The Money Charity Response – Gambling Commission Consultation on Gambling with Credit Cards (October 2019)

The Money Charity is a financial capability charity whose vision is to empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives.[1]

We welcome the opportunity to respond to the Gambling Commission's consultation on gambling with credit cards, which follows on from our response to the May 2019 Call for Evidence on Gambling with Credit Cards.[2]

In this response, we set out our Key Points, make some overall comments on the issue then answer the questions posed in the Consultation Paper.

[1] See box on back page.
[2] https://themoneycharity.org.uk/work/policy/consultation-responses/, May 2019.

Key Points

1. Because of the number of consumers who use credit cards for small gambles and do not suffer harm, we do not support a complete ban on the use of credit cards for gambling. However, we recognise there is a significant issue of problem gambling with credit cards which does demand action.

2. We think the Gambling Commission should design its approach to mesh with the Financial Conduct Authority's new rules on persistent credit card debt, and the FCA's emerging rules on the fair treatment of customers in vulnerable situations.

3. We propose that friction should be introduced into the use of credit cards for gambling, with credit cards initially set to "no" for gambling, but with the opportunity for consumers to arrange responsible gambling limits on their credit cards.

4. Where these limits are exceeded, or where credit card providers otherwise detect the occurrence of problem gambling, they should intervene to stop consumers running up further debt. The key thing should be pre-emptive action, using the greater data intelligence now available to firms in the financial sector.

Overall Comments

As a financial capability charity, working with teenagers and adults every day, we are conscious of the choices people make between financially sound and financially risky behaviour. The trade-off between short-term gratification and long-term financial health is constantly in play and we know how hard some consumers struggle to deal with a propensity to spend beyond their means.

We would advise people not to gamble using their credit cards, on the basis that gambling should use only spare money that consumers are prepared to lose.[3] Consumers should not run up debts to gamble. However, as we said in our response to the Gambling Commission's May 2019 Call for Evidence, a ban is problematic, for two reasons:

- Consumers may evade the ban by borrowing from other sources, possibly even more dangerous than credit cards (eg pay-day loans or loan sharks).
- Some people use their credit cards wisely and do not fall into problem gambling. It would be undesirable to ban safe use of credit cards unless the harm done to those with problem gambling was on such a scale as to justify a general ban.

[3] In effect, paying for entertainment.

FCA credit card research and persistent debt rules

Research by the Financial Conduct Authority (FCA) has found that credit card users fall broadly into three camps: those who pay off their card in full every month, those who pay only the minimum payment and those who are in arrears. Between the anchor points of the minimum and the maximum payment lie relatively few consumers, giving the chart of credit card monthly payments a pronounced "U" shape.[4] This polarity can be interpreted as a split between those who use their credit card mainly as a convenient form of payment (those who pay off the balance in full each month) and those who use their credit card to spend, at least for a while, beyond their means (those who pay the minimum payment).

The credit card minimum payment is set at a low level (fees and charges plus one percent of the outstanding balance) designed to keep those with a propensity to run up credit card debt in debt for as long as possible.

In our monthly publication The Money Statistics we highlight how long it would take a person paying only the minimum payment to pay off their credit card debt, given the prevailing rate of interest and average level of credit card debt. In October 2019, this term was 26 years and seven months.[5]

The FCA has moved to reduce the problem of persistent credit card debt. Beginning in early 2020, consumers with credit card debt defined as persistent over a three-year period will get letters and other communications from their credit card providers requiring them to manage down their level of debt.[6] In severe cases, credit card providers will have to move to debt restructuring and forbearance. This is likely to affect problem gamblers and the card issuers that have lent to them, some of whom may find themselves on the sharp end of the new rules.

We think the Gambling Commission should take account of the new FCA credit card regime and should design its rules on gambling with credit cards to mesh with the FCA's persistent credit card debt rules.

Gambling Commission research on gambling with credit cards

Regarding consumer gambling with credit cards, Gambling Commission research, set out in the consultation paper, has shown a significant issue with problem gamblers using credit cards, but also that there is a fairly large group (43%) who gamble with a credit card without being at risk of harm.

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[4] See FCA 2016, Credit Card Market Study, Annex 4: Behavioural trials, page 2.
[5] https://themoneycharity.org.uk/money-statistics/
[6] https://www.fca.org.uk/news/press-releases/new-credit-card-rules-introduced-fca

Other types of nominally short-term debt (overdrafts, payday loans and other loans) were more strongly associated with problem gambling than were credit cards.

Further, the amounts placed on credit cards were often small: in February 2019, one third of those who used a credit card to gamble played with a monthly total of £20 or less. Two thirds played with £100 or less.

At the other end of the scale, 7,598 consumers (out of 165,225) placed credit card bets between £1000 and £5000 in the month, and 1,169 consumers placed credit card bets of more than £5,000.[7]

Some gamblers who responded to the May 2019 Call for Evidence used multiple credit cards and had "accumulated tens of thousands of pounds of gambling debt", without action being taken by their card providers.

FCA vulnerability guidance

Another relevant piece of regulatory work is the FCA's emerging guidance on consumers in vulnerable situations – which would certainly include problem gamblers. The proposed guidance has been out for consultation and the FCA will make announcements in due course. The underlying idea is that firms must become better at detecting customers in vulnerable situations and responding appropriately to their needs. The trend is toward making this more obligatory. The FCA work builds on work by UK Finance, other regulators and trade associations and the Lending Standards Board.

Responsibilities of card issuers

Taking together the FCA's work on vulnerability and persistent credit card debt, it is evident that card issuers and credit providers have a responsibility to detect and bear down on unaffordable debt, including the unaffordable debt of problem gamblers. Credit card companies should be able to see when a customer is engaging in problem gambling and should intercept this. We agree with the consultation paper's emphasis on the responsibilities of financial services.

As we said in our response to the May 2019 consultation:

> "What is needed is a package of measures that in combination make problem gambling more difficult, by triggering restrictions on all forms of borrowing and payment associated with problem gambling."

This applies to credit card providers, overdraft providers (often the same firms as credit card providers), pay-day lenders and other providers of credit.

[7] Gambling Commission Consultation Paper, Table 8.

We propose a suite of measures for introducing friction into the use of credit cards for gambling:

- The default setting should be that a credit card cannot be used for gambling. Attempts to gamble with a credit card that has not been "opted in" should be automatically declined.
- A consumer should be required to "opt in" to using their credit card for gambling purposes.
- The "opt in" process should be via a call to the credit card issuer, during which the issuer warns the user of the dangers of gambling and, with the user, sets a credit limit for such purposes. The issuer should also give the user an example of the cost of such debt, expressed in £ and pence for ease of comprehension.
- The issuer should explain how gambling transactions with credit cards are treated differently from normal purchases: they are treated as cash advances with a cash advance fee, interest accrued from the date of the transaction and a significantly higher interest rate. A pounds and pence example should be given to make it absolutely clear what this type of credit will cost.
- The user should be invited to set a limit on cash withdrawals on the credit card, as these could also be used for gambling purposes, evading credit card restrictions.
- Where a user regularly hits the credit limit set for gambling purposes, a warning should be given that the card will switch back to "off" for gambling purposes. After expiry of the warning period, the card should be re-set to "off" for gambling and the user should be required to call again to re-set the card to "on". They will then hear the standard warnings again.
- Gambling with a credit card should be treated similarly to 'persistent credit card debt' under the FCA's new credit card rules,[8] ie the credit card issuer should intervene after defined periods of time to make sure that customers gambling with a credit card are gambling only with money they can afford to lose and are not incurring persistent credit card debt as a result. If the card issuer finds these parameters being breached, a process for managing down the customer's credit card debt should be initiated.

Consumer response to greater control on gambling with credit cards

The Money and Mental Health Policy Institute has just published new research on consumer expectations of financial service firms in situations of vulnerability. This showed that "spending an unusual amount of money on gambling" came third after fraud and scams in the proportion of respondents[9] that felt that companies should "take immediate action (eg blocking payments)" to protect the consumer. 41% of respondents favoured

[8] https://www.fca.org.uk/publication/policy/ps18-04.pdf
[9] A survey of 540 people with lived experience of mental health problems.

immediate action, with a further 24% supporting “tell me and offer practical support (eg help to set spending limit on my account)”.[10] This suggests that active financial service controls will be supported by the target community.

Answers to selected consultation questions

Q5: Do you think the Commission should introduce a prohibition on the use of credit cards for online betting and gambling?

No, we favour the approach of friction coupled with targeted customer intervention by financial service firms.

Q8: Do you agree that the Commission should introduce a prohibition on the acceptance of credit cards by non-remote betting operators alongside a prohibition of credit cards for online gambling?

As with our answer to Question 5, we do not support a prohibition, but think a suite of measures should be introduced to create friction in gambling with credit cards and to increase the effectiveness of financial service firms in detecting and intercepting problem gambling.

Q10: Do you agree that the Commission should introduce limits, restrictions and control measures on the use of credit cards for online gambling instead of a prohibition on credit cards?

Yes.

See Overall Comments above for our reasons and proposals.

Q11: Do you agree that non-remote betting operators should be included within the code so that they would also have to provide the same measures as remote gambling operators?

Yes.

Problem gambling is problem gambling wherever it occurs. The measures to intercept it should be the same.

Q 12: Do you agree that lottery operators should be included within the code so that they would also have to provide the same measures as other remote gambling operators?

[10] Money and Mental Health Policy Institute 2019, Data Protecting – Using financial data to support customers, page 36.

We don’t know enough about the lottery sector to comment authoritatively on this question. However, we think that in principle all forms of gambling should be covered by the new rules, providing the scale of the gambling offered is great enough to be able to cause problem debt. On this basis, small-bet lotteries could be exempt, but lotteries that allow large or repeated cumulative bets should be covered by the same credit card rules.

Q13: Do you agree with the wording of the proposed new social responsibility code provision 3.7.3 that would require operators to minimize the risks of harm from gambling with credit cards?

We would prefer to see the words “minimises the risk” replaced with the word “avoids”. This would impose on the operator a stronger requirement more consistent with the general principle of consumer protection that firms have an obligation to “avoid reasonably foreseeable harm” to their consumers.[11]

Q14: Do you agree that the suggestions for specific control measures should be introduced as part of an ordinary code provision 3.7.4 rather than a social responsibility code provision?

As we read the text of the consultation document, ordinary code provision 3.7.4 would accompany code provision 3.7.3 rather than being an alternative to it.

Q15: Do you agree with the wording of the proposed ordinary code provision 3.7.4?

We agree with the wording of 3.7.4, subject to:

- Amend “minimise” to read “avoid” (as in our answer to Question 13).
- Create an explicit link between operator responsibilities and card issuer responsibilities such as we have proposed in our Overall Comments.

The card issuer controls on use of credit for problem gambling should dovetail with the licensee controls. Between the two it should be close to impossible for a consumer to engage in problem gambling with a credit card.

Q17: Do you agree that any new requirements or provisions introduced should also apply to credit card transactions conducted through e-wallets?

We agree that before e-wallet payments are accepted, the e-wallet provider should have in place procedures to assure that e-wallets are not being used to facilitate problem gambling using credit cards (or other forms of credit). As we said in our Overall

[11] https://en.wikipedia.org/wiki/Donoghue_v_Stevenson

Comments there needs to be a comprehensive suite of measures intercepting problem gambling using all forms of credit.

Q21: What measures can financial services such as banks and lenders take to identify their customers who are using borrowed funds for gambling and to mitigate the risk of harm to those customers?

Two things:

(1) The suite of measures proposed in our Overall Comments above.

(2) Financial firms increasingly have sophisticated analytical techniques which they can apply to their transaction and lending data. To a close approximation, firms know how and where their customers are spending their money. Certainly, they have the information to pick up and intercept problem gambling. Combining this ability with the new FCA requirements on persistent credit card debt and customers in vulnerable circumstances, it should be possible to move quickly to a regime in which problem gambling using credit cards and other forms of credit is virtually impossible.

Q 31: How did you hear about this consultation?

Gambling Commission website.

The Money Charity is the UK's financial capability charity providing education, information, advice and guidance to all.

We believe that everyone achieves financial wellbeing by managing money well. We empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives, helping them achieve their goals and live a happier, more positive life as a result.

We do this by developing and delivering products and services which provide education, information and advice on money matters for those in the workplace, in our communities, and in education, as well as through influencing and supporting others to promote financial capability and financial wellbeing through consultancy, policy, research and media work.

We have a 'can-do' attitude, finding solutions to meet the needs of our clients, partners, funders and stakeholders.

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