

**Statement of principles for determining  
financial penalties**

**June 2017**

# 1 Introduction

## **The purpose of this statement of principles for determining financial penalties**

- 1.1 This statement sets out the principles that the Gambling Commission (the Commission) will apply and have regard to in exercising its powers to require the holder of an operating licence or the holder of a personal licence to pay a financial penalty.
- 1.2 This statement of principles applies both to circumstances in which the Commission exercises its powers to impose a financial penalty under section 121 of the Gambling Act 2005 (the Act), or when the Commission is considering the matter of a payment in lieu of a financial penalty as part of a regulatory settlement with a licensee. Therefore references to financial penalties within this document should also be read to include payments in lieu of financial penalties.

## **The framework of policies and procedures**

- 1.3 The Commission has developed a number of policies which govern how it carries out its statutory functions. As such this document needs to be read in conjunction with the following documents:
  - Statement of principles for licensing and regulation
  - Licensing, compliance and enforcement policy statement
  - Licence Conditions and Codes of Practice
  - Complaints procedure
  - Corporate governance framework
  - Indicative Sanctions Guidance
  - Regulatory panel procedures.

## **The legal framework**

- 1.4 Section 121 of the Gambling Act 2005 provides that the Commission may require the holder of an operating licence to pay a penalty if the Commission thinks that a condition of the licence has been breached. The Commission may impose a financial penalty following a review under section 116(1) or (2) of the Act. The Commission also has the power to impose a financial penalty without carrying out a licence review. Once a financial penalty has been imposed the Commission pays received monies into a Consolidated Fund, once it has deducted its costs and a reasonable share of its expenditure, as set out at section 121(5)(c).

## **The scope of this document**

- 1.5 Section 121(6) of the Act requires the Commission to, among other things, prepare a statement setting out the principles to be applied by decision makers in exercising the Commission's powers to impose financial penalties, and to have regard to the statement when exercising a power under this section. The Commission shall review this statement of principles from time to time and revise it when it thinks necessary.

## **Key considerations**

- 1.6 In exercising its powers to impose a financial penalty the Commission will have particular regard to:
  - the seriousness of the breach of condition in respect of which the penalty is proposed
  - whether or not the licensee knew or ought to have known of the breach
  - whether the breach is an example of repeat behaviour by the licensee
  - whether the breach arose in circumstances that were similar to previous cases the Commission has dealt with which resulted in the publication of lessons to be learned for the wider industry
  - the nature of the licensee (including, in particular, the licensee's financial resources)
  - the timeliness of any admissions made by the licensee and actions taken to remediate the breach.

## 2 Applicable principles

### The purpose of imposing a financial penalty

**2.1** The primary purpose of the Commission's exercise of its regulatory powers is to protect the interests of consumers and the general the public and uphold the licencing objectives. This may, indirectly, have a punitive effect on the licensee. The primary aims of financial penalties will be to:

- change the behaviour of the licensee
- eliminate any financial gain or benefit from non-compliance with licence conditions
- be proportionate to the nature of the breach of licence condition and the harm caused
- aim to deter future non-compliance, both on the part of the licensee and other operators.

### Criteria for the imposition of a financial penalty

**2.2** By virtue of section 121(7), in considering the imposition of a penalty, the Commission must have regard to:

- the seriousness of the breach of the licence condition in respect of which the penalty is proposed
- whether the licensee knew or ought to have known of the breach
- the nature of the licensee (including, in particular, the licensee's financial resources).

**2.3** A financial penalty may be appropriate in the following circumstances (the list is not exhaustive):

- where the breach of a licence condition was committed intentionally or recklessly,
- where the breach could have been prevented by the licensee
- the licensee was aware or should have been aware of the breach
- repeated breach of a licence condition
- systemic failure to comply with a condition of the licence
- where the breach gave rise to financial gain for the licensee
- where the breach of a licence condition had an impact on consumers
- where the breach of a licence condition may have damaged confidence in the gambling industry
- where the licensee did not report the breach of a licence condition
- where there is a lack of effective remedial action after the breach or failure becomes apparent to the licensee
- where a financial penalty is necessary to deter future contraventions or failures and to encourage compliance.

**2.4** A financial penalty will not normally be used in the following circumstances (the list is not exhaustive):

- if the breach of a licence condition was minor in nature
- if the breach, or possibility of a breach of a licence condition, would not have been likely to be apparent to a diligent licensee
- if the Commission considers that other regulatory action is more appropriate.

### Criteria for determining the quantum of a financial penalty

**2.5** Although the Act does not set a limit for a financial penalty, a penalty will be set at a level which the Commission considers to be proportionate to the breach. It will take into account the financial situation of the licensee where this information is provided to the Commission. A financial penalty allows the Commission, amongst other things, to eliminate any financial gain or benefit from non-compliance.

- 2.6** The total amount payable by a licensee will normally be made up of two elements:
- i. an amount to reflect any detriment suffered by consumers and/or remove any financial gain made by the licensee as a result of the contravention or failure (where these can reasonably be calculated or estimated) and
  - ii. an amount that reflects the seriousness of the contravention or failure, the impact on the licensing objectives and the need for deterrence (the 'penal element')
- 2.7** The Commission will approach any financial penalty in the following way:
- i. Calculate the detriment to consumers and/or calculate the gain to the license, if possible.
  - ii. Consider the seriousness of the breach to determine the appropriate penal element of the fine.
  - iii. Consider any aggravating and mitigating factors that may increase or decrease the penal element.
  - iv. Consider the need for a deterrence uplift to the penal element, having regard to the principle that non-compliance should be more costly than compliance and that enforcement should deliver strong deterrence against future non-compliance.
  - v. Where a case is settled early<sup>1</sup>, apply a discount to the penal element if appropriate.
  - vi. The total amount to be paid by the licensee will be the sum of the figures determined at step 1 and step 4 (or step 5 if the case is settled), subject to any further adjustments to ensure that the total financial liability arising from a financial penalty and/or redress payments is reasonable.
- 2.8** In determining the appropriate financial penalty, the Commission will take into account all the other circumstances of the case, which may include (the list is not exhaustive):
- the seriousness of the breach
  - the impact on the licensing objectives
  - whether there has been a repeated breach or failure by the operator or other group companies
  - whether the breach arose in circumstances that were similar to previous cases the Commission has dealt with which resulted in the publication of lessons to be learned for the wider industry
  - the need to encourage compliance among other operators
  - whether the breach continued after the licensee became aware of it
  - the scale of the breach of a licence condition across the licensed entity
  - the involvement of middle and senior management
  - the level of any financial gain from the breach
  - the extent of any attempt to conceal the failure or breach
  - the impact on customers and the general public and the extent of steps taken to remedy the breach
  - the absence of internal controls or procedures intended to prevent the breach
  - the awareness and involvement of company boards
  - the duration of the breach
  - the extent of steps taken to remedy the breach
  - early and voluntary reporting of breaches to the Commission
  - timely co-operation with any investigation undertaken by the Commission

### **Discount to the financial penalty**

- 2.9** The Commission, in considering the quantum of a financial penalty, will pay particular attention to any timely, voluntary admissions and/or disclosure made by a licensee where concerns have arisen. It will invariably be in a licensee's interests to be full, frank and open with the Commission. In appropriate cases credit may be given for this in the form of a discount from any financial penalty (see step 5 at paragraph 2.7, above), or from any payment in lieu of a financial penalty made as part of a regulatory settlement.

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<sup>1</sup> See Regulatory Settlements, as described in the Statement of Principles for Licensing and Regulation, and the Licensing, Compliance and Enforcement under the Gambling Act 2005: policy statement

Such discounts will apply to the penal element of the fine and not to any gain and/or detriment that has been identified by the Commission.

- 2.10** The size of the discount will reflect the stage at which the agreement is reached in the context of the investigation, licence review, or regulatory settlement procedure.

### **Procedural matters**

- 2.11** Section 121 imposes a number of procedural steps which must be taken before the Commission can impose a financial penalty. Before imposing a requirement on a licensee to pay a penalty under this section the Commission must notify a licensee:
- that the Commission proposes to require it to pay a penalty
  - of the amount of the proposed penalty
  - of the Commission's reasons
  - of a period within which the licensee may make representations to the Commission.

- 2.12** The Commission will normally give licensees 14 days to make representations.

### **Time limits**

- 2.13** By virtue of section 121(3) the Commission may not give a notice in respect of the breach of a condition after the end of the period of two years beginning with the day on which the breach occurred or began to occur, or, if later, the day on which the breach came to the knowledge of the Commission.

### **Payments in lieu of financial penalties**

- 2.14** Payments made in lieu of a financial penalty as part of a regulatory settlement do not need to be paid into the Consolidated Fund as financial penalties imposed under section 121 do. As a result there is more flexibility about how such monies may be used. However, The Commission will apply the following principles in approaching such agreed payments:
- i. The Commission reserves the power to approve the destination of monies paid as part of a regulatory settlement
  - ii. Operators must not generate positive publicity from the settlement
  - iii. Payments need to be demonstrably over and above 'normal' RET contributions
  - iv. Where practicable, the operator should return money to any identified victims
  - v. If victims cannot be identified or there are no victims, the monies should be given to charity for socially responsible purposes
  - vi. Socially responsible purposes would include purposes which address gambling related harm or in some way promotes one or more of the licensing objectives
  - vii. where payments are made with the aim of addressing gambling-related harm, the presumption is that the money would be paid to GambleAware (formerly Responsible Gambling Trust) to be used for specific agreed purposes that accelerate their commissioning plans
  - viii. Operators should have no interest in organisations who will receive divested funds
  - ix. There should be meaningful evaluation of the effectiveness of projects or research funded by a specific regulatory settlements
  - x. Research findings must be made public to help raise standards
  - xi. Clear timeframes should be set for payment of monies and for delivery of work paid for from those monies.

**Gambling Commission June 2017**

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**Keeping gambling fair and safe for all**

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