

Decision notice

Review of ElectraWorks Limited's operating licence

Breach of conditions relating to marketing and advertising and specified management office for marketing

February 2018

Introduction

1. On 4 October 2017 the Gambling Commission (the Commission) gave ElectraWorks Limited (the Licensee) 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)).
2. The Commission has found that the Licensee breached conditions of its licence relating to:
 - **Marketing:** advertisements published on websites controlled by the Licensee did not state significant limitations and qualifications, despite there being space to do so.
 - **Specified management office:** the Licensee failed to ensure that an individual who held the management office for marketing held the requisite personal management licence (PML).
3. In line with the Commission's [Licensing, compliance and enforcement policy statement](#), the [Indicative Sanctions Guide](#) and the [Statement of Principles for determining Financial Penalties](#), the Commission has decided to impose:
 - a **financial penalty of £350,000** for the breaches in relation to marketing,
 - a **warning** for failing to ensure an individual who held the management office for marketing and advertising held a PML
4. This decision notice sets out the relevant licence condition (LC) and social responsibility code provision (SRCP), the background events, our findings and the outcome of the review.

Commission's findings

5. The Commission's findings are that the Licensee breached:
 - a) Paragraph 1 of LC 1.2.1 (Specified management offices – personal management licences) in that between 30 June 2016 and 10 April 2017 it failed to ensure that the individual occupying the management office for marketing held a PML which authorised the performance of that function.
 - b) Paragraph 2(a) of SRCP 5.1.7 (Marketing of offers) in that between 24 August 2016 and 31 August 2017 it published 14 advertisements on its website which did not state significant limitations and qualifications despite there being space to do so.

Marketing and advertising – breach of SR code provision 5.1.7.2(a)

6. On 8 May 2015, the LCCP was amended to include, amongst other additions, new social responsibility codes in relation to marketing and advertising. SRCP 5.1.7.2(a) stipulates that all licensees must abide by any relevant provisions of the Committee of Advertising Practice (CAP) code and the Broadcast Committee of Advertising Practice (BCAP) code, which relates to 'free bet', 'bonus' or similar offers.

7. On 26 March 2016 a [complaint](#) was made by a customer to the Advertising Standards Authority (ASA) in relation to an advertisement found on a website run by the Licensee. The complaint was subsequently investigated and upheld by the ASA and was found to have breached CAP Code (Edition 12), specifically CAP code rules 3.1 and 3.3 (misleading advertisement), 3.9 (Qualification) and 8.2 (Promotional marketing).
8. On 24 August 2016 the Commission found an advertisement on a website belonging to the Licensee that breached paragraph 2(a) of SRCP. This was brought to the Licensee's attention, who later removed the advertisement.
9. In April 2017, 6 breaches were found on several of the Licensee's websites which breached paragraph 2(a) of SRCP 5.1.7; these same breaches were found again in June 2017. These advertisements were subsequently removed by the Licensee. A further advertisement was found on 31 August 2017, which was also promptly removed after the Licensee was made aware of it by the Commission.
10. The Commission had at the time already taken action against other operators for misleading advertising when these breaches occurred. Our expectation is that operators take these notices into account as wider industry learning and use them to modify their own policies and procedures to prevent similar breaches.

PML for marketing – breach of licence condition 1.2.1

11. On 30 June 2016 the Licensee's PML holder for marketing left his post. Despite his departure, the individual who took over the responsibilities of the marketing management office did not hold the requisite PML, as required under LC 1.2.1 of the LCCP.
12. On 24 August 2016 the Commission notified the Licensee that no PML was in place for its marketing management office. The Commission received assurances that an application was being prepared and would be received shortly by the Licensee.
13. On 22 September 2016 the PML applicant commenced an online application form for a PML, but no formal application was received by the Commission until 13 February 2017. The PML application was subsequently granted on 10 April 2017.
14. The Licensee acknowledges that it was aware in April 2016 that a replacement for the role of PML holder for marketing was required by June 2016. The Commission acknowledged that the Licensee experienced some technical difficulties in the submission of the PML application.
15. The Commission expects operators to ensure that they have PML holders in place for management offices as specified in the LCCP and would expect responsible operators to plan ahead to ensure any changes in personnel do not result in breaches of the relevant licence conditions.

Decision and reasons

16. In accordance with both our regulatory powers under section 117 of the Act and the Commission's [Indicative Sanctions Guide \(June 2017\)](#) we decided to:
 - (1) issue the Licensee with a formal warning under section 117(1)(a) of the Act in respect of the breach of paragraph 1 of LC 1.2.1.
 - (2) impose a financial penalty of £350,000 under section 121 of the Act in relation to the breaches of paragraph 2(a) of SRCP 5.1.7.

17. The warning will remain on the Licensee's file and will be taken into account if we identify further regulatory failures on its part.
18. In relation to the financial penalty, we took into account the factors set out in our published [Statement of principles for determining financial penalties \(June 2017\)](#) in deciding that £350,000 was an appropriate financial penalty.

Conclusions

19. The licensee was transparent and open throughout our enquiries and the subsequent licence review. It recognised its failings and took steps to ensure the issues were addressed and did not occur in the future.
20. This decision notice provides valuable learning for all operators to ensure that, when promoting free bets or bonus offers, they must comply with the relevant requirements under SRCP 5.1.7. This would ensure that consumers are not misled about the nature of free bets or bonuses which are being offered.
21. Any individual placed in charge of a specified management office must hold the requisite PML as per the requirements in LC 1.2.1. Any incoming personnel should have their PMLs granted when taking over the responsibilities of their specified management office and are urged to plan ahead. It is the responsibility of the applicant or the Licensee to check the progression of any applications.