

ILCU Legal Department Supporting Credit Unions

Problem Gambling Awareness Webinar

Follow up and Frequently Asked Questions (FAQs)

May 2021

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Irish League
of **Credit Unions**

Gambling webinar Follow up to Frequently Asked Questions (FAQs)

1. Will the webinar be shared on ILCU website?

1.1 The slides are available by clicking [here](#).

2. Does the Dunlewey service offer leaflets that can be left out for members?

2.1 Dunlewey has leaflets, support cards and training information which it can provide to interested credit unions.

2.2 Digital versions are also available. These can be found at **Appendix 1** to this document along with links for downloading from the ILCU website.

2.3 Hard copies are currently being re-printed and can be posted on request by Dunlewey.

2.4 Dunlewey has also advised us that a short video clip which credit unions can utilise as part of their information TV and monitors will be made available. Additionally a website banner will also be available to link members to Dunlewey. These will be updated in due course.

2.5 For further information on the resources available please contact Jackie Roberts at the email address jackie@dunlewey.org

3. A number of questions were raised at the webinar around transaction patterns and what can be said to members regarding potential issues (or loan rejections).

3.1 Credit unions in both jurisdictions are required to lend responsibly.

3.2 Credit unions should obtain sufficient information to make an informed decision about the lending. Any checks should be proportionate, based on the size of the borrowing.

3.3 This is a hugely complex and difficult area to navigate. However, it is incumbent on each credit union to do its utmost to safeguard and protect members and this is particularly so where there is any sort of vulnerability evident.

Rejecting a loan due to affordability issues

3.4 Credit unions should be careful to analyse whether members are becoming reliant on short term lending (either with themselves or other lenders) for gambling transactions as further lending by the credit union could constitute irresponsible lending.

3.5 Where there is an issue with affordability based on income and expenditure, then it is likely to be much easier to reject a loan application.

3.6 Where a loan is rejected on the basis of affordability due to concerns regarding excessive gambling transactions, the credit union should present any statement of rejection in a clear, objective and factual manner. Feedback should be non-judgemental and sensitive. Ultimately a credit union can use its commercial discretion to reject a loan.

What if there are no affordability issues?

3.7 If there are no affordability issues but substantive evidence on the account (or through other documentation) of regular or sustained gambling transactions or issues, the credit union may wish to signpost the member to appropriate resources. This is particularly so where a member is becoming reliant on short term lending to sustain regular gambling transactions. Although a member may not be welcoming of such signposting, it is difficult to see that the Ombudsman would be critical of the credit union for signposting the member to appropriate resources and help, on foot of a complaint in this regard.

3.8 In a UK Ombudsman decision in 2020¹ where gambling transactions were present in a

complaint, the UK Ombudsman stated:

“Just because there are a number of gambling transactions, this doesn’t mean that someone must have a gambling problem, and it’d be unfair of [the credit union] to assume this was the case. These transactions form part of the picture, not the whole picture.

So I don’t think [the credit union] should’ve declined all of Mr F’s loans because he was spending money gambling – he could easily have been spending the same amount of money on other social activities, for example eating out, and this wouldn’t be considered as any cause for concern either. It’s how this social spending forms part of the overall picture that’s important, not what specific type of spending is taking place.

Taking all of the above into account, and that [the credit union] have declined Mr F’s applications for loans on multiple occasions – the value of the approved loans and the value of the declined loans are almost the same; I don’t agree that they’ve been irresponsible when lending to Mr F, or that the loans weren’t affordable to him at the time he took these out.

But, if the loans are no longer affordable to Mr F, I’d expect [the credit union] to act positively and sensitively to his current financial circumstances, and work with him to agree a repayment plan that’s suitable for his needs and is sustainable.”

3.9 Interactions with members in relation to this area needs to be taken as sensitively as possible. If a credit union does engage with the member in any way on the basis above they should ensure that they take contemporaneous notes of any communications, conversations and meetings between officer(s) and the member.

What if the credit union is told by the member of a gambling problem or addiction?

3.10 Another recent UK Financial Ombudsman decision in Great Britain (GB)² and Irish Ombudsman decision highlights the need for credit unions to be cautious in this area.

UK Financial Ombudsman Decision against a credit union in Great Britain- Mr F’s Complaint against Commsave Credit Union
In the GB decision, the member proactively informed the credit union of a gambling addiction and the Ombudsman ruled that the credit union did not do enough to help the member or prevent further loans from being approved. The main issue in that decision was the fact that the credit union had been notified that the member had a gambling addiction, explained to the credit union that he was in financial difficulties and wanted to agree a plan to pay off his borrowings. It was this knowledge that meant the credit union had information suggesting that the member could be vulnerable.

¹ <https://www.financial-ombudsman.org.uk/files/279493/DRN-1862646.pdf>

² <https://www.financial-ombudsman.org.uk/files/270169/DRN1403859.pdf>

In summary, the credit union member had a loan. He notified the credit union that he had a gambling addiction, was in financial difficulties, and wanted to agree an affordable repayment plan to pay off his borrowings

Further loans were provided to the member. The credit union believed it acted responsibly, conducting credit checks and affordability assessments each time the member borrowed.

Whilst the ombudsman acknowledged that the member had the benefit of the money borrowed, it ruled that the credit union did not do enough to help the member.

"[The credit union] also had the knowledge that he had a gambling addiction, and was therefore vulnerable. So even if the affordability assessments showed that Mr F could afford the repayments, that's not enough to satisfy me that the lending was affordable. I think Commsave should have looked at the full circumstances, and taken Mr F's vulnerability into account. Had it done so, I think it would have made different lending decisions. Instead, it doesn't seem to have been mentioned".

Whilst the Ombudsman didn't ask for any capital sums to be refunded, it did ask the credit union to refund all interest and charges from the date that the member had told the credit union about his gambling addictions. That money was to be credited towards the member's existing borrowing with any money left over to be paid directly to the member.

Click [here](#) to access the UK Ombudsman's ruling

Irish Financial Services and Pensions Ombudsman Decision Ref: 2020-0299

This decision related to a UK based customer and an investment company regulated by the Central Bank of Ireland.

Subsequent to incurring significant losses, the Complainant contacted the company to explain that he was a gambler, that he was mentally unwell and that he was very vulnerable. As a result of these factors, the Complainant requested that the company prevent him from trading any further shares.

Despite this request, the company was found to have encouraged the Complainant to start trading on the account again and subsequently, he suffered further losses.

The company attempted to defend the complaint by stating that the Complainant's account with the company was an 'execution-only' account which meant that whilst it executed trades for the Complainant and merely carried out his instructions, it did not provide any advice.

In the course of the FSPO's decision however, reference was made to email correspondence between the parties which was held to contradict the company's defence. Specifically, the FSPO noted that the email correspondence from the company to the Complainant contained specific recommendations regarding investment options thus negating the company's 'execution only' defence.

The FSPO found that the company had completely and utterly disregarded its obligations towards the Complainant and that it had facilitated him in reactivating his account despite

having been clearly notified in writing of his personal circumstances and acute vulnerability.

The FSPO directed that the company pay the Complainant £17,000. In addition, the matter was referred to the Central Bank of Ireland.

The full text of this decision can be found [here](#)³.

4 What if a third party discloses concerns to the credit union about a family member or friend?⁴

- 4.1 How should you respond when a third party (such as a relative or carer) is involved with someone's finances (as is often the case with some vulnerable members)?
- 4.2 Credit unions cannot disclose information about a member's account to a third party without the appropriate authorisation or an arrangement such as a power of attorney.
- 4.3 In addition, if a third party contacts a credit union to let them know that a member cannot manage their financial affairs for a while, because of, for example, a deteriorating health condition or a sudden crisis, there is nothing to stop the credit union making a note of the circumstances so that appropriate action can be taken when they can be in contact with the member.
- 4.4 This does not involve disclosing any information to the caller. Sometimes this is all that is required to reassure concerned relatives that the credit union understands the situation.
- 4.5 Credit unions may also want to use the information provided by a third party to investigate further and seek a separate conversation with the member when appropriate to do so.
- 4.6 This may be important in preventing abuse as well as clarifying the member's needs.

5 Are there any plans to regulate the gambling sector in Republic of Ireland?

- 5.1 The ROI Department of Justice has stated that "Work is underway on the drafting of a Gambling Bill to comprehensively reform the regulation of gambling activities and to provide for an independent Gambling Regulator.
- 5.2 The Department's Statement of Strategy 2021-2023 set out the commitment to establish a gambling regulator focused on public safety and wellbeing, covering gambling online and in person, and the powers to regulate advertising, gambling websites and apps. It is likely that the new legislation will include spending limits on customers, stronger age verification and advertising curbs.
- 5.3 The ILCU Legal Department will keep credit unions updated on any developments in this regard."

6 Conclusion

- 6.1 Credit unions are urged to treat gambling sensitively. Gambling may be deemed to be a pastime to some and a risky endeavour to others. The best approach from the

³ <https://www.fspo.ie/decisions/documents/2020-0299.pdf>

⁴ The Money Advice Liaison Group and Money Advice Trust in the UK has a guide titled "Vulnerability, GDPR, and disclosure" which NI credit unions may find helpful – Click [here](#)

credit union is to be neutral and impartial about gambling unless it is indeed having an obvious negative impact on the member.

- 6.2 Where a member seeks to borrow at a time that their gambling spending causes a concern that they may not be in a position to sustain a new loan, then this must be addressed by the credit union. It is suggested that a best-interest approach be taken, i.e. it is in the best interests of the member to signpost the risk of gambling where it appears from bank statements that there is disproportionate spending on gambling compared with the member's income.
- 6.3 Similarly, where it is becoming obvious that a member's savings are swiftly decreasing, is there an onus on the credit union to contact the member in this regard? You might consider whether it is over-stepping the mark or whether it is being prudent. It will most likely depend on this situation at hand, so a case-by-case approach is likely to be best.
- 6.4 Essentially, communication is key in this scenario, so it must be done without judgment and in a factual but compassionate tone. Whilst we appreciate this may be obvious to most, it is important to reinforce this.
- 6.5 Credit unions facing these types of situations should also refer to their own safeguarding and vulnerability policy.
- 6.6 ROI credit unions should be aware of Paragraph 3.1 of the Consumer Protection Code (CPC)⁵. Although not legally obliged to abide by it unless acting as an insurance intermediary, the principles are considered to be good practice and therefore ROI credit unions should be cognizant of it (and the ILCU Safeguarding Vulnerable Member guidance) in interactions with members.
- 6.7 NI credit unions should be cognizant of the FCA's new FG21/1 Guidance for firms on the fair treatment of vulnerable customers available [here](#) and the ILCU Safeguarding Vulnerable Member guidance. Please note that the guidance and vulnerable member policy is currently in the process of being updated to take account of FG21/1.

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⁵ Where a regulated entity has identified that a personal consumer is a vulnerable consumer, the regulated entity must ensure that the vulnerable consumer is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the regulated entity.

"vulnerable consumer" means a natural person who: a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).

Appendix 1 Dunlewey Posters

Dunlewey Poster Text Only



We provide **FREE** and **CONFIDENTIAL** advice, information and counselling for adults over 18 who are directly or indirectly affected by problem gambling issues.

In the last 12 months, have you:

- Bet more than you could really afford to lose?
- Gone back on another day to try to win back money you have lost?
- Borrowed money or sold anything to gamble?
- Felt guilty about the way you gamble or what happens when you gamble?
- Experienced health problems such as stress or anxiety as a result of Gambling?
- Been affected by someone else's gambling?

Dunlewey Problem Gambling Treatment Service
Helpine numbers:

N.I. 08000 886 725 ROI 1800 936 725
www.dunlewey.net

Dunlewey Poster with Image



Dunlewey Problem Gambling Treatment Service
Helpine numbers:

N.I. 08000 886 725 ROI 1800 936 725
Email: admin@dunlewey.org

Dunlewey problem gambling card



Unlocking the door to personal growth learning and change

We provide **FREE** and **CONFIDENTIAL** advice, information and counselling for adults over 18 who are directly or indirectly affected by problem gambling issues.

www.dunlewey.net

Contact us
028 9039 2547

Free Gambling Helpline
N.I. 08000 886 725
ROI 1800 936 725

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 *Unlocking the door to personal growth learning and change*