

# GAMBLING COMMISSION

## **Statement of principles for determining financial penalties**

**September 2009**

# 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 in exercising its powers to require the holder of an operating licence to pay a financial penalty.

## The framework of policies and procedures

- 1.2 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
  - Regulatory panel procedures.

## The legal framework

- 1.3 Section 121 of the Gambling Act 2005 (the Act) 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.

## The scope of this document

- 1.4 Section 121(6) of the Act requires the Commission to, among other things, prepare a statement setting out the principles to be applied by the Commission in exercising its powers to impose financial penalties and to have regard to the statement when exercising a power under this section. In particular the Commission will have 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
  - the nature of the licensee (including, in particular, the licensee's financial resources).
- 1.5 This document sets out the principles which the Commission will apply and will have regard to when exercising its powers under section 121 of the Act.

## 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 the public, although they may have a punitive effect. 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.

### 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 In deciding whether it would be appropriate to impose a penalty, the Commission will take full account of the particular facts and circumstances of the breach under consideration. Factors which the Commission will take into consideration include (the list is not exhaustive):
- the extent to which the circumstances from which the contravention or failure arose were within the control of the licensee
  - the presence or absence of internal controls or procedures which were intended to prevent the breach
  - the steps that the licensee has taken since the breach was identified to avoid recurrence of the breach.
- 2.4 A financial penalty allows the Commission, amongst other things, to eliminate financial gain or benefit from non-compliance. A financial penalty may be appropriate in the following circumstances (the list is not exhaustive):
- where the breach of a licence condition was committed deliberately or recklessly
  - 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
  - where the breach of a licence condition had an impact on customers
  - where the licensee did not report the breach of a licence condition.
- 2.5 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

- 2.6 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 and will take into

account the financial situation of the licensee, including the ability to pay. The Commission will also take into account all the other circumstances of the case, which may include (the list is not exhaustive):

- the impact on the licensing objectives
- whether there has been a repeated breach or failure
- 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 senior management
- the level of any attempt to make financial gain from the breach
- the extent of any attempt to conceal the failure or breach
- the impact on customers
- the absence of internal controls or procedures intended to prevent the breach
- the duration of the breach
- the extent of steps taken to remedy the breach
- reporting the breach to the Commission
- co-operation with any investigation undertaken by the Commission.

## Procedural matters

**2.7** 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 him 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.

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

## Time limits

**2.9** 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.

**Gambling Commission September 2009**

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## Keeping gambling fair and safe for all

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Copies of this document are available in alternative formats on request.

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**SOP 09/02**