

Information Commissioner's Office – Written evidence (GAM0119)

The Information Commissioner's response to an inquiry on the Social and Economic Impact of the Gambling Industry from the House of Lords Gambling Industry Committee

1. The Information Commissioner has responsibility for promoting and enforcing the EU General Data Protection Regulation (GDPR), the Data Protection Act 2018 (DPA18), the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR); the Privacy and Electronic Communications Regulations 2003 (PECR); the INSPIRE Regulations; eIDAS Regulations; Re-use of Public Sector Information Regulations; and the NIS Regulations.
2. The Information Commissioner is independent of government and upholds information rights in the public interest, promoting transparency and accountability by public bodies and organisations and protecting individuals' privacy and information access rights.

Introduction

3. The Gambling Industry Committee have opened an inquiry into the social and economic impact of the gambling industry. A number of issues have been raised during the evidence sessions for this inquiry and data protection legislation has been one of them. Gambling operators have said that they hold a significant amount of data on their online customers and a large amount of information on play but they are not able to share this data with other operators because the GDPR prevents this.
4. The Committee has asked the ICO if the General Data Protection Regulation (GDPR) prevents gambling operators from the sharing of personal data of vulnerable gamblers with other gambling operators and what would need to be changed to allow operators to do this.
5. Data protection law does not prevent gambling operators from sharing the personal data of vulnerable gamblers. We believe that there are ways to do this that are compliant with data protection legislation.

Does the GDPR prevent gambling operators sharing vulnerable gamblers personal data?

6. It is important that people who may be vulnerable receive the help they need. Data sharing can be possible if an effective risk assessment is undertaken. A Data Protection Impact Assessment (DPIA) should be produced for any scheme within the gambling industry around the sharing or use of personal data to this effect. This can enable a full assessment of necessity and proportionality.
7. GDPR will require operators to have a lawful basis for processing and that the processing is fair and proportionate. Consideration will need to be given as to whether sharing can meet the 'protect the vital interests of a data subject' basis in Article 6 GDPR. There may also be other lawful bases that

can be considered under Art 6.

8. It will be important to address the transparency of how the data will be collected and used. For example, current privacy notices for new and existing customers would need to be addressed. A customer would reasonably expect ID checks and anti-money laundering checks, but may not expect the details of accounts with one operator to be shared with another operator. As one gambler may have multiple accounts with different operators, the desire to increase sharing is understandable if vulnerability is to be addressed. If they are categorised as being someone who is vulnerable to harm it vital that transparency is considered from the outset.
9. The gambling operators also need to ensure the purpose limitation principle is addressed. They should ensure that the processes they put in place do not use the data they are sharing or receiving for any purposes beyond the original intended purpose, e.g. for commercial services.
10. Another important principle the gambling operators will need to work to is data minimisation. They need to consider what data they would need to identify vulnerability. Once that data is collected they then need to think about what the minimum amount of personal data they need to share is and who they need to share what data with in order to achieve their purpose. Appropriate technical solutions should promote data protection by design and by default. These might include techniques which minimise the sharing and exposure of customer data, such as multi-party computation. This is a cryptographic technique which enables data from multiple sources to be calculated without revealing data to those sources. A calculation is made, revealing only the result. This means no one submitting data sees anyone else's data, but they get to know the outcome.

What needs to be changed to allow gambling operators to share the personal data of vulnerable gamblers?

11. We recognise there may be issues with the availability of data about vulnerable users. Collection of new data must be necessary and proportionate to the aim of protecting the users.
12. They also need to establish whether their intended interventions using data will work effectively. More research and piloting needs to be done into what they will do once they have identified a vulnerable user and shared their information with third parties. An evidence base should be available to support the case for further collection and use of data, this can be recorded in the data protection impact assessment.
13. We acknowledge that the Gambling Act 2005 will require further consideration as it was written before smart phones became a frictionless method of gambling. We understand the reference to vulnerability in the current Gambling Act has never been used for interventions of this kind before and the industry will need reassurance to consider these steps. The ICO is willing to work with the Gambling Commission on this issue.

14. The ICO has various ways in which organisations can seek advice and help in relation to questions like these. For example, The ICO has established an Innovation Hub whose remit is to consider GDPR implications of data driven technologies and novel uses of personal data. The ICO sandbox³⁵² which helps organisations develop genuinely innovative and viable data protection products with a potential for delivering real benefit to the UK public. There is also the ICO grants programme³⁵³ which has been running since 2017 and has funded a number of privacy and data protection initiatives that have practical applications and will have a public benefit. Also, the ICO helpline³⁵⁴ and our website provide general guidance on compliance with data protection legislation³⁵⁵.

The Data Sharing Code

15. In considering how they might resolve the issue around the sharing of personal data between gambling operators (and others where necessary) the gambling operators will find the upcoming updated ICO Data Sharing Code useful. Last summer the ICO consulted³⁵⁶ on an updated version of the Code and published the responses³⁵⁷ we received, along with our comments on those responses. The Code is now in its final stages of drafting and we will submit to government to lay in Parliament later in 2020.

Conclusion

16. Our key message is that data protection legislation does not prevent gambling operators from sharing the personal data of their vulnerable users. Operators will need to ensure that they share data fairly and proportionately and consider particular elements of GDPR such as the lawful basis to enable the sharing.

16 March 2020

³⁵² <https://ico.org.uk/for-organisations/the-guide-to-the-sandbox-beta-phase/>

³⁵³ <https://ico.org.uk/global/privacy-notice/apply-for-an-ico-grant/>

³⁵⁴ <https://ico.org.uk/global/privacy-notice/how-you-can-contact-us/>

³⁵⁵ <https://ico.org.uk/for-organisations/guide-to-data-protection/>

³⁵⁶ <https://ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/ico-consultation-on-the-draft-data-sharing-code-of-practice/>

³⁵⁷ <https://ico.org.uk/about-the-ico/responses-to-the-call-for-views-on-updating-the-data-sharing-code-of-practice/>