of central importance for longitudinal studies (recommendations 19 and 20), to understand changes in customer behaviour, particularly where availability of data is limited, such as data regarding women who gamble and may be at risk of harm.

A key area the industry is being called to address is the connection between problem gambling and the risk of suicide (recommendation 25). Data gathered on this topic may be highly subjective, based on user surveys, which carries the inherent risk of the lack of understanding an individual has about their own behaviour, limiting the usefulness for researchers. Objective data from Single Customer View could show the full extent of an individual's behaviour, giving

operators (or an independent appointed body) the opportunity to intervene effectively.

Any processing of personal data carries with it the responsibility to safeguard the rights and freedoms of individuals, balancing these rights with the need to protect individuals from the harm SCV hopes to prevent. Developers of SCV need to adopt a data protection by design and by default approach, as expressed in Article 25 of the GDPR. Any risks identified need to be addressed and mitigated so that the potential benefits of SCV can be realised without causing unintended harm.

We intend to work with the sector and advise on the data protection implications of the various proposals and how these goals may be met in compliance with data protection law.

Closing comments

Single Customer View has the potential to be an effective data sharing method for gambling sector operators to protect their customers from harm, with procedures as standardised as those already in place for Anti-Money Laundering and fraud, if the standards of data protection compliance outlined in the GDPR and DPA 2018 are met. Insights gained from Single Customer View would be of particular interest to policymakers, independent researchers, psychologists and other clinicians, would aid the appropriate estimation and allocation of resources for treatment centres, and would contribute to the Government's goal of making the UK the safest place in the world to be online.

The ICO accepts the recommendations of the Committee and is working with the Gambling Commission and other appropriate bodies to address perceived barriers to sharing personal data in order to protect customers from harm related to gambling.

Yours sincerely,

Steve Wood
Deputy Commissioner (Executive Director - Regulatory Strategy Service)