

Changes to corporate governance framework (Regulatory Panels)

Overview

Through effective licensing and regulatory enforcement activity, the Commission aims to protect consumers and the wider public, and to raise standards in the gambling industry.

There are a variety of ways that the Commission can deal with non-compliance by Licensees, ranging from enhanced compliance procedures and regulatory settlements to licence reviews and formal enforcement action. The Commission is also responsible for determining applications for new operating and personal licences and ensuring that those that hold a licence remain suitable to do so.

Cases can be referred to a Regulatory Panel for determination at the request of the Applicant/ Licensee and/or if their scale, complexity, or novelty are of strategic importance to the Commission.

Due to changes in the gambling market and gambling regulation, the cases that are heard by Regulatory Panels are becoming increasingly complex and legalistic.

We are consulting on a number of proposals to ensure that our Regulatory Panels are best equipped to deal with our evolving casework.

Introduction

1 What is your name?

Name

2 What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

Email

3 What is your organisation?

Organisation

4 Privacy notice

As part of this call for evidence, we may decide to publish your name and organisation on our website to indicate that you have responded to this consultation. We have asked you to indicate your consent to the Commission publishing your name and organisation to indicate you have responded to this call for evidence.

(Required)

Please select only one item

I CONSENT to the publication of my name and organisation to indicate I responded to this consultation

I DO NOT CONSENT to the publication of my name and organisation to indicate I responded to this consultation

Privacy and cookies

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Background

Regulatory Panels, comprised of Commissioners, provide the opportunity for applicants / licensees to attend an oral hearing to challenge the decisions Commission staff are minded to take in enforcement and licensing cases.

Sch.4 para. 8(1) of the Gambling Act 2005 sets out the statutory regime for delegated decision making and guides our approach to Panels. The Commission may delegate any of its functions to:

(a) a Commissioner

(b) a committee of the Commission consisting of—

(i) commissioners, or

(ii) a mixture of one or more commissioners and one or more employees

or

(c) an employee of the Commission

Under legislation the Commission is not empowered to have panel hearings heard by a formally independent panel. There is a route of external appeal for licensees or applicants to the First Tier Tribunal from any decisions made by the Panel.

Our proposals

Under the proposals we shall employ between four and six Adjudicators, who are legally qualified persons employed solely for the purposes of sitting on Regulatory Panels.

The quorum for conduct of any business by the Regulatory Panel is proposed as one Commissioner and one Adjudicator for matters relating to an operating licence and one Adjudicator for matters relating to a personal licence.

Usually, for an operator enforcement case or an operator licensing case, quorum will be one Commissioner and one Adjudicator and for a personal licence case (either enforcement or licensing application), quorum will usually be one Adjudicator.

The reason for the proposed difference in quorum is based on our experience of the likely complexity of these different types of hearing.

We propose that a Regulatory Panel may also occasionally be asked by Commission staff to provide steers on regulatory settlement proposals / indication of an appropriate figure for a financial penalty (on the condition that a differently constituted panel would hear any subsequent enforcement case) when necessary. Delegation for approval of settlements will remain with Executive Directors.

We would retain the option for a legal adviser to attend Panel hearings, but the presumption is that ordinarily a legally qualified panel member would provide the legal advice to the Panel. As occurs now, this advice would need to be announced to both parties.

Advantages to this option:

- (a) a mixed Panel will bring a broader range of combined experience and ensure such skills do not atrophy by being regularly utilised
- (b) greater availability of Panel members to hear cases brings more flexibility in listing cases and shorter waiting times for hearings
- (c) the mixed Panel model is adopted by a number of other regulators
- (d) saving on costs of legal adviser to Panel meaning that costs awarded against the losing party will be lower overall

We are satisfied that this proposal represents a cost-effective way of conducting hearings. In order to be open and transparent, we have set out our estimate of costs and savings below.

Ongoing costs:

(a) Day rate for legally qualified adjudicator bearing in mind case volume, and depending on the quality of applicant sought. Based on an average salary for this type of work (38 days per annum), we might budget an extra £40,000 for a year's adjudications.

(b) In addition, we would need to have at least one training day per annum (6 x day rate, plus Commission staff costs of facilitating this)

(c) Time will be needed for Board oversight of the Panel members, including:

i. Each member to be observed and performance reviewed by the Chair of the Panel, with the Chair observed by the Chair of the Commission during their term for appraisal purposes

ii. Annual report to Board

(d) Overheads relating to their status as employees, agents or contractors. We would propose to model the employment contract on our existing contracts e.g. advisory panels/ independent members.

(e) Governance time in managing the Panel, appointing hearing dates etc – assume this would be like-for-like as against existing arrangements.

(f) Recruitment time / costs on a three-year cycle once their terms expire, assuming there is no need to terminate early, as per the above item.

Savings:

Savings would be made in not having a separate legal adviser to the panels. As external panel legal advice costs range from £2,000 per case to £10,000 for the most complex cases, we would estimate this saving would contribute approximately £30,000 towards the annual cost of the panel.

The decision as to whether we pay Panel members for time incurred if the hearing does not take place (due to the licensee, for example, abandoning their opposition in the meantime) has the potential to impact on actual costs.

The above figures do not account for hearings abandoned at that stage and there are usually two to three such hearings per year. It is proposed that we pay for work done once the papers have been provided to Panel members - if we do not offer to pay for time incurred, this will have a detrimental effect on the attractiveness of the role.

In the same way as we currently recover costs, some of the above costs may be recovered from operators in some cases. This would be where:

(a) costs can fairly be attributed to a particular enforcement case

- (b) the official's decision on breach is upheld
- (c) a fine is ordered to be paid;
- (d) the fine is in excess of investigation costs; and
- (e) the fine is in fact paid in full.

In order to improve how we regulate, and to provide further clarity to applicants and licensees on how the Panel will decide on matters of procedure, we have set out some proposed changes.

In particular, we are looking to expand the sections on 'Documentary and other evidence' and 'Representations and evidence', and the circumstances in which it will be possible to admit late evidence.

In respect of regulatory decisions, we have proposed further guidance in the financial penalties section in terms of representations. We have also proposed extended timescales for submission of bundles prior to the hearing, payment of financial penalties and dates for decisions.

5 Proposed changes to the Scheme of Delegation of licensing and regulatory decisions in respect of gambling

PDF of tracked changes

6 Proposed changes to regulatory decisions: procedures and guidance for regulatory hearings

PDF of tracked changes

7 Proposed changes to Licensing decisions: procedures and guidance for licensing hearings

PDF of tracked changes

Questions

8 Do you agree with the proposal to use adjudicators on regulatory panels?

Please select only one item

Yes No Don't know

Question 4 comments

9 Do you agree with the proposed changes to the 'Scheme of Delegation of licensing and regulatory decisions in respect of gambling'?

Please select only one item

Yes No Don't know

Question 5 comments

10 Do you agree with the proposed changes to 'Regulatory decisions: procedures and guidance for regulatory hearings'?

Please select only one item

Yes No Don't know

Question 6 comments

11 Do you agree with the proposed changes to 'Licensing decisions: procedures and guidance for licensing hearings'?

Please select only one item

Yes No Don't know

Question 7 comments

Before you submit your response

12 How did you hear about this consultation?

Please select only one item

- Social media Word of mouth Gambling Commission website
 Broadcast (News, TV or radio) Newspaper (print or online) Other

If you answered other, please specify

13 Overall, how satisfied were you with our online consultation tool?

Please select only one item

- Very satisfied Satisfied Somewhat satisfied Disappointed

How could we improve this service?