

[REDACTED]
[REDACTED]
UK Finance
1 Angel Court,
London,
EC2R 7HJ

12 July 2023

Dear [REDACTED],

Re: Sharing of personal data to facilitate “financial risk checks” by online gambling operators

I write regarding UK Finance’s letter of 13 December 2022 that seeks to clarify the ICO’s position in relation to the sharing of personal data to facilitate “financial risk checks” by online gambling operators.

Please be advised that after initial consideration, Stephen Bonner has passed this matter to me, as Executive Director for Regulatory Risk, to respond to you.

Background

The Government and the Gambling Commission propose to introduce new requirements on online gambling operators to carry out “financial risk checks” as a condition of their licence. Under these proposals¹, operators would be required to take steps to understand a customer’s financial situation so operators may more effectively safeguard them from financial harm due to unaffordable losses. The ICO has been working with the Government and the Gambling Commission to support the delivery of these new safeguards.

UK Finance has requested that the ICO provides a steer in relation to the sharing of consumer credit risk data by credit reference agencies with gambling operators. Specifically, UK Finance has asked the ICO to determine if this processing would be deemed ‘compatible’ with the original processing purposes, in the sense of Article 5(1)(b) of the UK GDPR. Furthermore, UK Finance has requested that the ICO provides a steer to determine lenders’ transparency obligations under the UK GDPR, and specifically whether they have an obligation to notify their customers of the new sharing by the credit reference agencies as a prerequisite for this sharing to take place.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1153228/1286-HH-E02769112-Gambling_White_Paper_Book_Accessible1.pdf

At our meeting in March 2023, I set out the ICO's position on the above points. I agreed to write confirming this position, which is set out below.

Our view

The ICO recognises the need for clarity on how it interprets the UK GDPR and DPA 2018 in this context, and we are happy to provide this, below. Our position reflects our latest understanding of the proposed financial risk checks and supersedes any previous steers that the ICO has provided based on earlier iterations of these proposals.

In summary:

- It is our view that the GDPR does allow credit reference agencies to share personal information with gambling operators for the purposes of enabling financial risk checks. In accordance with the GDPR, the information that is shared must be limited to what is necessary.
- We expect credit reference agencies to conduct a data protection impact assessment (DPIA) before processing personal information for the financial risk checks because of the nature of the processing and the outcomes generated from this, which may include denial of service.
- Gambling operators must safeguard any additional personal information they receive from the credit reference agencies and use it only for the purposes of carrying out the financial risk checks.
- We expect bank, lenders and other parties to update their privacy notices and other relevant accountability information to reflect the increased scope of data sharing by the credit reference agencies.

In detail

The 'compatibility' of processing with the original processing purposes

It is our understanding that the Gambling Commission will consult on two forms of financial risk check, to be undertaken by online gambling operators:

- 1) basic checks for online gamblers incurring moderate levels of spend, to check for financial vulnerability indicators such as County Court Judgments. These would take place at £125 net loss within a month or £500 within a year.

- 2) enhanced checks for online gamblers incurring higher levels of spend which may indicate harmful binge gambling or sustained unaffordable losses (£1,000 net loss within 24 hours or £2,000 within 90 days). The triggers for enhanced checks would be halved for those aged 18 to 24 given evidence on increased risk.

In determining what data may be shared in line with Article 5(1)(b) of the UK GDPR, lenders (and other parties which share information with credit reference agencies) and credit reference agencies will need to undertake a compatibility assessment to decide whether the new purpose for sharing data is compatible with the original purpose for processing these data. The assessment should take into account:

- any link between the original purpose and the new purpose;
- the context in which the personal data was collected, including the relationship between the data subject and the controller;
- the nature of the personal data, including whether it is a special category of personal data (Article 9 UK GDPR) or personal data related to criminal convictions and offences (Article 10 UK GDPR);
- the possible consequences of the intended processing for data subjects; and
- the existence of appropriate safeguards².

We note that there is a close link between the original purpose and the new purpose for sharing data. Lenders (and other parties) currently share data with credit reference agencies for the purpose of enabling the assessment of consumer credit. It is in lenders' interests to do so to minimise the risk of bad debts and ensure the financial sustainability of their business. In the same way, lenders also have an interest in the processing of this data to enable online gambling operators to conduct financial risk checks. This also enables lenders to minimise the risk of bad debts and ensure the financial sustainability of their business.

We note that data subjects already have an expectation that their data is shared by lenders and credit reference agencies for the purpose of credit checks. We note the Gambling Commission's position, set out to you in its letter of 27 April 2023, that the potential for data sharing relating to financial vulnerability should be prominently and clearly communicated to all gambling customers by gambling operators, irrespective of whether or not they have met the threshold for

² For example, how to ensure the recipient gambling operator will respond appropriately to the information received from credit reference agencies and financial risk checks, and how it will ensure the financial risk check information will not be used for other (incompatible) purposes, such as marketing or other commercial purposes.

financial risk checks. We note that if such prominent and clear communications to all customers are introduced, individuals that incur moderate or higher levels of spend with online gambling operators should have an expectation that their data held by credit reference agencies, will be shared with gambling operators for financial risk checks, prior to these checks occurring.

We note the sensitivity of the personal data being processed and the potential impact on individuals in terms of denial of service by online gambling operators. We expect that credit reference agencies will share only the minimum amount of personal data needed to fulfil the new purpose, in line with Article 5(1)(c) of UK GDPR. For example, zero-knowledge proofs may be employed to prove that someone is not at financial risk without revealing any further information regarding their financial status³. We expect that the credit reference agencies will only process the personal data of the individual seeking to gamble and will not process information relating to their financial associates.

We note that it is in the interests of the individual seeking to gamble that online gambling operators don't allow them to become overburdened with losses they can't afford. We consider that the underlying purpose, to safeguard individuals at risk, provides a compelling reason for the sharing of this data by credit reference agencies.

We expect that gambling operators will put in place robust safeguards to ensure the data received from credit reference agencies is analysed accurately, held securely and not used for additional (incompatible) purposes. We note that it is expected that the financial risk checks will be necessary only for the 20% of accounts that meet the threshold for a basic check (moderate losses) and 3% of accounts that meet the threshold for an enhanced check (higher losses).

We note that any use by gambling operators of the financial risk check data, for commercial gain would be strictly outside of the purposes for which the data is being shared. This includes the fact that an individual has or has not met the threshold, all data received from the credit reference agencies (including nil returns) and any analysis by and conclusion of the gambling operators. We note the Gambling Commission's position, set out to you in its letter of 27 April 2023, that it would be a significant regulatory issue were the data to be used in this way and that this could attract a significant sanction. We recommend that the credit reference agencies confirm in their data sharing agreements with the gambling contractors that the use of the additional information they share is strictly limited to the purpose of carrying out the financial risk checks.

³ <https://ico.org.uk/media/about-the-ico/consultations/4021464/chapter-5-anonymisation-pets.pdf>

Taking into account these considerations, it is our view that in principle it is possible to design financial risk checks by gambling operators utilising data from credit reference agencies, that are compatible with the purposes for which data is currently received by the credit reference agencies from lenders and other parties. Given the nature of the processing, including the risks of denial of service, we expect that credit reference agencies will conduct a Data Protection Impact Assessment (DPIA) before processing is commenced.

It would also be good practice for lenders and those other parties to review their GDPR accountability frameworks (Article 5(2) UK GDPR), including their data sharing agreements with the CRAs and existing DPIAs, to ensure these reflected the personal data processing required by the financial risk checks. We would expect such considerations to be carried out as part of their ongoing compliance review process.

Lenders' transparency obligations

We expect that lenders and other parties which share information with credit reference agencies will review their privacy information and if necessary update it to ensure that it is transparent that the information it shares with credit reference agencies may be used and shared by the credit reference agencies for the purpose of the financial risk checks by gambling operators.

As noted earlier, the Gambling Commission intends that the potential for the financial risk checks should be prominently and clearly communicated to all gambling customers by gambling operators. On this basis, we do not consider that lenders (and other parties which share information with credit reference agencies) have an obligation to also notify customers on an individual basis.

We expect that as part of their ongoing compliance review process, lenders and those other parties will update their privacy notices and other relevant accountability information (e.g. records of processing information) in due course to reflect the increased scope of the sharing of data by credit reference agencies but consider that notification of these updates does not need to be sent to individual customers.

Credit reference agencies should notify lenders and other parties ahead of the sharing commencing but are not required to wait for confirmation that the lenders' and other parties' reviews have taken place before sharing the data with gambling operators. We encourage the credit reference agencies to cooperate with lenders and other parties to assist with their reviews when requested. This may include sharing information contained in the credit reference agencies' DPIAs where suitable.

Future legislative reforms

As well as providing clarity on our interpretation of current data protection law, I wanted to draw your attention to the Data Protection and Digital Information Bill that is currently in Parliament.

As introduced, the Bill includes provisions clarifying that the processing of personal data for a new purpose is to be treated as compatible with the original purpose when the processing is necessary for "safeguarding vulnerable individuals". Given that these checks will be critical for protecting individuals suffering from a gambling disorder (or who may be susceptible to a gambling disorder), there is a strong case that processing financial data for these checks would be considered necessary for safeguarding vulnerable individuals. As such, we expect the future legislative reforms brought by the Bill to further support the development of these new safeguards.

I trust that this provides UK Finance and its members with clarity on how the ICO interprets the UK GDPR and DPA 2018 in this context, and would be happy to meet with you to explain our position further. Given the public interest in this issue, including that of UK Finance members' customers, I am publishing this letter as a matter of transparency.



Yours sincerely,
Stephen Almond
Executive Director, Regulatory Risk