

Decision notice

**Review of BGO Entertainment Limited's
operating licence
Breaches of conditions relating to
marketing and advertising**

April 2017

Introduction

1. On 23 September 2016 the Gambling Commission (the Commission) gave BGO Entertainment Limited (BGO) notice that we were commencing a review of its operating licence. We commenced a review under section 116(2) of the Gambling Act 2005 (the Act) because we:
 - had reason to suspect that activities may have been carried on in purported reliance on the licence but not in accordance with a condition of the licence (section 116(2)(a))
 - suspected that the licensee may be unsuitable to carry on the licensed activities (section 116(2)(c)(i)) and
 - thought that a review would be appropriate (section 116(2)(c)(ii)).
2. This decision notice sets out the relevant licence conditions, the background events, our findings and the outcome of the review.

Licence conditions relating to Marketing and Advertising

3. The [Licence Conditions and Codes of Practice \(LCCP\)](#), issued under section 24 of the Act, set out the requirements holders of operating and personal licences must meet. Compliance with social responsibility (SR) code provisions is a condition of a licence and any breach of them by an operator may lead us to review the operator's licence with a view to suspension, revocation or the imposition of a financial penalty.
4. On 8 May 2015, following a [public consultation](#), new licence conditions relating to SR came into force, including SR code provision 5.1.7 (Marketing of offers). This states that all licensees must abide by any relevant provision of the Committee of Advertising Practice (CAP) code and the Broadcast Committee of Advertising Practice (BCAP) code, as the case may be, which relates to 'free bet', 'bonus' or similar offers, and in that regard follow the CAP and BCAP ['Guidance on the rules for gambling advertisements'](#). In particular, advertisements must state significant limitations and qualifications. Marketing material must not amount to or involve misleading actions or misleading omissions. These rules apply to all forms of marketing communications, including social media and affiliate marketing.
5. SR code provision 1.1.2 (Responsibility for third parties) requires licensees to take responsibility for third parties with whom they contract for the provision of any aspect of the licensee's business related to the licensed activities. This means that licensees are considered responsible for the actions and behaviour of third parties with whom they contract, which includes marketing affiliates and advertising networks.

Events leading to the review

6. In June 2015, we asked remote operators to provide information relating to compliance with the revised LCCP including the new requirements relating to marketing and advertising, namely SR code provision 5.1.7. BGO was one of several remote operators identified as having advertising which did not comply with those requirements. BGO's

advertisements did not include the significant limitations and qualifications relating to promotions and were therefore potentially misleading to consumers.

7. Despite extensive contact with us, BGO failed to take prompt and effective action to address the issues identified. BGO repeatedly provided assurances to us that it understood the requirements and had taken action to ensure that they were met. However, we continued to find evidence that advertisements on BGO's own website and the websites of third parties were potentially misleading by failing to include significant limitations and qualifications of promotions.
8. In May 2016, as part of measures through which BGO sought to provide reassurances to us that it had addressed the advertising-related breaches, it commissioned a Copy Advice Audit of its website from CAP. The review assessed marketing communications on BGO's website and considered its conformity with the CAP Code.
9. The audit made several recommendations in relation to what significant limitations and qualifications **should** be included in the advertisements on BGO's website. BGO did not initially follow those recommendations. We took the recommendations from the audit into account in reaching the conclusion that advertisements on BGO's own website continued to breach social responsibility code provision 5.1.7 from May to July 2016.
10. Following further engagement, BGO made the changes recommended in the audit in late July 2016. However, we continued to find and capture evidence of ongoing breaches in relation to advertising on the websites of third parties with which BGO had a contractual relationship in August, September and October 2016.

The Commission's findings

11. Our findings were that:
 1. BGO failed to act in accordance with SR code provision 1.1.2 and SR code provision 5.1.7.2.a between 17 July 2015 - 18 October 2016 in that:
 - a) between 17 July 2015 - 21 July 2016 BGO published nine advertisements on its website which breached SR code provision 5.1.7.2.a and were therefore misleading
 - b) between 4 February - 18 October 2016 third parties with which BGO had a contractual relationship published fourteen advertisements for BGO which breached SR code provision 5.1.7.2.a and were therefore misleading.
 2. BGO acted in a way which cast doubt on its suitability to carry on the licensed activities because it:
 - a) failed to take timely and effective action to address the breaches of SR code provision 5.1.7, when we made it aware of them
 - b) provided inaccurate assurances that the problems in this area had been addressed.

Decision and reasons

12. In accordance with both our regulatory powers under section 117 of the Act and our published [Guidance on regulatory decision making after a licence review](#), we decided to:
 - (1) issue BGO with a formal warning under section 117(1)(a) of the Act.
 - (2) impose a financial penalty of £300,000 under section 121 of the Act in relation to the breaches of SR code provisions 5.1.7 and 1.1.2.
13. The warning will remain on BGO's file and we will take it into account if we identify further regulatory failures on its part.
14. In relation to the financial penalty, we took into account the factors set out in our published [Statement of principles for determining financial penalties](#) in deciding that £300,000 was an appropriate financial penalty.