Social Market Foundation submission to the Gambling Commission consultation on customer interaction

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SMF Social Market Foundation

SUBMISSION TO THE GAMBLING COMMISSION CONSULTATION ON CUSTOMER INTERACTION

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About the Social Market Foundation

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INTRODUCTION

1. This document is an extended response to Question 18 of the Gambling Commission's consultation on customer interaction, namely: "What information should operators obtain, as a minimum, to satisfy themselves that their customers are not gambling beyond their means?"

   In this response, we reiterate the evidence and argument of our August 2020 report, *Gambling Review and Reform: Towards a New Regulatory Framework*, including the proposal for a standardised threshold set at £100 per month at which affordability checks should be applied across operators. We also consider new evidence which has come to light since the publication of our report.

2. While this document focuses on the key issue of affordability contained in Question 18, it also provides evidence which relates to the following three questions of the consultation:

   - Question 16: What additional evidence should the Commission consider in relation to the harms associated with gambling that is not affordable?
   - Question 17: What additional evidence or information should the Commission consider in setting thresholds for affordability assessments?
   - Question 19: How would consumers react to a handbrake or hard stop requirement, where the operator is required to prevent further gambling unless an affordability assessment is undertaken and shows that the level of gambling is affordable?

3. Our response is divided into three sections:

   - Why Affordability?
   - Why £100?
   - What is to be done?

   In Section 1, 'Why Affordability?', we examine the issues of consumer protection, harm prevention, economic agency and the role of the regulator. We assess industry attitudes to affordability, reasons for reform and insights from lived experience. In Section 2, 'Why £100?', we reiterate the position of our August 2020 report and provide supporting evidence for a standardised and multi-operator affordability threshold set at £100 of losses per month. In Section 3, 'What is to be done?', we look at the technical considerations and challenges around questions of process in implementing this threshold, in particular the question of consumer data.

4. We argue that:

   - A wide range of evidence supports the introduction of a threshold set at £100 of losses per month, at which standardised affordability checks should be applied across operators;
   - These checks should be a non-intrusive process, and should be based on the data already held and the customer due diligence processes already carried out by most remote operators on their customers. Furthermore, the £100 threshold should *not* be understood as a hard limit on monthly spend;

- Because most gamblers lose far less than £100 per month, these affordability checks would be invisible to the majority of consumers while at the same time protecting the most vulnerable in our society from financial harm;
- These affordability checks would only apply to remote betting and gaming, not land-based gambling;
- Until last year, remote gambling industry leaders publicly advocated affordability as a “key” mechanism to reducing gambling-related harm, arguing that this mechanism should be “joined-up” across operators and standardised, ideally with a “single customer view” on sources of consumer income and wealth. It is only recently that the industry has changed its position to argue against affordability checks;
- The argument that enhanced regulation of affordability equates to nanny statism because, in the words of one industry leader, it amounts to a “fundamental ethical issue” of “intrusion into personal affairs”[1] makes no sense, because data on consumers already exists, is already controlled by operators for the purpose of commercial advantage as well as harm prevention, is already shared with third parties (such as credit reference agencies), often without consumer knowledge, and source of funds checks are already imposed by many operators, including when consumers withdraw winnings;
- A standardised affordability threshold requires independent oversight of existing operator data on consumers. Specifically, consumer data currently controlled by operators should be shared with an independent third party which would have oversight of affordability: a new gambling ombudsman;
- Questions of data should continue to be the subject of joint dialogue between both the Gambling Commission and the Information Commissioner’s Office in their assessment of Single Customer View and data privacy (as per the January 2021 ICO Sandbox announcement[2]), and no final decisions on affordability should be made until these joint dialogues have reached a conclusion;
- Any future affordability threshold should not be just “guidance” left to operators as part of a “manual” to LCCP, but its compliance should be mandated, monitored and enforced independently as a condition to licence in Great Britain.

WHY AFFORDABILITY?

5. Affordability is not an unambiguous concept. While it is understood that a commodity or service is unaffordable when it costs more than an overall budget, there are many ways of determining what a budget means. When used in a specific environment, it is inevitable that ‘affordability’ will have contrasting meanings, understandings and applications. Different areas of the economy are comprised of different market conditions, and there will always be subjective preferences on how much should be spent on a particular commodity or service. We are also aware that the question of affordability is a complex and controversial one because it touches upon the extent to which the spending, and therefore the economic agency, of an individual in a free market is limited by the state.

6. We believe that individuals should be at liberty to gamble as self-determining agents within a free market. We recognise that it is inevitable that gamblers will sometimes spend more than they can afford, and that irrational decision-making and impulsivity is an inherent characteristic of gambling.

7. However, when that activity becomes disproportionately more costly than an income allows, making gambling not just unaffordable but also a precipitant of harm, then it is not unreasonable to suggest that the risk of harm should be mitigated by the protective intervention of regulation. Numerous studies indicate that remote gaming content has specific causal and correlative associations with more extreme types of loss-chasing behaviour and disordered gambling, because of the rapid speed and higher stakes involved with online games.[3]

8. The Gambling Commission states that evidence shows how "there is a large-scale issue with remote gamblers betting more than they can afford to lose and experiencing issues with their gambling. The 2018 Health Survey for England, a large-scale face-to-face survey which employs both the PGSI and DSM-IV problem gambling screening instruments, found that of those who had gambled online (on slots, casino or bingo games) in the past year, 21% had bet more than they can afford at least sometimes... In addition, HSE 2018 found that 71% of those classified as problem gamblers or moderate risk on at least one screen said they had bet more than they can afford at least sometimes. This figure fell to 1% of past-year gamblers who were not problem or moderate risk gamblers. This indicates that gambling within one's means is a reasonable way of discriminating between those who are problem or moderate risk gamblers and those that are not."

9. The Gambling Commission expects operators to interact in a way "which minimises the risk of customers experiencing harms associated with gambling – by identifying customers who may be at risk of harm, interacting with those customers, and understanding the impact on the customer and of their overall approach" as part of the social responsibility code provisions in the Licence Conditions and Codes of Practice. Noting that operators are not acting sufficiently quickly or effectively to minimise harm, the Commission proposes retaining the existing LCCP requirement to deliver interaction in a way which minimises the risk of customers experiencing harms associated with gambling, and adds that "licensees must conduct affordability assessments at the level specified in this provision following the call for evidence. The definition of relevant affordability assessments will be provided – and different types of assessments may be set at different levels."

10. Similarly, the Gambling Related Harm APPG has referred to affordability being a key factor in protecting people from harm. The APPG states that "online gambling companies oppose stake limits. The operators have reported to us that stake limits are not needed as they have data to identify those who are at risk of harm or gambling beyond their means." But "when we asked operators about what was an affordable level of gambling for an individual," the APPG notes that "they all reported that they did not yet have a clear view of what that was. This is inconsistent with operators saying that they do not need online stake limits as they have the data to assess where gamblers are at risk and gambling more than they can afford."[4]

11. In other words, remote gambling operators claim that their systems can detect patterns of problem gambling and can intervene when someone is spending more than they can afford, yet there is no industry-wide accepted definition of affordability. This means that interventions are left to the discretion of a particular operator, rather than being applied as a regulatory standard.

12. Expert analysts of the gambling industry have, in the past, echoed the position of the Gambling Commission and the Gambling Related Harm APPG. For example, the advisory group Regulus Partners argued in January 2020 that "undoubtedly, there is a

strong logic for regulating affordability," adding that "it is, rightly, becoming an increasing area of focus for the regulator and industry."[5]

13. Industry leaders have also advocated checks on affordability as the most effective way of preventing harm. In 2019, the chief executives of the largest remote gambling operators in the UK – with the exception of GVC (now Entain) – attended an oral evidence session of the Gambling Related Harm APPG. When asked by the Chair of the APPG why they had not introduced limits to stakes on their remote content, these industry leaders argued that they were able to monitor gambling behaviour, detect problematic gambling and determine what an individual's level of affordability might be, including 'Source of Funds' checks when a customer hits a certain threshold.[6]

14. It should be noted that while these operators endorsed the *principle* of affordability checks at this session, they did not propose a specific *amount* that could be applied as an affordability threshold. When asked by Gerald Jones MP what would be the affordable level of losses for someone on an average salary, over a year, the operators replied that "they are working on a solution."[7]

15. This show of industry support for affordability at the Gambling Related Harm APPG was repeated in evidence sessions for the House of Lords Select Committee on the Social and Economic Impact of the Gambling Industry. During the Lords Inquiry, the Chief Executive of Paddy Power Betfair stated that "what is incumbent on us, and where we need to work with the [Gambling Act] Review to shape the regulation, is to ensure that protections are put in place for players that makes play affordable for them", advocating options to "develop a joined-up picture of affordability" across the gambling industry.[8] Likewise, the Chief Executive of GVC, Kenny Alexander, told the House of Lords Select Committee that "affordability is absolutely key. There is a huge desire for the industry to get to a standard view among all licensed operators, all using the same affordability checks, all agreeing and making the same decision about an individual player if they were to come to that business… There should be a single standard view for looking at the affordability of players for all licensed operators". Alexander concluded that "If we can address it and get it right, I think that the number of problem gamblers in existence today – a magnitude of about 400,000 – will come down."[9]

16. To summarise: in 2019 and 2020, the leaders of the British remote gambling industry advocated affordability as a "key" mechanism to reducing gambling-related harm; they argued that this mechanism should be "joined-up" across operators and standardised, ideally with a "single customer view"; and that this standardised multi-operator affordability mechanism should include information about sources of consumer income and wealth.

17. Affordability as a mechanism of harm prevention is also backed by public opinion. When asked whether "there should be limits on how much money consumers can deposit into online gambling accounts", Survation polling shows that 82% of respondents agree, a view consistent across both Labour and Conservative voters.[10]

18. This view is also echoed by a recent survey of people with lived experience of problem gambling for TalkGEN, a non-profit organisation. While the TalkGEN sample is small – 133 people – it includes useful insights into the attitudes of a hard-to-reach cohort. From a quantitative perspective, it is perhaps inevitable that the majority of this cohort proves, when surveyed, to be in favour of affordability checks as a means to reduce harm. But from a qualitative perspective it is useful to read the individual responses. For example, one respondent said that "if [affordability checks] were introduced early

on in my gambling career then maybe I would have saved a lot of damage"; another said that "I wouldn't have been happy, because I believed I was in control, but in hindsight it would have made a huge difference to my life. I would often gamble away a month's salary within minutes of waking up on payday. That's clearly not affordable. If my gambling was then limited the damage would have been limited. It seems to me to be a simple correlation."[11]

19. Furthermore, affordability checks are not an abstract concept or aspiration. As stated in the evidence given by industry leaders to the Gambling Related Harm APPG, remote operators already have the data and the technological means to implement checks on consumer spend and deposits. Operators also already conduct enhanced due diligence checks on the withdrawal of winnings. These checks are conducted both internally by the operators themselves and also by third parties including fraud prevention systems such as Iovation, credit agencies such as Experian, screening platforms such as W2Global and BeBettor, and open banking intelligence platforms such as Ducit. For example, Rank Group have trialled affordability modelling in partnership with Experian to examine the potential use of open banking to improve systems of customer due diligence. And Experian's Open Banking service allows operators to access consumer data such as disposable income, weekly income and expenditure.

20. Gambling regulators in other countries have also explored different types of threshold for affordability. For example, Sweden imposed a temporary cap on remote casino deposits during the first wave of the Covid-19 crisis in 2020, set at SEK5000 per week (around £1850 per month).[12] And Germany has recently set a 1000€ per month cross-operator limit on remote deposits as part of the new German Interstate Treaty on Gambling, with compliance monitored by a central "limit control file".[13]

21. Each of these interventions are based on a premise that gambling spend is linked to gambling-related harm, and that the prevention of harm can be achieved (in part) by limiting unaffordable spend. Yet despite this, the position of some observers has recently shifted away from the former endorsement of affordability checks as a mechanism of harm reduction. For example, Regulus Partners wrote in a July 2020 blog that "the danger is that the genie is now out of the bottle and that public health lobbyists will seek to use 'affordability' to push through mandatory (population-level) limits on expenditure – whether in absolute terms (the ABSG has hinted at statutory loss-limits as a possible "affordability" solution); or in relative terms (others have suggested that gambling expenditure should be limited to 5% of a person's income)", concluding that "this is radical and intrusive". Regulus agree that "it is reasonable to suggest that preventing people from spending time and money gambling that they cannot afford is the very essence of harm prevention," but argue that the Gambling Commission risks confusing "affordability" with "unaffordability". The latter, they say, "describes a level of consumption that requires – or is likely in time to require – the use of essential resources, debt or criminally procured funds. By contrast, the notion of affordability – because it is so loosely defined – lends itself to the idea of 'permitted expenditure' or how much people should be allowed to gamble". This is despite the fact that Regulus argued, only six months previously, that "undoubtedly, there is a strong logic for regulating affordability".

22. The Betting and Gaming Council have also shifted from the position previously held by its own members. Despite the fact that in 2019 and 2020 the chief executives of the major remote operators endorsed "joined-up" affordability checks as a "key" mechanism to reduce gambling harm, the BGC response to our August 2020 report stated that "[their members] already carry out robust and improved affordability

checks... We disagree with the suggestion of an arbitrary and random low cap on spending and can think of no other area of the economy where the government determines how much an individual can spend."[14] This view has since been echoed by an industry leader who recently stated that affordability touches on a "fundamental ethical issue" of "intrusion into personal affairs".[15]

23. We argue that this recent *volte-face* in industry thinking amounts to an ideological response to a technical question. In 2019 and 2020, remote operators were debating the question of affordability in technical terms of data: what kind of data was required to prevent harm and how (from both an operational and legal perspective) this data could be shared while maintaining customer privacy. Since Summer 2020, the industry position has drifted from these technical questions and has increasingly focussed on an essentially philosophical narrative of consumer freedom and the nanny state.

24. Philosophically speaking, the debate over freedom in the market is not new when it comes to the question of gambling reform. The same debate was had during the campaign to limit the maximum stake of Fixed Odds Betting Terminals, when free market think tanks like the Adam Smith Institute and the Institute of Economic Affairs accused reformist MPs of "paternalism". Similarly, when George Bush Senior introduced a limit to sports betting with the Professional and Amateur Sports Protection Act in 1992, he too was accused of paternalism[16] – a term typically used by libertarians to label someone anti-market.

25. The libertarian position is essentially this: markets thrive through the balancing effects of corporate self-interest and consumer choice rather than through government intervention. This is Adam Smith's 'invisible hand' which guides and guarantees for each agent in the market "his own security" through "his own gain."[17] Regulation leads to a collapse in freedom and a rise in prices. This applies even to markets of potential harm:[18] in the words of Milton Friedman in *Free to Choose*, "there is no place for government to prohibit consumers from buying products the effect of which will be to harm themselves."[19]

26. Friedman's position on the question of market freedom and harm was encapsulated in an exchange he had about automobile safety while promoting *Free to Choose* on the Phil Donahue Show in 1979. Given the freedom to choose between a safe or unsafe car, he said, consumers do not need government to regulate the market. The demand for safer cars, if desired, will lead to greater supply: "if the public at large really wanted to buy safely rather than cosmetics", he argued, "it would be in the self-interest of the automobile dealer to sell them safely. You have had some automobile companies that have concentrated on selling safety and they have not done very well in the sales."

27. This argument applies to the choice of a consumer in a market of commodities such as automobiles. It is based on the old-fashioned principle of one-way traffic between demand and supply. In today's data-driven economy – which Harvard professor Shoshana Zuboff has called 'the Age of Surveillance Capitalism' – this one-way view of transactional relationships no longer applies. A service or commodity in the digital market is not just an expression of consumer choice; it is also an act of yielding data about that choice to the provider of the service or commodity. Data itself becomes monetised and used (through processes of interaction and inducement) to influence and restrict consumer choice. In this way, consumer agency (freedom) becomes dislocated from consumer identity (data). The product is no longer something to be chosen, like an automobile; the product *is* the interaction itself.

28. New research from the Behavioural Insights Team on gambling demonstrates this process in action. For example, a BIT study has found that by removing industry-set options for deposit limits, and presented with a blank box instead, online gamblers reduce the amount they set for themselves by up to 46%.[20]

29. Remote gambling operators control significant amounts of data on their customers, and this data is often made commercially available. Many remote gambling operators will engage in 'cookie syncing' with third parties such as marketing companies and fraud detection companies, sometimes without consumer knowledge or consent. Consumer data is integrated in the 'invisible processing' of modelling and analytics in order to build individual and socio-demographic profiles designed to map the financial opportunities and vulnerabilities of a customer journey. We touch on this journey in more detail in Section 3.

30. This is how, in the words of Zuboff, "surveillance capitalism departs from market capitalism". While surveillance capitalists are like market capitalists in that they demand 'freedom to' pursue their own practices and promote their own products, while "aggressively asserting the necessity of their 'freedom from' law and regulation", Zuboff argues that "when it comes to surveillance capitalist operations, the 'market' is no longer invisible, certainly not in the way that Smith or Hayek imagined. The competitive struggle among surveillance capitalists produces the compulsion toward totality. Total information tends toward certainty and the promise of guaranteed outcomes." She concludes, "this is a fundamental reversal of the classic ideal of the 'market' as intrinsically unknowable. Recall Mark Zuckerberg's boast that Facebook would know every book, film, and song a person had ever consumed and that its predictive models would tell you what bar to go to when you arrive in a strange city, where the bartender would have your favourite drink waiting."[21]

31. In other words, at the heart of the question over consumer affordability is the question of consumer data: data as the mechanism by which operators control – and restrict – both consumer identity and economic agency through interaction. In this context, libertarian accusations of intrusion do not hold water. Intrusion has already happened from the beginning of the customer journey. And operators, through internal systems of consumer profiling and the sharing of these profiles with third parties through mechanisms such as cookie syncing, already capture from their customers a framework of affordability which they can choose to apply either for the purpose of harm prevention or for commercial gain. When it comes to the ecosystem of surveillance capitalism, remote gambling operators are at the top of the food chain.

32. For these reasons, we argue that the question "Why Affordability?" should be brought back from the ideological narrative put together by the industry in recent months and returned to its proper technical basis. The question "Why Affordability?" should instead be understood in these terms: "who or what should have oversight of the affordability mechanisms which are already conducted and controlled by the remote gambling industry, based on data which that industry has already extracted from its customers?" This reframes the terms of the Gambling Commission's call for evidence on affordability thresholds and action, specifically the Commission's questions on "where should thresholds be set for affordability assessments to get the right balance between consumer freedom and privacy, and consumer protection?" and how remote operators can "conduct specified forms of affordability assessments at thresholds that would be set by the Commission."

WHY £100?

33. In our August 2020 report, we argued for the introduction of a standardised affordability threshold set at £100 per month at which customer due diligence checks should be applied across operators. This £100 figure is not “arbitrary and random” (to use the words of the Betting and Gaming Council), but rather is supported by a range of evidence.

34. First, the Gambling Commission states that it has updated its customer interaction guidance to reiterate that operators should “consider” affordability when setting threshold levels for interaction, by looking at population level data about discretionary income. The Commission also states that thresholds are not consistent across operators and are often set too high, noting that “when population level income data is taken into account, many operators consider that the entirety of an individual’s discretionary income (or in some cases disposable income) should be available for gambling.” By looking at discretionary income per calendar month according to a YouGov survey of 128,000 people, the Commission notes that the highest number of responses specified a discretionary income of less than £125 per month. The Commission also shows that those who gamble online spend on average £57 per month.

35. This figure of ≤£125 reflects the disposable income data in the Commission’s Enforcement Report 2018/19, which indicates that the majority of the population have disposable income of less than £500 per month, with a discretionary income of less than that. The report states that “for each age group, the data suggests that most of the panel members have disposable income per month from a figure less than £125 up to £499. This is equivalent to less than £1,500 per year and £6,000 per year. However, even these disposable income figures do not take into consideration unavoidable monthly costs or annual costs such as transport, fuel, monthly contractual payments (mobile phones, cars, life insurance etc), vehicle maintenance (service, repairs and MOT), clothing and personal care.”[22]

36. In our August 2020 report, we arrived at a similar figure of affordability to that of the Gambling Commission through an assessment of Minimum Income Standards (MIS), whereby income is framed within the context of an acceptable standard of living. A Minimum Income Standard builds upon the residual income approach, as well as family budget standards, by defining a commodity as affordable if a household is able to meet its other basic or essential needs after paying for that commodity in order to reach a socially acceptable standard of living.[23] A residual income approach, which has been used to calculate affordability in other sectors such as rent and housing,[24] shows how household expenditure reflects an ability to pay for things, it is comprehensive as it controls for different types of households, and it serves as an indicator of deprivation. When supplemented with MIS, income is framed within the context of living standards and therefore the adequacy of income is also assessed.

37. A socially acceptable model of affordability is only fit for purpose if it captures different income indices. Because gambling has a socio-economic gradient,[25] so too should a gambling-related model of affordability. We argue that household residual income should form the basis of a working definition of affordability so that different types of families can be accommodated, especially those which might be at risk of deprivation.

38. According to the Office for National Statistics, disposable income is the most widely used measurement of the amount of money that households have available for

spending after direct taxes have been deducted. This includes earnings from employment, private pensions and investments, as well as cash benefits provided by the state.[26] In terms of understanding low income, 'households that fall below average income' is a reference for inequality. However, because some households are unable to reach a socially acceptable standard of living, it is also important to consider the application of income. The Minimum Income Standard is calculated by the Centre for Research in Social Policy at Loughborough University and is supported by the Joseph Rowntree Foundation to reflect what the public thinks is a minimum living standard. It is used to understand the adequacy of income levels in the UK today,[27] has been adopted by the Living Wage Foundation to calculate the Living Wage,[28] has been used to support a High Court ruling on asylum seekers' benefits,[29] and has been used to consolidate residual income approaches across different sectors. By representing a budget standard comprised of a list of costed items, such as food, council tax, clothes, travel and rent, MIS establishes a threshold below which households will struggle to have the goods and services needed to properly participate in society. MIS represents the 'floor amount' of what people can spend (on anything) in a socially acceptable way.

39. We adopted the MIS budget for 'social and cultural participation' (comprised of leisure goods, pets, entertainment and recreation, TV licence and rental, and holidays) in order to determine a budget for gambling.[30] As gambling is regarded as being part of the hospitality, retail and leisure sector, and is regulated and legislated as a cultural industry, we argued that it is legitimate for the MIS budget set aside for 'social and cultural participation' to be allocated to gambling.

40. According to this budget, the lowest weekly amount (which corresponds to a single pensioner household) needed for people to spend on gambling in order to push their household from a socially acceptable standing of living into having an amount that meets the MIS poverty line is calculated at £45.[31] We therefore argued in our report that £45 per week would be an affordable amount of spending on gambling for households to ensure that they do not put themselves into serious financial jeopardy.

41. However, a model of affordability should not exist simply to prevent people from the worst-case scenario of reaching poverty. It should also identify how gambling expenditure might impact disposable income in an everyday sense, protecting people from spending beyond their and their family's means without necessarily amounting to severe hardship. For many households, this gambling budget (as per the MIS social and cultural activities budget) is lower than £45 per week. By analysing each type of household individually, we concluded that the lowest budget is set at £23 per week, or £100 per month.[32]

42. In other words, our affordability model proposed a gambling budget for different family types according to Minimum Income Standards. The model identifies a threshold at which gambling expenditure (as defined by individual spend on social and cultural participation) would affect a household's disposable income and the essential needs necessary to achieving a socially acceptable standard of living.

43. In addition to the Commission's work on discretionary income and the Social Market Foundation's work on Minimum Income Standards, the case for a £100 affordability threshold is supported by other evidence. For example, a study by Forrest and McHale of the University of Liverpool found that 73% of slots players and 85% of non-slots players had a monthly loss of £50 or less. They state: "while harm can be found among low- as well as high-level gamblers, an expenditure of £50 per month is by no means remarkable across leisure pursuits."[33]

44. Similarly, this figure of ≤£100 is supported by PWC's recent report on the black market for the Betting and Gaming Council, which categorises "low spend" among gamblers as "less than £25 total spend per month", "medium spend" as £25-£75, and "high spend" as more than £75.[34] In fact, taking both Forrest and McHale's figure of £50 per month, and PWC's figure of £75 per month, it is clear that the £100 affordability threshold proposed in our report is at the upper end of the spectrum of most consumers' average gambling spend.

45. It is also reinforced by the findings of a recent survey of Lloyds bank data published by researchers from the universities of Oxford and Warwick. This study examined the association between gambling as a proportion of monthly spend and a set of financial, social and health harm outcomes using anonymous data from a random sample of 102,195 customers in a dataset of 6.5 million individuals, and ascertained that "for many of the outcome variables, the association with gambling is notably stronger at high percentile ranks approximately above the 75th percentile (which equates to ~3.6% of total monthly expenditure)"[35] – a figure which is equivalent to around £90 for the average household. The Lloyds data represents total spend rather than net deposits, indicating that a more accurate figure at which an affordability threshold should be set to prevent harm might actually be *below* £100 per month.

46. It is important to highlight the fact that money deposited is different from money lost, and that losses are different from stakes. When multiplied by a factor of 20 (based on the fact that remote Gross Gambling Yield is 5% of remote gambling turnover), our proposed monthly threshold of £100 equates to £2000 of stakes. This represents an annual staking activity of £24000 – almost equal to the median take-home earnings of a full-time worker in the UK.[36]

47. Based on this wide range of evidence, we argue that the right amount at which a standardised affordability threshold should be set across operators for losses is £100 per month. Any more than £100 would be an infringement on other spending necessities for some households according to an analysis of discretionary income and Minimum Income Standards, leading to the potential for harm. At the same time, £100 is higher than the amount spent by the majority of gamblers, according to ONS estimates, academic research and the recent PWC report on the black market. In other words, we argue that a £100 threshold would be invisible to the majority of consumers while at the same time protecting the most vulnerable in our society.

48. In our report, we remained conscious of the debate about freedom in the market and the so-called "nanny state". For this reason we were clear from the outset that our £100 affordability model should be a customer due diligence threshold, not a spending limit. For spending up to that threshold, we concur with the Gambling Commission that it is not realistic for deposits to be checked beyond the minimum requirements of identity and age verification. Once the threshold is crossed, we argue that enhanced customer due diligence checks should be conducted based on the data which is already held and the processes which are already carried out by individual operators. A £100 monthly customer due diligence threshold on losses would not be an "intrusion" on the average gambler's expenditure. It sets the bar low enough to protect everyone, including those on low income, but is high enough to accommodate the vast majority of gambling activity among the general population. These checks should be as invisible and non-intrusive to the customer as possible. To borrow again from the words of Adam Smith: we envisage the £100 affordability threshold to be an "invisible hand" in the remote gambling marketplace.

WHAT IS TO BE DONE?

49. The Gambling Commission states that the "evidence to date would not indicate that it would be proportionate to require customers to be subjected to affordability assessments for small, infrequent gambling at a level which would be affordable to most of the population, or where gambling at those levels is extremely unlikely to cause financial hardship." The Commission continues: "We would not necessarily consider it proportionate that an affordability assessment is undertaken on all customers but operators should certainly be gathering data throughout the life of the customer relationship, starting from the point of registration... We are proposing that an affordability assessment is undertaken if certain loss thresholds are reached. Operators would then be expected to take appropriate action based on the result of the assessment." The Commission adds that "we anticipate that the majority of affordability assessments will be supported by the use of third party providers, to validate or supplement information collected from customers directly" and concludes, "measures to protect consumers from unaffordable online gambling would be most effective in a 'single customer view facility' to allow an individual's total online gambling to be assessed through a central system… We continue to monitor progress and provide regulatory perspective along with the Information Commissioner's Office".

50. We agree with the Commission's position that an affordability assessment should only be undertaken once certain loss thresholds are reached. In Section 2 we argued that, based on the body of evidence, this threshold should be set at £100 per month. However, we disagree that the "appropriate action" triggered by this threshold should then be left as an "expectation" of operators. Action should be standardised across operators and mandated as an unequivocal requirement, not an expectation, of social responsibility as part of the LCCP. We agree with the principle of a central system of data in order to ensure the effectiveness of this standardisation, and the need to coordinate the Commission's work in this area with the ICO. We do not agree that "third party providers" such as credit reference agencies should be the mechanism through which these affordability assessments are integrated into a central system of data, for reasons which we outline below. At the same time, we do not believe that the grip of big business on consumer data should be replaced by the grip of the big state. Instead, we propose an independent third party with statutory authority equal to that of the Gambling Commission, which would operate between consumers, the market and the state: a new gambling ombudsman.

51. In Section 1 of this document, we outlined how the libertarian argument against affordability is based on a premise that such checks would amount to "personal intrusion". This premise is false, because gambling operators already have data on their customers, and this data is often used in ways that many individual customers would not predict. For instance, operators expressly state that they make their data "commercially available",[37] yet what this means in practice is hard for customers to know and might even run counter to the norms of data protection.

52. Furthermore, operators share data with third parties such as Experian, a company that the ICO has taken enforcement action against for their "invisible processing" practices.[38] It is not known what steps operators took following this action by the ICO, despite their obligations to handle data securely.

53. A good example of the relationship between remote operators and credit reference agencies can be seen in the marketing of an “affordability solution for gaming” by TransUnion, owner of fraud detection and device intelligence provider Iovation. TransUnion states that “in March 2018, the Gambling Commission announced guidelines to protect vulnerable gamblers. The Regulator is likely to increase focus on these affordability policies in 2019 and beyond. As in other industries, gaming operators that get ahead of regulation changes are more likely to gain an edge on competitors, protect their vulnerable customers and commercial performance”. The company offers “cutting-edge modelling and analytics to provide a simple, transparent solution. It uses individual-level financial data … along with socio-demographic data and property data. The solution will help you gauge the financial stress and vulnerability of your players throughout the customer journey, with minimal impact to the customer experience.” Specifically, the “demographic and income sustainability indicators” which are advertised include: debt levels and credit appetite, available income, and lifestyle.[39]

54. Many remote gambling operators also engage in the exchange of tracking data (known as ‘cookie syncing’) with third parties such as marketing companies and fraud detection and device intelligence companies, sometimes without the customer’s knowledge or consent. The manner in which cookie syncing works in the wider behavioural advertising ecosystem is subject to scrutiny by regulators in the UK and across Europe,[40] with the ICO already finding such practices to be “non-compliant” with data protection norms.

55. In addition to this, remote gambling operators also conduct checks on ID and source of funds when customers want to withdraw their winnings, as part of “online fraud and money laundering prevention procedures.” Withdrawal verification processes might require proof of photographic ID, proof of address, proof of source of funds or even “notarised documentation” – documents approved and stamped by a notary or solicitor.[41]

56. The extent of customer data held by individual operators was highlighted in the evidence given by the chief executives of Britain’s largest remote operators to both the Gambling Related Harm APPG and the House of Lord Select Committee Inquiry. In March 2020 the chief executive of William Hill said that “we do extensive customer due diligence and source of funds checks.” Similarly, in 2019 the chief executives of four major operators gave evidence at the Gambling Related Harm APPG which stated that they were able to monitor gambling behaviour, detect problematic gambling and determine what an individual’s level of affordability might be, including ‘Source of Funds’ checks when a customer hits a certain threshold. And these same industry leaders provided oral evidence at the House of Lords Select Committee Inquiry which claimed that “in a retail betting shop, betting is largely anonymous: you walk in and tend to bet in cash, and there is no record of who the customer is. In an online environment, we have a significant amount of data. We know all their age data and who they are, as well as their play data” – adding that this is “to ensure that protections are put in for players so that they bet in a way that is affordable for them, that we use the data we have as operators in a consistent and coherent way to protect those players.”[42]

57. Despite the fact that operators have “a huge amount of data on our customers” and “a vast amount of information on play”, these industry leaders told the House of Lords Select Committee that they “could not” share their data with other operators. For this reason, the Lords Committee recommended that the Gambling Commission should

work in conjunction with the Information Commissioner's Office to establish a framework whereby remote operators could share affordability data.

58. We recognise that such data will inevitably contain commercially sensitive material, and that regulation would not necessarily benefit from this data being made available to the public domain. Because of the zero-sum competition that defines the gambling market, the required data pool that would allow for information sharing does not exist. Operators fear that giving up their data would mean giving up a market advantage, particularly if there is no guarantee that their competitor will do the same. There is therefore a clear need for an independent third party which has full access to industry data without exposing this data to commercial competitors or the public domain.

59. The need for a shared framework of operator data was also highlighted by the Government in a letter from the Minister of Sport, Nigel Huddleston, sent to the Chief Executive of the Betting and Gaming Council to address concerns about problem gambling during the first COVID-19 lockdown in 2020. During the lockdown, the Gambling Commission issued advice to operators that they should review patterns of play and spend, and conduct affordability assessments of their customer base. In his letter, the Minister stated that "it is essential that the Government and the regulator have access to up-to-date information and granular detail on gambling habits and potential harms during the time of heightened risk. You will today be receiving a data request from the Gambling Commission which will allow us to make a full assessment of the impact of the current situation. Fulfilling this request comprehensively and quickly should be a priority for your organisations".[43]

60. While concurring with the Minister's main message, we would argue that data sharing should not be left as a "request" to be fulfilled at the discretion of individual operators. Affordability can only work if it is implemented across operators and if data is shared in a standardised fashion. This requires a third party which can liaise between both the Financial Conduct Authority (in order to access enhanced data) and the Information Commissioner's Office (in order to protect privacy), as well as credit referencing agencies and banks. The sharing of data should be a regulatory requirement. It should not be left to what currently amounts as self-regulation.

61. It is clear that a credit reference agency would not be an appropriate or independent third party depository for the purposes of sharing standardised remote gambling data. This is for three reasons. First, the practices of processing, tracking and matching data by such "market participants" has already been investigated by the ICO;[44] how these companies use remote gambling data is an ongoing question for both the ICO and privacy organisations.[45] Experience from the ICO and Privacy International suggests that consumers should be concerned about how their data is used, the transparency over the use of that data and whether they will be able to effectively assert rights over the information about themselves.

62. Second, gambling companies and credit reference agencies have a commercial incentive to maximise data use for wider ends beyond the confines of affordability checks. This is clearly a conflict of interest.

63. Third, concerns over the exploitation of data for commercial ends become particularly acute at the point when data about vulnerabilities is shared. Such data is sensitive and subject to special protections in the data protection regime under Article 9 of GDPR. Indeed, the sharing of such data is prohibited unless exemptions apply. In practice, this means that sharing is likely to be prohibited unless a user provides consent. By providing an extraneous basis for sharing such data between credit reference

agencies and gambling operators, on the basis of a legal obligation, data subjects may lose protections in the data protection regime.

64. For these reasons, we argue that an effective affordability model should adopt the same existing processes of data modelling and analytics already conducted by remote operators and credit reference agencies, but that these processes should be overseen by an independent third party which does not incentivise further data collection. This independent third party should put transparency and accountability at the core of its oversight, and should serve the consumer alone. Credit reference agencies are unable to perform that role given their wider business models and existing relationships with gambing operators.

65. In our August 2020 report, we proposed that the most suitable third party depository for remote operator affordability data would be a new Gambling Ombudsman. This ombudsman would be a public agency with statutory authority, and would provide a formal, independent point of liaison between the Gambling Commission and the ICO, consumers, remote gambling operators, credit agencies and banks in order to maintain and protect customer data 'under one roof'. It would also ensure that the ombudsman already has full access to the information needed to make an independent assessment of potential consumer complaints.

66. Finally, we believe that it is crucial that the complex and controversial question of remote gambling data is properly assessed in the context of wider government and regulatory initiatives. Recently, the ICO and the Gambling Commission have announced a joint programme to explore the development of a Single Customer View for online players, stating that "the Commission recognises there is risk around any new form of data use and so is working with the ICO to ensure the SCV is delivered in a way which puts data security and the interests of the public and players as the absolute priority."[46] Similarly, the Government is exploring legal and regulatory questions around the development of digital identity.[47] The Government has also recently published a response to the Online Harms White Paper public consultation.[48] And the Competition and Markets Authority is investigating ways in which algorithmic systems which lack transparency can reduce competition and harm consumers.[49] Each of these interventions share interweaving points of connection with each other. The question of gambling affordability – that is, the question of data, harm and economic agency – is at the heart of this nexus.

67. We therefore argue that whatever direction the Gambling Commission takes in terms of affordability and customer interaction, it should be done in dialogue with the ICO, CMA and government consultations on online harms and digital identity, to ensure a holistic approach to a highly complex question. No final decisions should be made on affordability until this dialogue has reached a conclusion.

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