

Indicative sanctions guidance

June 2017

1 Introduction

1.1 This document sets out how the Regulatory Panel or employees of the Commission acting under delegated powers (decision makers) will approach the matter of regulatory sanctions following a licence review under section 116 of the Gambling Act 2005 (a licence review). It sets out a framework of matters that are relevant to decisions as to whether the Commission should exercise its powers of regulatory enforcement, and if so, what the appropriate sanction might be.

1.2 It is important to remember that a licence review may be commenced for a variety of reasons.

- The Commission may in relation to operating licences of a particular description review the manner in which licensees carry on licensed activities, and in particular, arrangements made by licensees to ensure compliance with conditions attached under section 75, 77 or 78 (see section 116(1)).
- The Commission may review any matter connected with the provision of facilities for gambling as authorised by an operating licence if the Commission:
 - has 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 (see section 116(2)(a)),
 - believes that the licensee, or a person who exercises a function in connection with or is interested in the licensed activities, has acquired a conviction of a kind mentioned in section 71(1) (see section 116(2)(b), or
 - for any reason
 - suspects that the licensee may be unsuitable to carry on the licensed activities (see section 116(2)(c)(i)), or
 - thinks that a review would be appropriate (see section 116(2)(c)(ii)).

This guidance is about sanctions. It will therefore be relevant to licence reviews commenced because of concerns about non-compliance with a licence condition, or a person's conviction or concerns about suitability.

1.3 Any decision as to imposing a sanction is an administrative decision which must be taken in accordance with the framework set out in the Gambling Act 2005, the Gambling Commission's principle and policy documents, and the principles of fairness and natural justice. This guidance is intended to assist decision makers to make fair, consistent, and transparent decisions.

1.4 The Commission exercises its functions in the interests of consumers and the wider public. Decisions must be made openly, impartially, with sound judgment, and with justifiable reasons. This means that decision makers must:

- come to the decisions they make with an open mind and demonstrate they are open minded
- make a decision only after due consideration of all information reasonably required upon which to base such a decision
- seek further information if it is felt they consider there is insufficient information to reach a decision.

1.5 It is important that decision makers have not already taken a firm view on a matter, nor that they give the appearance of having made up their mind before the formal consideration of a matter. However, a decision maker will not be considered to have taken a firm view on a matter by:

- just listening to viewpoints from interested parties
- having prior knowledge of the issues
- making comments, or giving a provisional view, provided that it is clear that the issue has not been prejudged
- seeking information through appropriate channels; or
- asking questions at a hearing which reflect issues raised.

- 1.6** If a decision maker has any concerns about procedural fairness then they should seek advice from the Commission's legal advisers.
- 1.7** This guidance has been prepared in accordance with the requirements of the Act and the Commission has also had regard to the:
- Statement of Principles for Licensing and Regulation¹
 - Regulators' Code²
 - report of the Hampton Review³
 - report of the Macrory Review⁴
 - Scottish Improving Regulation Report 2008⁵
 - reports of the Regulatory Review Group in Scotland⁶
 - Hampton Implementation Review Report into the Gambling Commission⁷.
- 1.8** This guidance will be reviewed and updated from time to time when appropriate.

¹ The Statement of Principles for Licensing and Regulation is available on the Commission's website

² The Regulators' Code (July 2013) which came into force in April 2014

³ Reducing Administrative Burdens: Effective Inspection and Enforcement, Philip Hampton, March 2005

⁴ Regulatory Justice: Making Sanctions Effective, Professor Richard B. Macrory, November 2006

⁵ The Scottish Improving Regulation Report 2008, July 2008

⁶ Interim Report from the Regulatory Review Group for the Scottish Group, February 2008; Regulatory Review Group Annual Report, July 2008

⁷ Gambling Commission: A Hampton Implementation Review Report, April 2009

2 Deciding what to do at the conclusion of a licence review

- 2.1** Following a review under section 116(1) or (2) of the Act, the Commission may:
- decide to take no further action
 - decide to give the licensee advice as to conduct
 - decide to exercise its powers set out in section 117 of the Act to:
 - give the licensee a warning
 - add, remove, or amend a condition to the licence
 - suspend a licence
 - revoke a licence
 - impose a financial penalty.
- 2.2** The powers under section 117 of the Gambling Act 2005 are not mutually exclusive and may, if appropriate, be exercised in combination.
- 2.3** Through its regulatory enforcement activity, the Commission aims to protect consumers and the wider public, and to raise standards in the gambling industry through targeted actions that:
- drive a culture where operators put consumers first
 - improve compliance with the licensing objectives
 - reduce gambling-related harm
 - deter operators from acting in the same way
- 2.4** In deciding whether to exercise the Commission's regulatory powers the decision maker should have regard to risk to the licensing objectives, as set out in section 1 of the Act, and apply the principle of proportionality, weighing the interests of consumers and the wider public against those of the licensee. The decision maker will also need to consider any mitigating or aggravating factors in relation to the seriousness of the matters under consideration.
- 2.5** In all cases due regard should be given to all the evidence gathered during a review, the facts that have been established, and any evidence presented by way of mitigation by or on behalf of the licensee.
- 2.6** The paragraphs below set out the regulatory decisions and sanctions available to decision makers at the conclusion of a licence review, their general effect, and factors indicating when they might be appropriate. The examples are not intended to provide an exhaustive list, but are intended to provide some guidance on the type of situations which are likely to be suitable for the particular sanction.

No further action

- 2.7** The first step in the process is to decide whether the Commission's regulatory powers should be used at all. Deciding that there should be no further action is not in itself regulatory action, but it is a regulatory decision as it means that the Commission is bringing its investigations into regulatory concerns or issues to an end.
- 2.8** Deciding that there should be no further action will be appropriate if the decision maker considers that there are no matters of concern, or where further formal action would not be a proportionate response to the established facts as there is no significant ongoing risk to the licensing objectives. In the latter case it may be appropriate to give the licensee some advice as to their future conduct.

Advice as to conduct

- 2.9** The purpose of giving advice is to ensure future compliance with the Commission's requirements and to assist the licensee discharge their responsibilities in a compliant way in the future. If advice as to conduct is given, consideration should also be given as to whether general advice should be published if it appears that the issue that gave rise to concerns may be prevalent in other parts of the industry.
- 2.10** Advice as to conduct is not a formal warning. However, the Commission will confirm in writing that it has given advice, keep a record of the fact that advice has been given and may refer to an advice to conduct letter in the future if appropriate.
- 2.11** The issuing of advice as to conduct may be appropriate where some or all of the following factors are apparent:
- poor administrative and / or operational procedures, where the licensee demonstrates that they will take steps to improve them
 - isolated and minor breaches of licence conditions or social responsibility codes of practice, where the licensee demonstrates that they have or will take steps to improve compliance
 - where disciplinary action has been taken by an employer against a personal licence holder, arising from circumstances of misconduct of a minor nature
 - inappropriate behaviour by a personal licence holder on gambling licensed premises (on / off duty) which does not involve dishonesty
 - cautions and convictions for offences involving minor instances of assault and / or disorderly behaviour (outside employed licensed duties).

Warnings

- 2.12** Where the decision maker decides that it is not sufficient to conclude a case without exercising the Commission's regulatory powers, then consideration should be given to whether a warning is appropriate. A warning may be appropriate where the concerns about a licensee have been assessed as being of lesser seriousness, but it is nonetheless necessary to formally note failures to meet the licensing objectives and/or licensing conditions that must not be repeated. In most circumstances, information about the circumstances relating to the warning will be published on the Commission's Sanctions Register.
- 2.13** A warning is not recorded against the license itself. However, warnings may be taken into account in the future if a licensee is the subject of another licence review or investigation. The Commission will deem subsequent breaches of a similar nature to those addressed by the warning to be a significantly aggravating factor at any future determination of sanction and it is highly unlikely that a warning will be issued again.
- 2.14** Warnings may be appropriate where some or all of the following factors are apparent:
- there is evidence that what happened did not seriously affect consumers
 - the licensee has demonstrated understanding and insight of the issues or concerns which gave rise to the licence review
 - the risk of repetition is low
 - what happened was an isolated incident and was not deliberate
 - the licensee has expressed genuine remorse
 - the licensee has an unblemished regulatory record
 - there has been no repetition of behaviour since the incident
 - the licensee has taken, or is taking, steps in remediation
 - In relation to personal licences, the licensee has produced relevant and appropriate references and testimonials.

Amending conditions or imposing additional conditions to a licence

- 2.15** Amending conditions of a licence or imposing additional conditions is a flexible means of dealing with a case. The licence continues with the additional or amended conditions that have been considered necessary to minimise the risk to the licensing objectives in the future. The imposition or amendment of conditions will be most appropriate where a failure or deficiency on the part of a licensee is capable of being remedied and where the risk of repetition is considered to be low.
- 2.16** Where conditions are imposed they should ensure that customers will not be seriously disadvantaged or affected, either directly or indirectly, and that the conditions will protect consumers and the wider public during the period they are in force. Before imposing or amending conditions of a licence the decision maker should be satisfied that there is no general failure, the matter is capable of correction, and that appropriate, realistic, and practicable conditions can be formulated.
- 2.17** Imposing additional conditions may be appropriate when some or all of the following factors are apparent:
- the concern about the licensee does not cause the decision maker to consider that they are unsuitable to continue being a licensee
 - the licensee has demonstrated understanding and insight of the issues or concerns which gave rise to the review
 - there is no significant risk of repetition if the additional licence conditions are complied with
 - there are specific areas in which re-training or other remedial action is required to mitigate the risk of recurrence and the licensee has demonstrated their potential and willingness to respond positively.

Financial Penalties

- 2.18** Financial penalties can only be imposed when the Commission consider that a licence condition has been breached. A financial penalty should aim 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
 - deter future non-compliance by the relevant licence holder and other licence holders more generally.
- 2.19** Imposing a financial penalty may be appropriate when some or all of the following factors are apparent:
- the breach of a licence condition was committed intentionally or recklessly
 - the breach could have been prevented by the licensee
 - the licensee was aware or should have been aware of the breach
 - there was a repeated breach of a licence condition
 - there was a systemic failure to comply with a condition of the licence
 - the breach gave rise to financial gain for the licensee
 - the breach of a licence condition had an impact on consumers
 - the breach of a licence condition may have damaged confidence in the gambling industry
 - the licensee did not report the breach of a licence condition to the Commission
 - 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, on the part of both the licensee and other operators.

2.20 More detailed guidance on financial penalties can be located in the Commission's 'Statement of Principles for Determining Financial Penalties'. Decision makers considering a financial penalty must apply the principles outlined in this document.

Suspension

2.21 The Commission may only suspend a licence if, following a review, the Commission considers that:

- a licensed activity is being or has been carried on in a manner which is inconsistent with the licensing objectives
- a condition of the licence has been breached
- a licensee has failed to cooperate with a review, or
- the licensee is unsuitable to carry on the licensed activities.

2.22 Suspension of a licence has a punitive effect in that it prevents an individual or operator from carrying out regulated activities during the period of suspension.

2.23 Suspension is likely to be appropriate for misconduct or incompetence that is serious, but not so serious as to justify revocation of the licence. A period of suspension will allow a licensee to take steps to remedy the breach or concerns which gave rise to the Commission's intervention, following which the licensee will be able to commence the licensed activities.

2.24 The length of the suspension is a matter for discretion, depending on the gravity of the particular case, but should be for as short a period as is appropriate to the circumstances of the case.

2.25 Subject to the requirements for suspension outlined above being met, suspension may be appropriate when some or all of the following factors are apparent:

- where there are concerns about serious on-going breaches
- where there are concerns that the continuation of licenced activities is a risk to consumers and/or the wider public
- there has been a serious instance of unacceptable conduct and a lesser sanction is not sufficient
- the concern about the licensee does not cause the decision maker to believe that they are fundamentally unsuitable to be licensed
- the licensee has demonstrated an understanding of the issues or concerns which gave rise to the review, with the result that there is no significant risk of a repetition of behaviour once the period of suspension has elapsed.

2.26 The Commission also has the power to suspend a licence when it decides to conduct a licence review, or at any time during the course of a licence review.

Revocation

2.27 The Commission may only revoke a licence if, following a review, the Commission considers that:

- a licensed activity is being or has been carried on in a manner which is inconsistent with the licensing objectives
- a condition of the licence has been breached
- a licensee has failed to cooperate with a review, or
- the licensee is unsuitable to carry on the licensed activities.

2.28 Revocation of an individual or an operator's licence is appropriate where this is the only means of protecting consumers and maintaining public confidence. However, decision makers should not feel it necessary to revoke a licensee's licence in order to satisfy public demand for blame and punishment.

2.29 Revocation is likely to be appropriate when what occurred demonstrates that the licensee is unsuitable to hold a licence, and involves any of the following:

- there has been a serious breach of the Commission's Licensing Conditions or Social Responsibility Codes of Practice
- what happened seriously affected consumers, either deliberately or through incompetence
- there is a continuing risk that what happened will be repeated
- what happened involved abuse of position or trust
- dishonesty (especially where persistent and / or covered up)
- persistent lack of insight or understanding of the seriousness of what happened, the reasons that led up to a problem or the consequences.

Gambling Commission June 2017

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