

# Review of the Gambling Act 2005 Call for Evidence

## UK Finance Response

**Date:** 31 March 2021

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### Introduction

1. UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms, we act to enhance competitiveness, support customers and facilitate innovation.
2. Our response to the UK government's Gambling Act Review Call for Evidence addresses aspects of direct interest to the banking and finance industry in particular the need to protect vulnerable consumers from gambling related harm.

### Executive Summary

3. UK Finance welcomes and is supportive of the aims of the review of the Gambling Act (2005) and call for evidence. We also welcome the timing of this review given the read across to the Government's ongoing work in relation to Online Harms and the significant increase in the number of individuals displaying characteristics of vulnerability as a result of the Covid19 Pandemic.
4. Digital innovation has fundamentally changed the way products and services are delivered and consumer preferences and behaviours are evolving rapidly in response. This creates both opportunities and challenges for consumers, (in particular vulnerable consumers) and organisations such as financial institutions and gambling operators have a responsibility to ensure that they deliver a high-quality user experience which protects individuals from increased risk of consumer detriment.
5. The financial services sector has recognised the harm that problem gambling can create, and many members have taken voluntary steps to develop innovative tools such as card blocks to provide vulnerable consumers (including those classified as problem gamblers) greater control over their spending. However, if a customer authorises a payment to be made and they have cleared funds – the financial institution is legally obliged to make the payment.
6. It is for this reason that we strongly believe that the Government needs to create a robust regulatory framework which ensures that gambling operators identify and prevent 'problem gambling' in a real time environment, enabling action to be taken both at individual operator and industry level.
7. The regulatory framework also needs to be robust and flexible enough to keep pace with technological advancements and emerging socio-economic trends- such as the COVID19 Pandemic which led to a 15% increase in the number of individuals displaying characteristics of

vulnerability within a 6 month period<sup>1</sup>, taking the total to 53% of the UK's Adult population (i.e. 27.7 million people).

8. Problem gambling is a complex and multi-faceted issue, where there is no single solution. A proportionate, cross-government, and cross-sector response is needed to identify, prevent, and protect the most vulnerable members of society.
9. The financial services sector is committed to playing its part and this paper outlines our thoughts on key aspects of the Government's review along with a number of recommendations which we believe will reduce the prevalence and impact of gambling related harm.
10. We would however like to draw to your attention the following six recommendations that we think will have the most significant impact. These recommendations are covered in greater detail throughout the response.
  - i. **Vulnerable Customer Framework:** We recommend that the Government and the Gambling Commission (GamCom) apply the same expectations of supporting and protecting customers in vulnerable circumstances as the FCA has placed on the financial services sector. This will involve putting in place a robust regulatory framework which requires gambling operators to:
    - a. Identify the types of harm an individual may be vulnerable to and take steps to mitigating the risks throughout all stages of the customer journey, and
    - b. Identify and provide tailored support to individuals that are at increased risk of vulnerability or are already experiencing gambling related harm.
  - ii. **Assessing a customer's financial situation:**
    - a. Gambling operators should be alive to a customer's financial circumstances and establish an individual 'unsustainable spend' threshold limit which takes into account the total spend across all gambling operators.
    - b. Account usage should be monitored, and action taken by gambling operators (across all brands within a firm and across all operators) when a consumer's behaviour or circumstances change.
  - iii. **Data Sharing:** if a strong case is identified that cross-sector data sharing can support effective support of vulnerable consumers by gambling operators, we are open to discussing this further with the authorities. At a minimum, any proposals for data sharing need to be proportionate, justified, and consistent with data protection regulatory requirements. An appropriate balance between the policy goals of supporting the vulnerable and protecting consumer privacy must be achieved. For this reason, careful consideration should be given to what data is required and how it should be obtained. Close discussion with the Information Commissioner's Office will be necessary for such proposals to advance and the Centre for Data Ethics and Innovation could also helpfully be consulted.
  - iv. **Protecting minors from underage gambling:** we strongly encourage the Government to develop additional layers of online protection which deter underage individuals participating in gambling activities and support the Children Commissioner's calls for:
    - a. Enhanced online gaming age verification
    - b. Tailoring of the user experience to the age of the user and

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<sup>1</sup> [FCA Financial Lives 2020 Survey: the impact of Coronavirus](#) (page18) 11 February 2021

- c. Clarity on whether loot boxes are to be regarded as 'Gambling' going forward.
- v. **Financial Services Gambling Blocks:** the legislative and regulatory responsibility for protecting vulnerable customers from gambling related harm must sit with the gambling operators as they have the relationship with the consumer and benefit from the commercial activity. Financial services gambling blocks provide an effective additional layer of protection which complements GamBan and GAMSTOP, but the introduction of these blocks is a commercial matter for firms and their application must be customer led because:
  - a. Consumers should have the freedom to choose how they spend their money and *"take responsibility for their decisions"*<sup>2</sup>
  - b. Financial services firms have a contractual and legal requirement to honour payments authorised by the customer
  - c. Any requirement to introduce a universal gambling block or 'make judgements' on what payments should be authorised would introduce significant moral hazard and set a precedent for other addictive activities such as tobacco and alcohol sales.
- vi. **Consumer Redress:** consumers should have access to an efficient, independent Gambling Alternative Dispute Resolution (ADR) Service which has the powers to adjudicate on cases where the customer has experienced gambling related harm. We strongly believe that:
  - a. A single independent Gambling Ombudsman should be established, which has the power to make binding decisions on gambling operators, and
  - b. the Gambling ADR should have an appropriate award threshold which aligns with the consumer detriment and monetary values lost as a result of poor gambling sector practice.

## Regulatory Framework

11. We recommend that the Government and the Gambling Commission apply the same expectations of supporting and protecting customers in vulnerable circumstances as the FCA has placed on the financial services sector. Adopting a more rigorous, flexible framework, based on the FCA Vulnerability Guidance, would support this objective, whilst ensuring that an appropriate balance is maintained between customer freedoms and proportionate regulation. This would also mitigate the risks of unintended consequences (e.g. driving consumers to forms of illegal gambling).

## Recognising and responding to the needs of vulnerable customers

12. The latest FCA Financial Lives Survey found that 27.7 million UK adults (53% of the population) are currently displaying one or more characteristics of vulnerability and the FCA Finalised Guidance for the Fair Treatment of Vulnerable Customers<sup>3</sup> recognises that Gambling and other types of addiction are key health related drivers which can lead to an individual being more susceptible to consumer detriment.

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<sup>2</sup> [Financial Services and Markets Act \(2000\)](#) Part 2 Chapter 1 Clause 1C(2d)

<sup>3</sup> FCA [FG21/1 Guidance for firms on the fair treatment of vulnerable customers](#) (Table 1 Page 10) February 2021

13. Financial services firms regulated by the FCA are required to ensure that vulnerable customers receive as good outcomes as other customers and they are required to evidence that they:
  - understand the needs of their target market / customer base
  - ensure their staff have the right skills and capability to recognise and respond to the needs of vulnerable customers
  - respond to customer needs throughout product design, flexible customer service provision and communications
  - monitor and assess whether they are meeting and responding to the needs of customers with characteristics of vulnerability and make improvements where this is not happening
14. Prior to the FCA Vulnerability Guidance being finalised, a number of firms voluntarily introduced gambling blocks on their debit and credit cards, enabling customers to better control their finances. The University of Bristol Personal Finance Research Centre undertook a review of the impact of these personalised tools and found that over half of the individuals that had activated a card blocker had spent less money on gambling as a result. Furthermore, data provided by one firm showed that on average the blocks stopped 2-3 gambling transactions per month – equating to between 390,000 -585,000 blocked transactions per month<sup>4</sup>.
15. The financial services sector is working very closely with organisations such as the Information Commissioner (ICO), the Gambling Commission, GamCare, GambleAware, and leading academic institutions such as Bristol and Warwick Universities to continue to develop more detailed insight into gambling related harm.
16. Most notably Muggleton et al<sup>5</sup>, analysed the anonymised credit and debit card transaction data of 6.5 million Lloyds Banking Group customers (10.6% of the population) between January 2014 and December 2018. The research found that gambling is associated with significant increases in the prevalence and complexity of vulnerability across all four FCA Vulnerability Drivers (Health, Life Events, Resilience and Financial Capability) and increased consumer harm. Furthermore, the research indicates that the risk of harm is more widespread than previously thought, as the negative impacts begin to increase for individuals that spend 5% of their monthly income on gambling. It is also worth noting that the authors state that the findings are likely to be understated as the analysis does not take into account cash or e-wallet payment transactions.

Key findings include:

- *Gambling and Social Wellbeing*
  - Gambling is associated with a 9% reduction in social activities
  - Gambling is associated with an 11.5% increase in night-time wakefulness both of which are associated with increases in poor mental health.
- *Gambling, Unemployment, Disability and Mortality*
  - High levels of gambling are associated with a 6% increase in future unemployment and
  - High levels of gambling are associated with a 30% increase in the mortality rate.

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<sup>4</sup> A Blueprint for Bank Card Gambling Blockers July 2020 Jamie Evans, Sharon Collard and Chris Fitch

<sup>5</sup> [The association between gambling and financial, social and health outcomes in big financial data](#) N.Muggleton et al 4 February 2021 Nature Human Behaviour Journal.

- *Gambling and Financial Distress:*
    - A 10% increase in absolute gambling spend is associated with a 51.5% increase in payday loans and
    - Gambling is associated with an 8% increase in bailiff interaction
17. These statistics are extremely sobering and demonstrate the wider societal impacts that gambling can have. It is therefore important that the Government and GamCom put in place a robust regulatory framework which requires gambling operators to undertake a proactive approach to identifying and supporting individuals that are at increased risk of vulnerability or are already experiencing gambling related harm.
  18. We note that GamCom has recently consulted on a framework for identifying customers at risk of experiencing harm and whilst UK Finance members welcome many of these proposals, we believe a stronger response is required given the significant negative outcomes associated with gambling related harm. We are also cautious about recommendations for greater data sharing (please see comments 35-49 below).
  19. The FCA requires financial services firms to consider vulnerability at both a macro and individual level. The 'Vulnerability Guidance Infographic (refer Appendix 1) provides an overview of the fifteen high level requirements that firms are required to comply with. You will note that firms are required to identify the types of harm a customer may be vulnerable to and then mitigate the risks of harm throughout all stages of the customer journey (products, services, and communication etc) using inclusive design principles. The current proposals put forward by the Gambling Commission focus primarily on recognising and responding to the individual's needs and this presents a missed opportunity to embed a cultural shift in the way gambling operators conduct their business.
  20. At the individual level, we agree with the Gambling Commission that operators have been too slow to take preventative action in the past and a more robust regulatory framework is required to ensure that vulnerable customers are protected from gambling related harm in the future. Gambling operators need to have robust processes for identifying consumers that are at risk and providing support that is tailored to that individual's needs at all stages of the customer journey.
  21. An individual's susceptibility to gambling related harm should be considered in terms of a Vulnerability Risk Spectrum<sup>6</sup>. Everyone has the potential to be vulnerable at some point in their life and their risk of harm will be determined by their personal circumstances and the number of vulnerability characteristics that they are experiencing.
  22. Vulnerability is dynamic and an individual's circumstances can change at any time, so it is important that gambling operators have effective customer due diligence processes and dynamic data triggers, for identifying whether a customer is showing signs of vulnerability.
  23. As has previously been mentioned a broad range of factors can contribute to an individual's vulnerability and we agree with the Gambling Commission that reliance on 'normal' consumer spending patterns is not a robust enough approach. We are supportive of the behavioural and transactional indicators identified by the Gambling Commission<sup>7</sup> in its recent consultation but would argue that this should not be regarded as an exhaustive list– otherwise there is danger that this will merely encourage a tick box exercise. Instead, the gambling industry should be encouraged to continue to develop additional indicators using new data sources such as referrals from charities,

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<sup>6</sup> FCA [FG21/1 Guidance for firms on the fair treatment of vulnerable customers](#) (Figure 2 Page 12) February 2021

<sup>7</sup> Gambling Commission [Consultation and Call for Evidence: remote customer interaction requirements and guidance \(page 8\)](#)

new processes for encouraging enhanced self-disclosure and potentially new data sources through development of single view of the customer mechanisms for pan-operator data sharing and potentially Open Banking. For further information on our views on cross industry data sharing please refer points (35-49).

24. Gambling spend/behaviour data will provide a great deal of insight but there are a wide range of vulnerability characteristics which may not be evident in transaction data, but could have a significant impact on a consumers ability to make 'good financial decisions' e.g. low financial capability or learning difficulties. It is therefore important that consumers are encouraged to disclose additional vulnerability characteristics which may have a bearing on the support or protection needed. The FCA Final Guidance on the Treatment of Vulnerable Customers provides a helpful summary of vulnerability characteristics that may increase an individual's risk of harm and these could be adopted by the Gambling Sector. These characteristics are split into the following four categories, Health, Life Events, Resilience and Financial Capability<sup>8</sup>.
25. Once an individual has been identified as vulnerable, consideration needs to be given to the action that should be taken to provide the support they need and mitigate the risk of gambling related harm.
26. The support provided should be tailored to the individual's needs and it is therefore important that a suite of 'treatments' is developed which enables the gambling operator to ensure that the right balance is achieved between consumer choice and a firm's duty of care to their client.
27. This suite of treatments as outlined in GamCom's consultation paper<sup>9</sup> appears to cover many of the options available, but it is very difficult to contextualise how this will work in practice. What level of harm requires a medium level response vs a strong response? How would a customer's mental health have a bearing on the level of response?
28. UK Finance strongly believes that certain actions should be front ended and applied to all consumers given the speed at which an individual can lose life changing amounts of money. This includes the need to consider the individual's propensity to be vulnerable, assessing the level of discretionary income that they have available and setting an appropriate risk-based limit. This limit should also take into account the total spend limits that the customer has across the gambling sector – which would require a single customer view at industry level. At the same time, we highlight the importance of ensuring a balance with privacy protection; in line with the draft recommendations in the GamCom November 2020 consultation, consideration of thresholds which trigger intrusive data sharing / monitoring will be needed. Further details on our views on privacy issues are provided in comments 35 to 49, and on the need for an 'Affordability Check' are provided in comments 50 to 62.
29. Account usage should then be monitored, and action taken by gambling operators (across all brands within a firm and across all operators) when a consumer's behaviour or circumstances change. Where problem gambling is identified consideration should be given to reducing the amount that a customer can spend on gambling or suspending their account and with customer consent, 'hot key' referrals should be made to specialist charities that can provide support.
30. GAMSTOP and Gamban are two important components of the 'gambling harm prevention toolkit', however members advise that consumer awareness of these tools remains limited despite their

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<sup>8</sup> FCA [FG21/1 Guidance for firms on the fair treatment of vulnerable customers](#) (Table 1 Page 10) February 2021

<sup>9</sup> Gambling Commission [Consultation and Call for Evidence: remote customer interaction requirements and guidance](#) (page 11)

efforts to address this, i.e. through leveraging their proprietary channels (e.g. websites), direct referrals and in some cases partnerships which have been funded by the individuals firms.

31. Members welcome the 12-month TalkBanStop Campaign which is being funded by the Gambling Commission and recommend that the results of this initiative are taken into consideration when developing the public policy response.
32. UK Finance members also support the establishment of a sustainable funding model to cover both communications campaign and the cost of the GAMSTOP and Gamban interventions and licences. This should be paid for by a broad range of gambling operators and firms who provide (and benefit from) these gambling products, in a similar way that financial services firms advocate that the provision of independent debt advice should be paid for by all creditors who benefit from the customer receiving that advice. This may require the Government to empower the Gambling Commission to pursue alternative funding mechanisms such as a levy – which is commonplace in the financial services sector.
33. UK Finance members have in the past supported large scale consumer awareness campaigns – amplifying key public health messages such as the Home Office #YouAreNotAlone Domestic Abuse Campaign through proprietary channels and UK Finance would be open to exploring how members could support future government sponsored gambling consumer awareness campaigns.
34. Finally, further consideration needs to be given as to how (with the customer’s consent) cross sector referrals can be made simpler and more effective e.g. single point of contact for the gambling sector (akin to the Financial Services Tell Us Once Death Notification Service) for referrals made by charities or financial services firms and gambling operators to charities and/or the individual’s financial institution so that additional support can be provided.

## Data Sharing

35. There are a range of potential policy levers that can help identify and support at-risk customers, being considered by the FCA, Gambling Commission and other policy makers. However, in deciding which policy options to pursue, and in designing concrete proposals, it is important for privacy and data protection risks to be fully considered and built into policy design.
36. In particular, we are aware of suggestions that gambling operators could better identify problem gambling and support their customers if they had access to lender data on creditworthiness and / or bank account transactions, as an input into simulating some form of unsustainable or unaffordable gambling spend assessment. We have been participating in discussion of these proposals at the Steering Committee On Reciprocity (SCOR) and with the Gambling Commission. We are open to further discussing the potential for data sharing but wish to highlight that a balance between the policy goals of supporting the vulnerable and protecting consumer privacy must be achieved, with care taken to identify and mitigate risks to consumers. At a minimum, any proposals need to be proportionate, justified, and consistent with data protection regulatory requirements. We highlight below some key points that particular consideration in the policy design process.

### **Proposals should start with the problem and aim for the least intrusive solutions (‘data minimisation’)**

37. More data does not necessarily mean better results. The first step should be to assess the root cause of identified problems. For example, where firms do not comply effectively with existing rules, a fresh approach to enforcement should be prioritised over new interventions.

38. Similarly, where better use could be made of data that gambling operators already hold, this should be pursued in the first instance, rather than moving towards more sharing of data. Access to publicly held data or sharing between gambling firms (such as facilitating a 'single customer view' across gambling firms) should also be fully considered in the first instance.
39. If a strong case for accessing a wider, cross-sectoral data set is established, the datapoints to be shared should be considered carefully and kept to the minimum necessary to achieve the purpose, being focused on the problem identified. 'Flags' showing harm or vulnerability (e.g. debt repayment arrears) should be explored before considering more detailed information sharing, particularly given that vulnerability may not be determined by solely considering the financial circumstances of the individual. Similarly, consideration should be given as to the triggers for access to data on a given customer.
40. As a general principle, personal data should not be accessed / shared except when justified and proportionate. This follows the GDPR principle of 'data minimisation', under which data should only be processed when it is genuinely necessary to achieve the specific purpose; data should not be collected just in case it turns out to be useful. As well as providing a general privacy safeguard, this approach reduces impact of data breaches and reduces scope for data to be 'repurposed' for illegitimate purposes (e.g. as inputs to building more effective marketing lists).

#### **Transparency, purpose limitation and legal basis**

41. Full transparency for consumers as to data collection and use needs to be achieved in order to maintain consumer trust and to ensure GDPR compliance. Any data sharing proposal would need to include an approach that ensures clear privacy information is provided to consumers by the appropriate entities within the data sharing ecosystem and at the appropriate time: information can be made available by entities collecting data, by gambling operators and by intermediaries. New data sharing, or data sharing not expected by consumers, would require a more prominent notification.
42. Purpose limitation – under GDPR, any re-use of existing data for a new purpose can only proceed if it is 'compatible' with the original purpose for the collection of the data. Alternatively, the freely given consent of the individual can be sought. As such, attention must be paid to what individuals were initially told about their data when this was collected, as well as to other risk factors (GDPR Article 6(4)) before data sharing can occur legally.
43. Legal basis – personal data can only be processed or transferred if each firm (data controller) has an applicable 'legal basis' under GDPR Article 6. It is not clear whether such a legal basis could be established at present for the relevant entities. It is possible that a regulatory change could be required to make clear that one of the Article 6 legal bases can apply.

#### **Consider risks holistically and set up mitigations and safeguards to match**

44. A full Data Protection Impact Assessment and (if the legal basis of the sharing is 'legitimate interests' under Article 6 of GDPR) a Legitimate Interests Assessment should be completed by policy makers. These provide a framework for considering risks posed to individuals systematically and holistically.
45. We note that, depending on the nature of the proposals, there could be risks at different places within the data sharing ecosystem. These include data loss, data misuse and unexpected consequences such as an impact of individuals' credit ratings.

46. Operators must be required to implement appropriate policies and controls and be held accountable for their decisions. Enhanced regulatory oversight and sanctions may be needed, given the risk of further harm to vulnerable consumers if data from new sources are misused or compromised in a data breach.
47. The Data Protection Impact Assessment process would also provide a means to consider other data protection compliance requirements not outlined here.

### **Review by authorities**

48. We strongly recommend close discussion with the Information Commissioner's Office in relation to any proposal to increase data sharing between different sectors. Indeed, this is a requirement under GDPR Article 36 when there are high risks that cannot readily be mitigated. In particular, an ICO steer on legal basis and purpose limitation / compatibility will likely be required, as these are particularly complex considerations.
49. The Centre for Data Ethics and Innovation might also be able to provide feedback in relation to proportionality and finding a proportionate balance between privacy protection and the protection of vulnerable individuals.

### **Affordability or unsustainable gambling spend**

50. The financial services industry recognises that gambling is a discretionary spend that an individual might choose to participate in, and the amount of gambling spend can fluctuate over time.
51. Whilst financial services are not directly impacted by the Gambling Act, we recognise that unsustainable levels of gambling can lead to harm, one of which can typically be associated with wider financial problems. Even where this gambling spend does not lead to financial difficulty, the spend might affect the financial wellbeing of the customer. The Money and Pension Service has a 10-year strategy to improve the financial wellbeing of individuals<sup>10</sup>, which establishes an agenda for change to improve financial resilience through; creating a savings culture, reducing reliance on credit to pay essential bills and, planning for later life.
52. In considering gambling policy interventions, appropriate customer information where available could be used to identify triggers,
  - Where harm is already evident (such as a persistency or level of unpaid bills or credit) and/or
  - Indicators of potential future harm (such as unsustainable levels of gambling spend, or the frequency and timing of the spend)
53. These triggers can then be used through policy and regulation to ensure that operators are required to take appropriate steps to minimise the potential for harm, which could include the suspension of access to gambling.
54. Whilst gambling spend is not a contractual payment like credit agreements (where stringent regulatory controls are in place to undertake a "creditworthiness and affordability" assessment) experiences from the financial services sector could be adapted to support the identification of existing or potential gambling harm. However, we believe that the controls to be implemented by an

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<sup>10</sup> [Money and Pensions Service The UK Strategy for Financial Wellbeing 2020-2030](#)

individual gambling operator to identify “unsustainable spend” should not be misinterpreted or labelled as “affordability” as it will not necessarily be representative of the individuals’ potential spend across all gambling operators.

55. We are aware that academic research is being undertaken into how the financial wellbeing of an individual who gambles can be assessed. The consideration of a customer’s financial situation together with any known vulnerability could be used to categorise gamblers into cohorts. The categorisation of customers into such cohorts for specific policy considerations has merit, but operators would need to give careful consideration as to whether this classification could or should be applied and used operationally due to the dynamic nature of individuals’ circumstances.

### **Assessing a customer’s financial situation**

56. Use of data is an established approach to identifying potential harm in financial services, and we support an assessment as to the extent (and what data) that this might be appropriate for use in the gambling sector.
57. The use of data can support a proportionate assessment of a customer’s financial circumstances to indicate what their discretionary income might be. This assessment can be enhanced through the use of customer level data such as their credit commitments as reported on a credit reference agency, and the use of Open Banking to provide details of the customer’s transactions through their current account(s). This theoretical assessment of a disposable income can be contrasted with the customers payment profile at the credit reference agency and whether they are able to meet their debts as they fall due. The combination of this discretionary income assessment and factual payment profile to cohort customers would appear an appropriate opportunity to explore.
58. Part of the evaluation process should consider whether this approach will achieve the policy objective for different customers (e.g. employed or self-employed, individual, or household expenditure)
59. As we have already highlighted the data privacy considerations need to be understood. Given the need for data privacy, together with an ability to access and understand detailed customer sensitive information in categorising cohorts of potential harm, we would expect this to be undertaken through a regulated entity. It would be most appropriate that credit information service providers (CISPs) who are experienced (and authorised) in the controlling and processing of customer data should take a lead on this work. Gambling operators should not be able to access the underlying customer data that is used by CISPs to derive the customer cohort. The gambling operator should however not be precluded from obtaining supplementary evidence from a customer (e.g. evidence of pay slips or settlement of an outstanding county court judgement or arrears) if that is a policy requirement.
60. Whilst there is an extensive range of data available to support an assessment of the customer’s financial position, such as that held at a credit reference agency, the opportunity should be taken to consider whether additional new data sources could be made available, such as HMRC data that would provide a customer’s income tax returns.
61. To be effective in addressing harm, any gambling spend assessment should consider

- Proportionality of the assessment relative to the level of spend and harm
  - All operators in the market are required to comply
  - The customer's total market spend and spending patterns rather than at each individual operator is monitored (We understand that a database to capture total spend is being developed by the gambling sector, and analysis of behavioural gambling patterns could also be indicative of potential harm)
  - The policy relative to the categorisation (which could range from, stop the customer making any further deposits, through to no action to be taken)
  - The frequency of the review of the customers categorisation
  - Unintended consequences
62. If gambling spend and associated harms are to be considered in a similar vein to financial services, other regulatory and governance requirements evident in the financial services sector should be considered to be applied in the gambling sector (such as the Senior Managers Regime, customer redress and complaints handling)

### Protecting minors from underage gambling

63. In 2019 the Gambling Commission found that the number of young people spending their own money on gambling in the previous week had declined from 14% in 2018 to 11%. Clearly the trend is going in the right direction, but it is concerning that the same report found that 1.7% of children aged 11-16 years (i.e. 55,000 children) are categorised as Problem Gamblers and 2.7% are classified as at risk gamblers<sup>11</sup> when the minimum legal age for gambling is sixteen.
64. The financial services sector takes the financial education and protection of children extremely seriously, and many of our members have proactively stopped underage payments to gambling organisations, by blocking any debit card payment with the gambling merchant category code (MCC) originating from a child's account.
65. This provides significant protection, but it is not fool proof because Merchant Category Codes were not originally designed for this purpose. Merchant category codes are assigned by the acquirer based on the merchant's primary business activity and are most effective where transactions are aligned with this primary activity. They are less effective where transactions are not processed or classified as gambling, for example:
- A minor could purchase a chocolate bar and a National Lottery ticket in a retail outlet and (unless appropriate age validation checks are undertaken), the purchases could be processed as grocery shopping – resulting in the gambling element not being identifiable or stopped.
  - Similarly, if a minor transitions from one online game to another where gambling is not restricted, it is possible that the merchant category code applied to any payments will be 'Gaming' rather than Gambling.
66. UK Finance is exploring what steps the financial services sector and other stakeholders can take to ensure that gambling activities are processed as gambling transactions and we will be happy to keep the Government informed on developments.

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<sup>11</sup> Gambling Commission [Young People and Gambling Survey 2019](#) (page 5) October 2019

67. However, underage gambling is not an issue that the financial services sector can solve on its own and we support the introduction of additional cross-sector control measures which will add further layers of online protection and deter underage individuals participating in gambling activities. This includes recent recommendations put forward by the Children's Commissioner for:
- Enhanced online gaming age verification
  - Tailoring of the user experience to the age of the user and
  - Clarity on whether loot boxes are to be regarded as 'Gambling' going forward.
68. With regards to age verification, this must remain the responsibility of retailers and online-service providers and not be determined by the availability of a credit card as:
- Children can make use of parents' or others' credit cards and
  - Whilst under-18s cannot be held to a credit-card agreement, they can be authorised users on another primary credit-card holder's account.
69. We also note as particularly relevant the ICO's Age-Appropriate Design Code, which will apply soon to all online services, providing additional protections to children.
70. Finally, in addition to the preventative measures above it is also important that young adults receive a meaningful financial education, so that they can develop good money management behaviours which will support future financial resilience. The financial services sector makes a significant contribution to the financial education of young people, through the provision of quality assured, free, financial education materials which align to the national curriculum and can be delivered by parents and within schools across the UK. These modules cover a range of topics and recently some of the major retail banks have developed modules on gambling to help young people make informed choices which enhance their financial wellbeing. This investment is having a positive social impact, but policy makers should give further consideration to the role of parents, given that the GamCom Young People Survey found that they were typically present when the child was gambling<sup>12</sup>.

## Payments

71. GamCom implemented a ban on gambling operators taking credit card payments with effect from April 2020. Anecdotal feedback from our members suggests that this regulatory intervention has had a positive impact, but it hasn't completely eradicated credit card payments to gambling organisations.
72. Feedback from members suggests that a small number of customers are:
- choosing to gamble using 'offshore' and unregulated companies which are outside the regulatory jurisdiction of the Gambling Commission and
  - making payments for VIP subscriptions and Food/Beverages.
73. In our response to the Gambling Commission Credit Card Consultation, UK Finance noted that the credit card restriction had a very narrow focus, and we anticipated that restricting one payment method would create a waterbed effect – with customers choosing to migrate to an alternative payment mechanisms.

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<sup>12</sup> Gambling Commission [Young People and Gambling Survey 2019](#) (page 3) October 2019

74. Whilst early days, members feedback suggests that consumers are using alternative payment channels (funded by various means including debit cards, cash, or bank transfers), to pay for their gambling activities and the following trends have been noted:
- increased debit card payments and
  - increased use of e-wallets/prepaid cards.
75. Use of new and emerging payment channels, may decrease the effectiveness of the friction that some members have designed into the customer proposition and as a result some members are exploring how they can enable existing customer-initiated blocks to function in payment rails which do not utilise merchant category codes.
76. Whilst the financial services gambling blocks provide an effective additional layer of protection which complements GamBan and GAMSTOP, the introduction of financial services gambling blocks is a commercial matter for firms and their application must be customer initiated. This is critical because:
- as recognised by the Government “*customers must have the freedom to choose how they spend their money*”<sup>13</sup> and “*should take responsibility for their decisions*” as stipulated in the Financial Services and Markets Act (2000)<sup>14</sup>
  - financial services firms have a contractual and legal requirement to honour payments authorised by the customer
  - any attempt to require financial service firms to introduce a universal block on gambling payments or ‘make a judgement’ on what payments should be authorised would introduce significant moral hazard. It would also set a dangerous precedent raising the question as to where the line should be drawn on activities that are ‘harmful’ – would it for example include other addictive activities such as tobacco or alcohol sales?
77. In addition to the issues outlined above, any requirement to place credit card type bans or blocks on additional payment channels would have a significant impact on the gambling sector which the Government states provides a positive contribution to the UK economy. It is for these reasons that the financial services sector strongly recommends that the Government makes it incumbent on the operators to limit vulnerable customers’ exposure to gambling related harm.
78. We are unable to comment as to whether payments in the land-based gambling sector provide an appropriate level of protection, but our general view is that good regulation should be based on the principle of same activity, same risk, same regulation.

## Consumer Redress

79. Given the significant consumer harm associated with problem gambling, we believe that GamCom should have the necessary powers to supervise and take strong enforcement action where gambling operators (regulated and unregulated) are found to have breached their regulatory obligations and failed to protect vulnerable individuals from gambling related harm.
80. The combination of increased regulatory requirements coupled with a strong supervisory culture should create a significant shift in the provision of good consumer outcomes and where this is not

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<sup>13</sup> Review of the Gambling Act 2005 Terms of Reference and Call for Evidence 8 December 2020 (Ministerial Foreword)

<sup>14</sup> [Financial Services and Markets Act \(2000\)](#) Part 2 Chapter 1 Clause 1C(2d)

the case consumers should have access to an efficient, independent Alternative Dispute Resolution (ADR) Service.

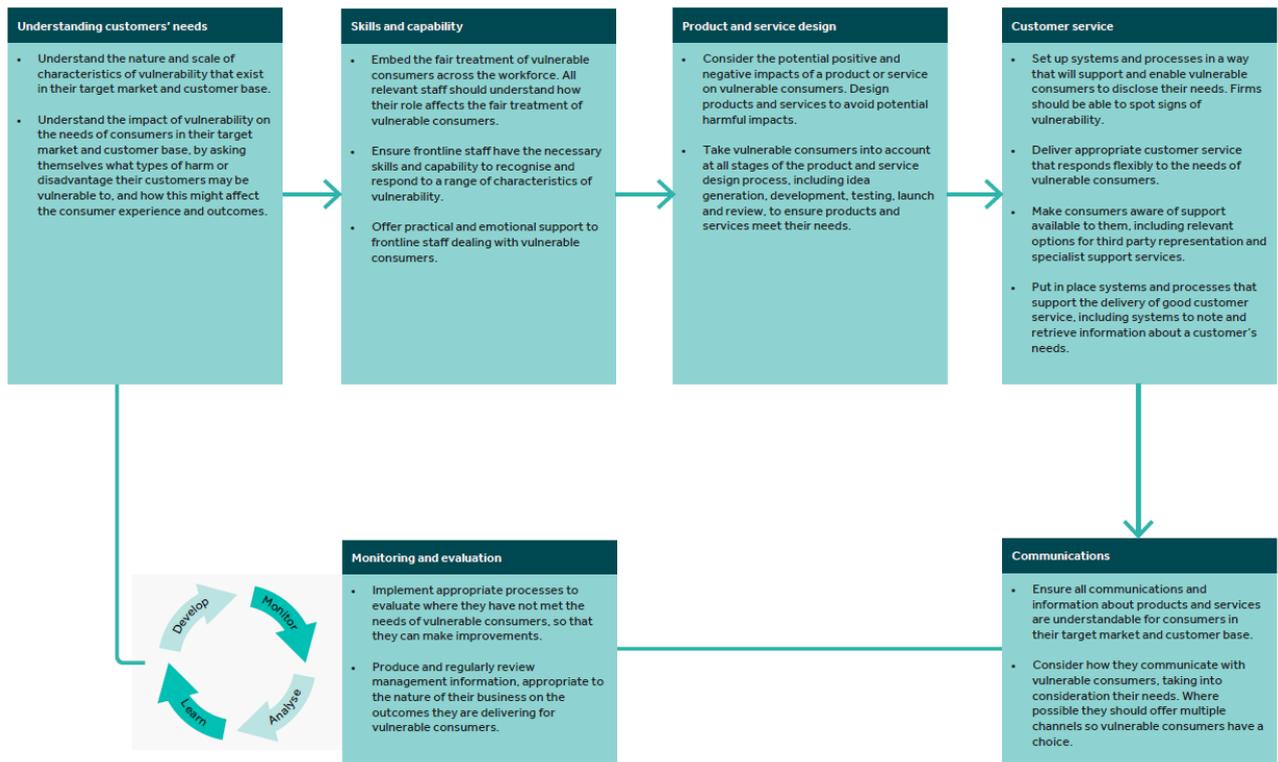
81. UK Finance strongly believes that there should be a single independent Gambling Ombudsman which considers the merits of the case, (taking into account the legislative, regulatory, or contractual requirements) and provides an independent assessment of what is fair and reasonable. The Gambling Ombudsman should also have the power to make binding decisions on gambling operators and an appropriate award threshold should be set which aligns with the consumer detriment and monetary values lost as a result of poor practice.
82. The introduction of a single Ombudsman would have the following benefits:
  - Increased consumer awareness which may lead to an increase in the number of complaints being submitted
  - Increased consistency in redress outcomes and greater visibility of the type and volume of complaints requiring resolution
  - Early sight of emerging trends– which could inform GamCom’s supervisory work
  - Potentially reduced costs as a single ombudsman may bring about economies of scale (when compared to the current 8 approved ADR providers).
83. In considering consumer redress, consideration also needs to be given to which organisations are facilitating the consumer harm, where liability lies for poor outcomes and the mechanism through which appropriate redress should be sought.
84. The FCA requires that firms lend responsibly, and our members have robust processes in place to ensure that they meet both the responsible lending and vulnerable customer requirements throughout the end to end customer journey. However, increasingly our members are seeing that customers are seeking reimbursement of their gambling spend/losses via complaints submitted to the Financial Ombudsman Service.
85. The financial services sector should not be responsible for the failings of other sectors – it is time for the liability to rest with those that are best able to prevent gambling related harm occurring in the first place.
86. Together these actions will ensure that vulnerable consumers are reimbursed where appropriate safe-guarding steps have not been taken, and secondly, operators will have more of an incentive to make sure that they embed effective processes into their business model if they are financially held to account.

In closing, UK Finance and its members understand that this is an important issue and we have an important part to play. We would be delighted to support the Government in the development of its policy proposals in this area – should that be welcome.

If you have any questions relating to this response, please contact Fiona Turner, Principal, Financial Inclusion, Capability and Vulnerability at [Fiona.turner@ukfinance.org.uk](mailto:Fiona.turner@ukfinance.org.uk).

**Eric Leenders**  
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# Appendix 1: The FCA Vulnerability Guidance Infographic



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