

# GAMBLING COMMISSION

## **Guidance on regulatory decision making after a licence review**

November 2009

# 1 Introduction

- 1.1** The decisions to be taken, whether by the Regulatory Panel or by employees acting under delegated powers are all administrative decisions, which must be taken in accordance with the framework set out in the Gambling Act 2005 ('the Act') and the principles of fairness and natural justice.
- 1.2** The Commission exercises its functions in the public interest. Decisions must be made openly, impartially, with sound judgment and for 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 there is insufficient information to reach a decision.
- 1.3** It is important that decision makers have not already taken a firm view on a matter, nor give the appearance of having made up their mind before the formal consideration of a matter. However, a decision maker will not 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.
- 1.4** If a decision maker has any concerns about procedural fairness then they should seek advice from the Commission's legal advisers.
- 1.5** This guidance sets out a framework of matters which are relevant to decisions about whether the Commission should exercise its regulatory powers following a licence review under section 116 of the Act.
- 1.6** 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 Regulation
  - Regulators' Compliance Code
  - report of the Hampton Review
  - report of the Macrory Review
  - Enforcement Concordat
  - Scottish Improving Regulation Report 2008
  - reports of the Regulatory Review Group in Scotland
  - Hampton Implementation Review Report into the Gambling Commission.
- 1.7** This guidance is a 'living document', which will be updated and revised as the need arises.

## 2 The framework for considering whether to exercise the Commission's regulatory powers after a licence review

**2.1** 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.

**2.2** 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 under section 117<sup>1</sup> of the Act to:
  - give the licensee a warning
  - add, remove or vary a condition to the licence
  - suspend a licence
  - revoke a licence
  - impose a financial penalty.

**2.3** The principal purpose of the Commission exercising its regulatory powers is to protect the public interest. In doing so, we will:

- seek to bring the licence holder back into compliance, where that can be achieved without undue risk to the licensing objectives or the public
- consider the necessity to deter the licence holder and others from future non-compliance
- consider, where appropriate and proportionate, the need to punish wrong doing

**2.4** In deciding whether to exercise the Commission's regulatory powers the decision maker should have regard to risk to the licensing objectives<sup>2</sup> and apply the principle of proportionality, weighing the interests of the public (as above) against those of the licensee. The decision maker will also need to consider any mitigation in relation to the seriousness of the matters under consideration.

**2.5** The Commission has developed policies which govern how it carries out its functions and this guidance needs to be read in conjunction with the following:

- Statement of Principles for Licensing and Regulation
- Licensing, Compliance and Enforcement Policy Statement
- Licence Conditions and Codes of Practice
- Corporate Governance Framework
- Regulatory Panel Procedures
- Statement of Principles for Determining Financial Penalties.

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<sup>1</sup> The powers under section 117 of the Gambling Act 2005 are not mutually exclusive and may, if appropriate, be exercised in combination.

<sup>2</sup> Section 1 Gambling Act 2005

### 3 Deciding what to do at the conclusion of a licence review

- 3.1 The paragraphs below outline each disposal option, stating the philosophy behind them and some broad criteria as to their use.

#### **No further action and Advice to Conduct**

- 3.2 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.
- 3.3 Deciding that there should be no further action will be appropriate if the decision maker considers that there is no case to answer or where further formal action would not be a proportionate response to the facts which have been established 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.
- 3.4 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 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.
- 3.5 An advice to conduct letter is not a formal warning. However, the Commission will keep a record of the fact that advice has been given and may refer to an advice to conduct letter in the future if circumstances require it.
- 3.6 It is difficult to be prescriptive about the circumstances in which an advice to conduct letter will be the most suitable means of disposal. The following 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 advice to conduct:
- poor administrative and / or operational procedures, where the licensee demonstrates that they will take steps to improve them
  - isolated minor breaches of licence conditions or social responsibility codes of practice, where the licensee demonstrates that they 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**

- 3.7 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 are at the lower end of the spectrum in terms of seriousness of the event which occurred or existed and the risk to the licensing objectives, in order to mark the fact that the behaviour was unacceptable and must not happen again.

**3.8** A warning allows the licence to continue. Warnings may also be taken into account in the future, if a licensee is the subject of another review.

**3.9** **Warnings may be appropriate where most or all of the following factors are apparent<sup>3</sup>:**

- there is evidence that what happened did not seriously affect customers
- the licensee has demonstrated an understanding of the issues or concerns which gave rise to the licence review and / or there is not a significant risk of a repetition
- what happened was an isolated incident and was not deliberate
- the licensee has made a genuine expression of regret
- the licensee has previous good history
- there has been no repetition of behaviour since the incident
- the licensee has taken, or is taking, rehabilitative / corrective steps
- the licensee has produced relevant and appropriate references and testimonials.

### **Amending conditions or imposing additional conditions to a licence**

**3.10** Amending conditions or imposing additional conditions to a licence will allow a licence to continue. The conditions applied will set out the steps or controls which are considered necessary to minimise the risk to the licensing objectives in the future. Imposing licence conditions will also mean that it is possible to impose financial penalties on a licensee (as well as any other regulatory action deemed appropriate) if the conditions are not complied with.

**3.11** Where conditions are imposed they should ensure that customers will not be seriously disadvantaged or affected either directly or indirectly as a result of the conditions imposed and that the conditions will protect customers and the public during the period they are in force. Conditions should also only be used where it is possible to formulate appropriate and practical conditions to impose on the licence.

**3.12** **Imposing additional conditions may be appropriate when most or all of the following factors are apparent<sup>4</sup>:**

- what happened is not fundamentally incompatible with continuing to be licensed
- the licensee has demonstrated an understanding of the issues or concerns which gave rise to the review and / or there is no significant risk of repeating behaviour if the licence conditions are complied with
- there are identifiable areas of practice in need of retraining and the licensee has demonstrated their potential and willingness to respond positively to retraining.

### **Financial Penalties**

**3.13** Financial penalties can only be imposed when 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

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<sup>3</sup> 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 warning.

<sup>4</sup> 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 imposing additional conditions.

- deter future non-compliance by the relevant licence holder and other licence holders more generally.

**3.14** More detailed guidance on financial penalties can be located in the Commission's 'Statement of Principles for Determining Financial Penalties'.

## **Suspension**

**3.15** The Commission may only suspend a licence<sup>5</sup> 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
- the licensee is unsuitable to carry on the licensed activities.

**3.16** 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.

**3.17** 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 the Commission's intervention, following which the licensee will be able to commence the licensed activities.

**3.18** 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.

**3.19** **Subject to the requirements for suspension outlined above being met, suspension may be appropriate when some or all of the following factors are apparent<sup>6</sup>:**

- suspension will prevent an ongoing breach or further breaches in the future and will be particularly appropriate for serious on-going breaches or concerns where continuation of the licensed activities is not in the public interest
- there has been a serious instance of unacceptable conduct and a lesser sanction is not sufficient
- what happened is not fundamentally incompatible with continuing 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 repeating behaviour once the period of suspension has elapsed.

## **Revocation**

**3.20** 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

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<sup>5</sup> The Commission also has the power to suspend a licence when it commences a licence review, or during a licence review.

<sup>6</sup> 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 suspension.

- a licensee has failed to cooperate with a review
- the licensee is unsuitable to carry on the licensed activities.

**3.21** Revocation of an individual or an operator's licence is appropriate where this is the only means of protecting the public 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.

**3.22** **Revocation is likely to be appropriate when what occurred is fundamentally incompatible with holding a licence and involves any of the following<sup>7</sup>:**

- there has been a serious departure from the Commission's Licensing Conditions or Social Responsibility Codes of Practice
- what happened seriously affected customers, either deliberately or through incompetence; particularly where 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.

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## Keeping gambling fair and safe for all

For further information or to register your interest in the Commission please visit our website at: [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

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<sup>7</sup> 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 revocation.