

2023 Consultation on proposed changes related to financial penalties and financial key event reporting

This print version of the consultation is laid out differently than the online version.

Overview

The Gambling Commission regulates most forms of commercial gambling in Great Britain. We are consulting on two sets of ‘business as usual’ proposed changes relating to clarity and transparency to the way financial penalties are calculated, and financial key event reporting by licensees to make sure we have the right information for risk-based regulation. This consultation makes proposed changes to our requirements on gambling businesses for reporting through the Licence Conditions and Codes of Practice (LCCP) and one of the proposed changes relating to reporting would also be reflected in our Licensing, Compliance and Enforcement Policy Statement. This consultation also makes proposals for a revised Statement of Principles for Determining Financial Penalties (SoPfDFP) which would also be reflected in our Indicative Sanctions Guidance. All stakeholders, including consumers, gambling licensees and members of the public are invited to share their views on these proposals.

Separate from this consultation on ‘business as usual’ matters, the Commission is also consulting on proposed changes to the regulatory framework required to implement the Gambling Commission’s commitments as part of the Gambling Act Review. Our consultation on the first set of proposed changes was published in July this year and closed in October. We are currently analysing the consultation responses we have received and will set out one or more responses to this consultation in 2024. Our consultation on the second set of proposed changes was published in November this year and will close in February 2024. You can have your say on this [separate current consultation on our website](#).

Please give us your views

This consultation covers two ‘business as usual’ areas:

Principles for determining financial penalties

Through effective licensing and regulatory enforcement, we aim to protect consumers and the wider public, and to raise standards in the gambling industry.

We may require a gambling licensee to pay a financial penalty if as a result of an investigation we find that a condition of the licence has been breached. We may impose a financial penalty following a licence review under the Gambling Act 2005 (the Act), and we also have the power to impose a financial penalty without carrying out a licence review.

Our [Statement of Principles for Determining Financial Penalties](#) (SoPfDFP) is produced in accordance with the Act and requires the Commission to, among other things, prepare a statement setting out the principles we will apply in exercising our powers to impose a financial penalty and to have regard to the statement when exercising that power. The Act requires us to review this statement from time to time and revise it when we consider it necessary.

In order to ensure transparency, clarity and consistency on how penalties are calculated, we are proposing to make changes to the criteria for imposing a financial penalty and the methodology for determining the amount of a penalty. These proposed changes are set out in a revised SoPfDFP for consultation. These proposed changes, if implemented, would also be reflected in our Indicative Sanctions Guidance, also set out here for consultation.

Financial key event reporting: Reporting changes in ownership and interests

Currently, gambling licensees are required to make a report to the Commission when persons become 3% or more shareholders in the licensee (or its holding company) and also if the licensee enters into a loan with an entity that is not regulated by the Financial Conduct Authority.

The proposed changes are driven by gambling licensees being linked to complex, modern day, global business structures meaning that the ownership and interests are not always clear. Similarly, their financing arrangements are not always straightforward.

The current requirements risk potential gaps in our understanding of licensees' financial positions and associations with others.

Furthermore, many gambling licensees are now linked to jurisdictions where the governance arrangements mean that some licensees cannot meet the 3% shareholder reporting requirement because they cannot access information about shareholdings below this level. This has led to some licensees having additional conditions added to their licence to allow a 5% threshold reporting requirement to apply to them.

The current reporting requirements are therefore difficult to apply consistently across all licensees.

We are therefore consulting on changes to the LCCP ([Licence Condition 15.2.1](#) Reporting key events) and the addition of some new key reporting requirements to ensure that we are notified of changes to finances, ownership and interests within gambling licensees at the appropriate levels. The proposed changes to the LCCP would also be reflected in our Licensing, Compliance and Enforcement Policy Statement.

Responding to this consultation

Thank you for taking part in this consultation. This consultation document covers two areas of proposals, and each has a number of questions. You can choose to respond to either or both areas and any questions you wish to within those areas. You can choose to respond to each area in whichever order you wish. We will consider all responses.

We ask that stakeholders respond to the consultation using the online survey. If you cannot submit online, responses can also be submitted by post to: **Policy Team, Gambling Commission, 4th Floor, Victoria Square House, Birmingham, B2 4BP.**

We may decide to publish the names of individuals (if responding in a personal capacity) or the organisations they are responding on behalf of on our website as part of the published response(s) to this consultation. In the survey, we ask you to indicate whether or not you provide consent to the Commission publishing:

- your name, if you are responding in a personal capacity, or
- the name of your organisation, if you are replying on their behalf.

If you provide consent, then this information may be placed on our website to provide information about who responded to the consultation exercises. Information about how the Gambling Commission processes your personal information, including a

specific section on information we collect as part of a Gambling Commission consultation exercise, can be found in the [Gambling Commission's Privacy Policy](#).

The consultation will last for 13 weeks and will close on 15 March 2024.

Introductory questions

What is your name?

[free text]

What is your email address?

[free text]

What is the name of your organisation?

[free text]

As part of this consultation, we may decide to publish your name (if you are responding in a personal capacity) or the name of your organisation (if you are responding on your organisation's behalf) on our website to indicate you responded to this consultation. Do you provide your consent to these details being published?

Please select only one item:

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

I DO NOT CONSENT to the publication of my name or organisation to indicate I respond to this consultation.

The [Commission's privacy notice](#) is available on our website.

Tell us a bit about you to help us understand your perspective. Are you:

Please select only one item:

An academic, responding as an individual

A person, responding in a personal capacity who is or has worked in a gambling business

A member of the public

A person representing a charity/non-profit

A person representing a gambling business

A person representing a trade association

A person representing a professional body, including academic organisations

A person representing a licensing authority or other regulator

Introductory questions (continued)

In this section, we ask a number of questions to help us understand the perspective of the responses we receive to inform and tailor our policy decisions.

If you or someone you know is struggling with gambling-related problems, contact the [National Gambling Helpline](#), 0808 8020 133 free of charge 24 hours a day, 7 days a week.

How often do you gamble?

Please select only one item:

Two or more times a week

Once a week

Less than once a week, more than once a month

Once a month

Every 2-3 months

Once or twice a year

Never

Have you gambled online in the past four weeks?

Please select only one item:

Yes

No

To what extent do you agree or disagree that in the past 12 months, you or someone close to you has experienced negative consequences as a result of your gambling?

Please select only one item:

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Prefer not to say

To what extent do you agree or disagree that in the past 12 months, you have experienced negative consequences as a result of someone else's gambling?

Please select only one item:

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Prefer not to say

Executive summary

Introduction

The Gambling Commission is the independent regulator of commercial gambling in Great Britain. The past year has seen a focus on the government's white paper [High stakes: gambling reform for the digital age](#) and two sets of consultations to implement its proposals. However, there are also areas where we see a need to improve our 'business as usual' work.

We are consulting on two set of proposed changes: to our requirements on gambling businesses through the Licence Conditions and Codes of Practice (LCCP) and the way we regulate via the Statement of Principles for Determining Financial Penalties (SoPfDFP).

All stakeholders, including consumers, gambling operators and members of the public are invited to share their views on these proposals.

Overall summary of proposals

We are consulting on two sets of proposed changes to the regulatory framework:

Principles for determining financial penalties

Through effective licensing and regulatory enforcement, we aim to protect consumers and the wider public, and to raise standards in the gambling industry.

We may require a gambling licensee to pay a financial penalty if as a result of an investigation we find that a condition of the licence has been breached. We may impose a financial penalty following a licence review under the Gambling Act 2005 (the Act), and we also have the power to impose a financial penalty without carrying out a licence review.

Our [Statement of Principles for Determining Financial Penalties](#) (SoPfDFP) is produced in accordance with the Act and requires the Commission to, among other things, prepare a statement setting out the principles we will apply in exercising our powers to impose a financial penalty and to have regard to the statement when exercising that power. The Act requires us to review this statement from time to time and revise it when we consider it necessary.

In order to ensure transparency, clarity and consistency on how penalties are calculated, we are proposing to make changes to the criteria for imposing a financial penalty and the methodology for determining the amount of a penalty. These proposed changes are set out in a revised SoPfDFP for consultation. These proposed changes, if implemented, would also be reflected in our Indicative Sanctions Guidance, also set out here for consultation.

Financial key event reporting: Reporting changes in ownership and interests

Currently, gambling licensees are required to make a report to the Commission when persons become 3% or more shareholders in the licensee (or its holding company) and also if the licensee enters into a loan with an entity that is not regulated by the Financial Conduct Authority.

The proposed changes are driven by gambling licensees being linked to complex, modern day, global business structures meaning that the ownership and interests are not always clear. Similarly, their financing arrangements are not always straightforward.

The current requirements risk potential gaps in our understanding of licensees' financial positions and associations with others.

Furthermore, many gambling licensees are now linked to jurisdictions where the governance arrangements mean that some licensees cannot meet the 3% shareholder reporting requirement because they cannot access information about shareholdings below this level. This has led to some licensees having additional conditions added to their licence to allow a 5% threshold reporting requirement to apply to them.

The current reporting requirements are therefore difficult to apply consistently across all licensees.

We are therefore consulting on changes to the LCCP ([Licence Condition 15.2.1](#) Reporting key events) to ensure that we are notified of changes to ownership and interests within gambling licensees at the appropriate levels. The proposed changes to the LCCP would also be reflected in our Licensing, Compliance and Enforcement Policy Statement.

Evaluating the impact of relevant proposals

The Gambling Commission works to assess our overall progress towards the strategic objectives set out in our [corporate strategy](#).

This includes our work on [Impact Metrics](#). The proposals in this consultation support our strategic objectives, including proposals to help reduce the risk of gambling customers experiencing gambling-related harm due to the non-compliance of licensees and the gambling industry being free from criminal influence and activity.

Alongside this work to measure overall impact, the Commission is developing its approach to evaluation of policy changes.

Our immediate focus is consultation proposals which take forward the Commission's commitments following the Government's White Paper- High stakes: Gambling Reform for the Digital Age. Our approach will be proportionate in nature.

Recognising the complexity associated with evaluating proposals that are part of a multi-year and interconnected programme of work, related available evidence, and key areas that can be expected to deliver the most insights and opportunities for learning, we are likely to focus on policies that have a direct impact on gambling consumers.

In approaching this programme of evaluation, we will continue to consider opportunities to evaluate our other policy work, noting that this will be more limited in

scale. We will take into account views that would help inform evaluation, as well as evidence presented throughout the consultation process.

Impact assessment

In developing proposals for consultation, we seek to understand the proportionality of approaches we propose to take in terms of the impact on businesses. The proposals on financial penalties would primarily be changes on how we would act resulting in increased transparency for gambling licensees. Those proposals would only impact upon licensees that breached our rules, there would be no impact on those that did not.

The consultation on reporting changes in ownership and interests includes a question inviting views on the direct costs which may be incurred by gambling licensees associated with implementing the proposals.

Equalities impacts

The Commission is committed to upholding the Public Sector Equality Duty as set out in the Equalities Act 2010. This includes giving due consideration to any potential equalities impacts, having regard to the need to eliminate discrimination, advancing equality of opportunity and fostering good relations between those who share a protected characteristic and those who do not when proposing changes to our regulatory framework.

The proposals on financial penalties are of interest primarily to gambling licensees and their representatives and, as such, do not directly relate to interaction or engagement between the Commission and consumers, or licensees and consumers. We currently consider that these proposals do not give rise to any known negative impacts in the context of protected characteristics under the Equalities Act.

The proposals on reporting changes in ownership and interests relate to operational changes for gambling licensees that do not have a direct impact on consumers and do not currently give rise to any known negative impacts in the context of protected characteristics under the Equalities Act.

Therefore, we are not aware of any significant adverse equalities impacts arising from these proposals but will keep this position under review. We ask specific questions in this consultation to explore any potential equalities effects for each set of proposals and we welcome views on these issues.

Next steps

Following consultation, we will analyse the responses alongside input from stakeholders and any additional evidence gathered during the consultation period to formulate our response(s). We anticipate (subject to the consultation) that the topics will have a minimum of a three-month notice period between publishing the response and for proposed changes to take effect. We are seeking views from respondents about any issues we should be aware of in implementing each of the changes and new requirements, should they progress to implementation.

Consultations contents page

Please select a consultation section below. If you have answered all of the ones you wish, please select the 'finished' option.

Please select only one item:

Principles for determining financial penalties

Financial key event reporting: Reporting changes in ownership and interests

Principles for Determining Financial Penalties

Introduction

Through effective licensing and regulatory enforcement, the Gambling Commission (“the Commission”) aims to protect consumers and the wider public and to raise standards in the gambling industry.

The Commission may require the holder of an operating Licence to pay a financial penalty under section 121 of the Gambling Act 2005 (the Act) if it thinks that a condition of the Licence has been breached. It may impose a financial penalty following a Licence review under section 116(1) or (2) of the Act, and it also has the power to impose a financial penalty without carrying out a Licence review.

Our [Statement of Principles for Determining Financial Penalties](#) (SoPfdFP) is produced in accordance with section 121(6) of the Act which requires the Commission to, among other things, prepare a statement setting out the principles it will apply in exercising its powers to impose a financial penalty on a holder of an operating Licence or a personal Licence, and to have regard to the statement when exercising a power under this section. It requires the Commission to review this statement from time to time and revise it when it thinks necessary.

The Commission is proposing, subject to consultation, to make changes to the criteria for imposing a financial penalty and the methodology for determining the amount of a penalty. These proposed changes are set out in a revised SoPfdFP for consultation. A draft version of the proposed new SoPfdFP is attached to this consultation for reference. Where appropriate, we are proposing to maintain some of the wording used in the existing SoPfdFP, such as when describing the legal framework and where our approach is unchanged in comparison to the existing statement of principles.

The Commission’s current view is that the proposed changes to the SoPfdFP would enable the Commission to better achieve the licensing objectives under section 1 of the Act and be consistent with its duty under section 22 of the Act to pursue those objectives.

The proposed changes are expected to result in financial penalties that are proportionate to the nature of the breach of Licence condition and the level of harm caused as a result of the breach, by making a clear link between the seriousness of the breach and the financial gain to the Licensee while it was in breach of the

regulatory framework. The proposed changes aim to make the Commission's approach to financial penalties more transparent, addressing stakeholder concerns about the lack of transparency and consistency with regards to the existing approach. Further, the proposed changes are intended to make the decision-making processes clearer therefore reducing the time and resources involved in determining financial penalties.

Summary of proposals – financial penalties

The Commission is seeking feedback on proposed changes to how the Commission will calculate financial penalties in a revised SoPfDFP. The proposals include:

- a) A clear and distinct six step process the Commission would follow when determining a financial penalty.
- b) Providing clarity as to how and when the Commission will calculate a 'disgorgement' element of the penalty where clear consumer detriment and/or financial gain by the Licensee has resulted directly from the breach.
- c) Identifying which factors would determine the seriousness of the breach and form part of the assessment of the starting point of the penal element, as distinct from constituting aggravating or mitigating factors.
- d) Providing transparency on how the Commission would determine the level of seriousness of the breach and the introduction of five levels of seriousness.
- e) A proposal for determining the starting point for the penal element of the penalty by reference to the seriousness of the breach and a percentage of gross gambling yield (GGY) or equivalent income generated during the period of the breach.
- f) A proposal for addressing situations involving multiple breaches during the period.
- g) A proposal for making adjustments to the penalty for aggravating and mitigating factors, deterrence and early resolution, as distinct and separate from the process for determining the seriousness and starting point of the penal element of the penalty.

In order to make clear the full picture of proposed changes, we have set out each proposal and material change to the existing SoPfDFP individually, with questions on each proposal. A full draft of the proposed SoPfDFP is included at the end of the consultation, alongside links to the current SoPfDFP. We have not marked up the existing SoPfDFP with proposed changes, as this could cause confusion in light of the nature of the new proposals and proposed amendments.

As set out in the SoPfDFP, it should be read in conjunction with a number of other documents, listed below:

- [Statement of principles for licensing and regulation](#)
- [Licensing, compliance and enforcement policy statement](#)
- [Licence Conditions and Codes of Practice](#)
- [Complaints procedure](#)
- [Corporate governance framework](#)
- [Indicative Sanctions Guidance](#)
- [Regulatory panel procedures](#).

If implemented, some of the proposals for the revised SoPfDFP will need to be reflected in the [Indicative Sanctions Guidance](#). We have included in this consultation the associated changes that would also apply to that Guidance if the proposals are implemented following consultation.

Background

In exercising its functions under the Act, the Commission shall aim to pursue, and wherever appropriate to have regard to, the licensing objectives, and to permit gambling, in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives.

Section 121 of the Act 2005 provides that the Commission may require the Licence holder to pay a financial penalty if the Commission believes a condition of the Licence has been breached.

The primary purpose of the Commission's exercise of its regulatory powers is to protect the interests of consumers and the general public and uphold the licensing objectives. This may have a punitive effect on the Licensee. 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.
- deter future non-compliance of other operators.

The current SoPfDFP

In accordance with section 121(6) of the Act, the Commission's current approach to issuing financial penalties is currently set out in the [Statement of Principles for](#)

[Determining Financial Penalties](#) June 2017¹. Further details of the approach can also be found in the [Indicative sanctions guidance](#) June 2017.

The statement maintained under 121(6) requires the Commission in considering the imposition of a penalty or amount of a penalty to have regard, in particular, 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, and
- the nature of the Licensee (including, in particular, its financial resources).

In line with section 121(7) of the Act, the current SoPДФP:

- lists circumstances where imposing a financial penalty may or may not be appropriate.
- sets out the criteria for determining the quantum of a financial penalty which includes:
 - the description of the two elements which will comprise the amount payable.
 - the approach the Commission takes to calculate the penalty, namely:
 - Calculate the detriment to consumers and/or calculate the gain to the Licensee, if possible.
 - Consider the seriousness of the breach to determine the appropriate penal element of the fine.
 - Consider any aggravating and mitigating factors that may increase or decrease the penal element.
 - Consider the need for a deterrence uplift to the penal element, having regard to the principle that non-compliance should be more costly than compliance and that enforcement should deliver strong deterrence against future non-compliance.
 - Where a case is settled early, apply a discount to the penal element if appropriate.
 - The total amount to be paid by the Licensee will be the sum of the figures determined at step 1 and step 4 (or step 5 if the case is settled), subject to any further adjustments to ensure that the

¹ Section 121(6) of the Act requires the Commission to, among other things, prepare a statement setting out the principles to be applied by decision makers in exercising the Commission's powers to impose financial penalties, and to have regard to the statement when exercising a power under this section.

total financial liability arising from a financial penalty and/or redress payments is reasonable.

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 and reasonable to the circumstances of the Licence breach. It will take into account the financial situation of the Licensee where this information is provided to the Commission. The process relies on using judgement against the identified factors and applying them to the steps deemed appropriate.

Once a financial penalty has been imposed the Commission pays received monies into the HM Treasury's consolidated fund, once it has deducted its costs and a reasonable share of its indirectly referable expenditure, as set out at section 121(5)(c).

During the two-year period of August 2021 until July 2023 (the period) the Commission issued circa £38 million in financial penalties paid to HM Treasury's consolidated fund and circa £44 million was paid in lieu of a financial penalty via the regulatory settlement process. During this period, we were concerned to see repeated failures from Licensees who had previously been subject to a financial penalty or regulatory settlement, and breaches of a similar nature by different Licensees following the publication of public statements and lessons learned for the wider industry.

During this time, we also received repeated requests from Licensees to improve transparency in respect of how we calculate financial penalties; for example, of the 41 cases, during the period, 19 Licensees asked for clarity as to how we had reached the quantum of the financial penalty or had challenged the appropriateness and/or fairness of the quantum. These requests ultimately lead to protracted casework often putting additional pressure on both the Commission's and on Licensees' resources and pushing the boundaries of the two-year limit on imposing a financial penalty.

The approach was last updated in June 2017. The Commission considers it is time to re-evaluate its approach to imposing and calculating financial penalties to ensure it remains fit for purpose in the current landscape and is facilitating changed behaviours across the industry.

The Commission's current approach to imposing sanctions draws heavily from the principles contained in the [Macrory report](#) which reflects good practice for regulators

to follow. The Commission has also considered the [Principles of effective regulation - National Audit Office \(NAO\) Report](#) which outlines the learning cycle regulators can apply when revisiting or refreshing practices to ensure they remain relevant and fit for purpose.

Whilst the Commission appreciates that different regulatory bodies operate within different legal and regulatory frameworks, we are aware that lessons can be learned from approaches taken in other regulated sectors. The Commission is aware that the Financial Conduct Authority (FCA), Information Commissioners Office (ICO) and the Solicitors Regulatory Authority (SRA) all provide a formula for calculating a financial penalty in the event of a breach of regulatory requirements. In developing these proposals, we have reviewed the approaches to determining financial penalties adopted by these and other regulators. For example:

- The **Financial Conduct Authority** takes a five-step approach (disgorgement, seriousness, mitigating and aggravating factors, adjustment for deterrence and settlement discount) using a metric system to identify the percentage of revenue derived during the period of the breach, assigning a percentage of revenue on an escalating scale in line with the seriousness of the breach.
- The **Information Commissioner's Office** has adopted a two-tier penalty system, with higher penalties for failure to comply with data protection principles and a lower tier for breaches of administrative requirements of the legislation. The level of penalties is based on a percentage of annual worldwide turnover, up to a maximum set out in legislation.
- The **Solicitors' Regulation Authority** adopts similar approaches for firms and individuals, basing penalties on a percentage of turnover or income respectively. They use a three-step approach to determine the basic penalty (seriousness, aggregating/mitigating factors, removal of any financial gain). The seriousness of the breach is based on a combination of the nature and impact of harm of the breach, which generates an overall serious level using four bands.
- The **Office of Gas and Electricity Markets** take a six-step approach for determining penalties in respect of remit breaches, in most cases using a percentage of revenue derived by the firm during the breach period, in relation to the products or business areas the breach relates to. There are five levels of 'seriousness', with associated percentages of revenue escalating from zero to 20% for the most serious cases.

Objectives of the proposals

The proposals set out in the consultation have been developed following consideration by Commission officials of the practical application of the existing SoPfDFP in enforcement cases since the statement came into effect in 2017. The Commission has also taken account of feedback from stakeholders such as regulatory panel members, Licensees and their representatives during this period. It has led us to conclude that:

- the existing SoPfDFP does not contain sufficiently clear guidance in terms of how the quantum of the financial penalty is calculated.
- the lack of clear guidance has given rise to concerns about duplication or double counting of contributory factors on the part of Licensees.
- the lack of clarity has left the Commission open to challenge around our ability to achieve consistent outcomes.
- the level of representations by Licensees requesting a greater understanding of how we reached the level of a financial penalty has led to our casework becoming protracted and leading to legal challenge.

The proposed new SoPfDFP is intended to address these concerns and feedback. The main objectives of the proposals set out in this consultation are:

- to ensure a consistent process for the determination and imposition of financial penalties to deter non-compliance with regulatory requirements,
- to provide greater transparency and clarity over how financial penalties are calculated,
- to continue to allow sufficient scope to exercise necessary judgement in the determination of the quantum based on individual case characteristics, and
- to mitigate the risk of legal challenges on our approach.

The Commission's reasons for specific proposals are set out in respect of each of the separate proposals below.

Details of proposals

This consultation document presents each section of the proposed new SoPfDFP in the order they appear in the full statement, with associated questions at the end of each section.

A full draft of the new proposed SoPfDFP is included at the end of the consultation, alongside links to the current SoPfDFP.

Where appropriate, we are proposing to retain some of the wording used in the existing SoPfdFP, such as when describing the legal framework and where our approach is unchanged in comparison to the existing statement of principles. We have included these sections within this consultation and invited comments on these for completeness.

Introduction

The introduction of the proposed new SoPfdFP has four headings:

- The purpose of this statement of principles for determining financial penalties
- The framework of policies and procedures
- The legal framework
- The scope of this document

The explanation under these headings mirrors the explanation in the existing SoPfdFP. We are seeking views on the wording of the introduction to ensure that it adequately describes the purpose, framework of policies and procedures, legal framework and scope of the document.

The existing SoPfdFP also included paragraph 1.6 – *Key considerations*. The proposed new SoPfdFP explores key considerations in subsequent sections of the document, so to avoid unnecessary duplication we propose to remove this section from the Introduction.

Proposed wording

Proposed deletions in comparison with the existing 'Introduction' are shown using strike-through.

1. Introduction

The purpose of this statement of principles for determining financial penalties

1.1 This statement sets out the principles that the Commission will apply and have regard to in exercising its powers to require the holder of an operating Licence or the holder of a personal Licence to pay a financial penalty.

1.2 This statement of principles applies both to circumstances in which the Commission exercises its powers to impose a financial penalty under section 121 of

the Gambling Act 2005 (the Act), or when the Commission is considering the matter of a payment in lieu of a financial penalty as part of a regulatory settlement with a Licensee. Therefore, references to financial penalties within this document should also be read to include payments in lieu of financial penalties.

The framework of policies and procedures

1.3 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
- Indicative Sanctions Guidance
- Regulatory panel procedures.

The legal framework

1.4 Section 121 of the ~~Gambling Act 2005~~ 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. Once a financial penalty has been imposed the Commission pays received monies into a Consolidated Fund, once it has deducted its costs and a reasonable share of its expenditure, as set out at section 121(5)(c) of the Act.

The scope of this document

1.5 Section 121(6) of the Act requires the Commission to, among other things, prepare a statement setting out the principles to be applied by decision makers in exercising the Commission's powers to impose financial penalties, and to have regard to the statement when exercising a power under this section. The Commission shall review this statement of principles from time to time and revise it when it thinks necessary.

Key considerations

1.6—In exercising its powers to impose a financial penalty the Commission will have particular 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
- whether the breach is an example of repeat behaviour by the Licensee
- whether the breach arose in circumstances that were similar to previous cases the Commission has dealt with which resulted in the publication of lessons to be learned for the wider industry
- the nature of the Licensee (including, in particular, the Licensee’s financial resources)
- the timeliness of any admissions made by the Licensee and actions taken to remediate the breach.

QUESTIONS on Section 1 – Introduction

To what extent do you agree that the wording in paragraphs 1.1 to 1.2 adequately describes the purpose of this statement of principles for determining financial penalties? [Multiple choice answer]

Please give your reasons for your answer below. If you do not agree, please suggest an alternative form of words. [Free text box]

To what extent do you agree that the wording in paragraph 1.3 adequately describes the framework of policies and procedures that the statement of principles for determining financial penalties should be read in conjunction with? [Multiple choice answer]

Please give your reasons for your answer below. Please include here any other documents that you believe should be added to the list. [Free text box]

To what extent do you agree that the wording in paragraph 1.4 adequately describes the legal framework within which the statement of principles for determining financial penalties sits? [Multiple choice answer]

Please give your reasons for your answer below. If you do not agree, please include any description of the legal framework that you believe should be incorporated. [Free text box]

To what extent do you agree that the wording in paragraph 1.5 adequately describes the scope of the document? [Multiple choice answer]

Please give your reasons for your answer below. If you do not agree, please suggest an alternative form of words. [Free text box]

To what extent do you agree with the proposal to remove paragraph 1.6 – key considerations – to avoid duplication of content that appears later in the proposed document? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

Are there any other references, documents or content the Commission should consider including, or take account of, in this section of the SoPfDFP? [Free text box]

Applicable principles

The purpose of imposing a financial penalty

The objectives of the proposals set out in this consultation are to ensure consistency, transparency and clarity over how financial penalties are calculated, while continuing to enable sufficient scope for the Commission to exercise appropriate judgement in determining the level of those penalties.

The Commission considers financial penalties should be set at a level where non-compliance is more costly than compliance. A financial penalty should therefore discourage Licence condition or other breaches and promote a culture of compliance across the Licensee business and the wider industry. We therefore propose that the level of the penalty should take into account and be proportionate to the financial resources of the Licensee. Further, any penalty should be proportionate to the nature of the breach and the harm caused.

The Commission's view is that both these principles should be reflected in the new SoPfDFP in the context of the purpose of imposing a financial penalty.

Later in this document we set out further details of our proposed approach to ensuring the proportionality of the level of the penalty. Here, we are consulting on the principles relating to the purpose of imposing a financial penalty, which underpin the process for determining the proportionality of financial penalties.

Proposed wording

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 consumers and the general public and uphold the licensing objectives. In exercising our regulatory powers this may have a direct punitive effect on the Licensee. 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.
- deter future non-compliance of other operators.

2.2 In order to change behaviour, deter Licence condition breaches and to promote a culture of compliance across the Licensee business, the Licensee's group and the wider industry, the level of the penalty should be set at a level where non-compliance is more costly than compliance and at a level which takes account of the financial resources of the Licensee. In addition, it should also be proportionate to the nature of the breach of Licence condition and the harm caused.

QUESTIONS on the purpose of imposing a financial penalty.

To what extent do you agree with the proposed wording at paragraph 2.1 and in particular the primary aims of financial penalties?

Please give your reasons for your answer below. [Free text box]

To what extent do you agree with the principles set out in paragraph 2.2 which underpin the detailed proposed amendments set out in this consultation? [Multiple choice answer]

Please give your reasons for your answer below. If you disagree, please provide additional explanation here. [Free text box]

Criteria for the imposition of a financial penalty

Financial penalties are one of the possible outcomes of an enforcement investigation and not every Licence condition breach will result in a financial penalty being imposed.

In this section, we propose to set out the criteria that the Commission must have regard to, by virtue of the Act, and propose for consultation certain other factors that the Commission may have regard to when considering the imposition of a financial penalty. We also propose to include the circumstances in which a financial penalty will not normally be used.

Paragraphs 2.3 and 2.5 of the proposed new SoPfDFP are unchanged from the existing SoPfDFP (paras 2.2 and 2.4 respectively).

Paragraph 2.4 lists the factors the Commission may have regard to when considering the penalty, although it is not intended to be exhaustive. The purpose of proposing this list is to clearly and transparently set out a range of factors which may be relevant when the Commission is considering whether the imposition of a financial penalty would be an appropriate and proportionate outcome of an investigation into a breach or breaches. By providing this at the outset, our intention is to ensure that Licensees and their representatives are fully aware of the factors which may be considered by the Commission in determining whether to impose a financial penalty, and the circumstances in which a financial penalty would not normally be used.

Proposed wording

Criteria for the imposition of a financial penalty

2.3 By virtue of section 121(7) of the Act, in considering the imposition of a penalty, the Commission must have regard to:

- the seriousness of the breach of 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).

2.4 The Commission may also have regard to such matters as it considers relevant including (but not limited to):

- whether the breach of a Licence condition is an example of repeat behaviour by the Licensee
- whether the breach of a Licence condition arose in circumstances that were similar to previous cases the Commission has dealt with which resulted in the publication of lessons to be learned for the wider industry
- the timeliness of any admissions made by the Licensee and actions taken to remediate the breach of a Licence condition
- where the breach of a Licence condition was committed intentionally or recklessly
- where the breach of a Licence condition could have been prevented by the Licensee
- a breach of a Licence condition arising from a systemic failure
- where the breach of a Licence condition gave rise to financial gain for the Licensee
- where the breach of a Licence condition had an impact on consumers
- where the breach of a Licence condition may have damaged confidence in the gambling industry
- where the Licensee was aware but did not report the breach of a Licence condition
- where there is a lack of timely and effective remedial action after the breach of a Licence condition or failure becomes apparent to the Licensee
- where a financial penalty is necessary to deter future contraventions or failures and to encourage compliance.

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.

QUESTIONS on criteria for the imposition of a financial penalty

To what extent do you agree with the proposed list of factors the Commission may have regard to when considering the imposition of a financial penalty, as set out in paragraph 2.4? [Multiple choice answer]

Please give your reasons for your answer below. Please include here any factors you believe should not be included, and/or any additional factors you believe the Commission should consider. [Free text box]

To what extent do you agree with the proposed circumstances in which a financial penalty would not normally be imposed, as set out in paragraph 2.5? [Multiple choice answer]

Please give your reasons for your answer below. Please include here any circumstances you believe should not be included, and/or any additional circumstances you believe the Commission should include. [Free text box]

Criteria for determining the quantum of a financial penalty – summary of proposals

This section includes proposals which are distinctly different from the existing statement of principles and represent the substantive changes to the way in which the Commission proposes to determine financial penalties. These proposals include:

- a) A clear and distinct six step process the Commission would follow when determining a financial penalty.
- b) Providing clarity as to how and when the Commission will calculate a 'disgorgement' element of the penalty where clear consumer detriment and/or financial gain by the Licensee has resulted directly from the breach.
- c) Identifying which factors would determine the seriousness of the breach and form part of the assessment of the starting point of the penal element, as distinct from constituting aggravating or mitigating factors.
- d) Providing transparency on how the Commission would determine the level of seriousness of the breach and the introduction of five levels of seriousness.
- e) A proposal for determining the starting point for the penal element of the penalty by reference to the seriousness of the breach and a percentage of gross gambling yield (GGY) or equivalent income generated during the period of the breach.

- f) A proposal for addressing situations involving multiple breaches during the period.
- g) A proposal for making adjustments to the penalty for aggravating and mitigating factors, deterrence and early resolution, as distinct and separate from the process for determining the seriousness and starting point of the penal element of the penalty.

The detailed wording proposed in the new SoPfDFP is set out in the following sections, along with consultation questions. Our rationale and expected impact of each of these proposals, if implemented, are summarised here, with more detailed explanation accompanying the individual proposals.

a) Setting out a clear and distinct six step process the Commission would follow when determining a financial penalty

This proposal consists of defining the process the Commission would follow when determining the level of the financial penalty. We are proposing this approach primarily to provide clarity and transparency, and to reduce the risk or perceived risk of duplication. If implemented, Licensees and representatives would be aware of and understand the methodology used by the Commission to determine each element of the penalty, and where in the process certain considerations would be taken into account. The detail is set out below, but in summary the six steps proposed are:

- Step 1 – calculate the disgorgement element of the penalty (if appropriate)
- Step 2 – determine the starting point for the penal element of the fine, in most cases by reference to seriousness and a percentage of GGY for the relevant breach period
- Step 3 – consider aggravating and mitigating factors which may increase or decrease the penal element
- Step 4 – consider the need for a deterrence uplift to the penal element
- Step 5 – consider any discount for early resolution
- Step 6 – consider any adjustment for affordability and proportionality

b) Clarity on the process to determine consumer detriment and/or financial gain by the Licensee as a direct result of the breach, to form the 'disgorgement' element of the penalty

We propose that the first step in this process would be to calculate the amount of consumer detriment or financial gain to the Licensee derived directly from the

breach, as a defined 'Step 1'. We propose that this calculated sum constitute the 'disgorgement' element of the penalty.

Identifying a 'disgorgement' element is part of the current process. Our proposals here are primarily to provide clarity on when in the process this would take place, and how this element would be taken into account in situations where it is not possible to accurately identify this element of a financial penalty.

c) Clear separation of factors which would determine the seriousness of the breach, from aggravating or mitigating factors

We propose to define more clearly which factors will be relevant at different stages of the process for calculating a financial penalty in order to promote a demonstrably methodical and consistent approach. In doing so, we propose to make clear the different factors that the Commission would ordinarily consider at each step. For example, factors that may attract a discount to the penal element would only be considered at the appropriate step, so would not be considered when determining the seriousness of the breach itself under Step 2.

If implemented, this approach would reduce the risk or perceived risk of duplication, or double counting, of factors and would provide transparency as to what matters have been considered by the Commission at each stage of the methodology. For example, it would make clear that the appropriate starting point of the penal element of the penalty based on seriousness of the breach under Step 2 is determined without reference to the way in which the Licensee then engages with the Commission throughout the investigation.

d) Transparency on how the Commission would determine the level of seriousness of the breach

We propose setting out how the Commission will make an assessment to determine the seriousness of the breach, including the circumstances the Commission would consider. Based on that assessment, we propose to assign a level of seriousness of the breach, using a five-point scale. While it is not possible to foresee and therefore include all potential scenarios, we propose to include sufficient detail on the factors that the Commission may consider, and which matters are indicative of particular levels of seriousness. The Commission considers this will ensure greater transparency and consistency in relation to how the Commission reaches decisions on seriousness.

In developing this approach, we have taken into account feedback via casework and requests from Licensees to provide greater clarity on *how* the starting point for the penalty is determined. We have considered the approach to assessing the seriousness of a complaint or breach of regulations adopted by other regulators such as the FCA and OFGEM, both of which use a five-point scale to categorise severity.

e) A proposed process for determining the starting point for the penal element of the penalty, calculated by reference to the seriousness of the breach and a percentage of gross gambling yield (GGY) generated during the period of the breach

When the level of seriousness of the breach has been determined, we propose using this to inform the starting point of the penal element of the fine. We propose that in most cases, this figure will be determined by reference to a percentage of the GGY derived by the licensed entity during the period of the breach, calculated to the nearest month, with breaches of less than 3 months' duration calculated at the GGY reported by the Licensee during the preceding quarter (preceding the end of the breach).

We propose the percentage amount should be calculated by reference to the seriousness of the breach, with five bands of a minimum and maximum percentage on an escalating five-point scale, up to a maximum in normal circumstances of 15% of GGY derived during the breach period for the most serious breaches.

In developing this proposal, we again considered the approaches adopted by the FCA and OFGEM, both of which use five point scales up to a maximum of 20% of revenue taken by the firm during the period of the breach to inform a starting point.

We explore this further alongside the detailed proposals.

f) A proposed process for situations involving multiple breaches during the period

Our casework to date has shown that enforcement cases can involve multiple Licence breaches, including different types of Licence breach, over different periods with varying levels of seriousness.

In adopting a methodical structured approach to determining financial penalties, we want to ensure that in the case of situations where multiple Licence breaches have occurred, we adopt a considered and proportionate approach to determining the starting point for the penalty.

Where multiple breaches have the same breach period, we propose to determine the level of seriousness by taking a holistic assessment of the breaches present. Where there are multiple breach periods over varying dates the Commission proposes to consider each distinct breach period in isolation to assess the seriousness of breaches for that specific breach period. The level of seriousness for each identified period would be determined using a holistic assessment of the breaches present to determine the overall level of seriousness. Each identified period would then be added together to give an aggregated figure covering the whole period(s).

g) Clarity on how adjustments to the penalty would be made for aggravating factors, mitigating factors, deterrence and early resolution, distinct and separate from the process for determining the seriousness and starting point of the penalty

As stated previously in this consultation, we propose to adopt a clearly defined six step process to determining financial penalties. If implemented following consultation, this process would approach the determination of the final amount of the fine in a demonstrably methodical and systematic way, considering a separate set of factors to determine each step of the composition of the fine: disgorgement, starting point for the penal element based on seriousness, any increase due to aggravating factors, any reduction for mitigating factors, any adjustment for a deterrent effect, and any reduction for early resolution.

If implemented, this separation would reduce the risk or perceived risk of duplication of factors being considered and would provide transparency on how each element had been calculated.

The following sections of this consultation address the overall process and the detail for each step of the six-step process.

Criteria for determining the quantum of a financial penalty

This proposal consists of defining the process the Commission would follow when determining the level of the financial penalty. We are proposing to set out a multi-step process to provide transparency on the process, and what factors may be relevant at different stages of the decision-making. If implemented, Licensees and representatives would be aware of and understand the approach the Commission would take to determine each element of the penalty, and where in the process particular matters may be considered.

In this section of the consultation, we are seeking views on the proposal to adopt the six-step approach and steps and sequences proposed. The detail within each step follows later in this consultation document.

Proposed wording

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.

2.7 The total amount payable by a Licensee will normally be made up of two elements:

- i. The Disgorgement element: an amount to reflect any financial detriment suffered by consumers and/or remove any financial gain made by the Licensee as a result of the contravention or failure (where these can be calculated) Step 1 below and
- ii. The Penal element: an amount that reflects the seriousness of the contravention or failure, the impact on the licensing objectives and the need for deterrence Steps 2 – 6 below.

2.8 The Commission will ordinarily approach the quantum of a financial penalty in the following way:

- i. Step 1: Calculate the Disgorgement element to reflect any financial detriment suffered by consumers and/or remove the financial gain to the Licensee, if possible (see paragraphs 2.9 – 2.10).
- ii. Step 2: Consider the seriousness of the breach to determine the appropriate starting point for the penal element of the fine (see paragraphs 2.11 – 2.20).
- iii. Step 3: Consider any aggravating and mitigating factors that may increase or decrease the penal element (see paragraphs 2.21 – 2.24).
- iv. Step 4: Consider the need for a deterrence uplift to the penal element, having regard to the principle that non-compliance should be more costly than compliance and that enforcement should deliver strong deterrence against future non-compliance (see paragraph 2.25).
- v. Step 5: Consider a discount to the penal element where early resolution has been reached (see paragraphs 2.26 – 2.28).

- vi. Step 6: Consider whether an adjustment should be made to ensure the sum of the figures at steps 1 (if calculated) and step 5 are reasonable and proportionate in respect of affordability (see paragraphs 2.29 – 2.32).

QUESTIONS on criteria for determining the quantum of a financial penalty

To what extent do you agree with the overall proposal to move to a clearly defined six step approach? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree with the proposal set out in paragraph 2.7, to separate the calculation of the disgorgement element of the fine from the calculation of the penal element, with these added together at Step 6? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree with the steps proposed and the sequencing of these steps as set out in paragraph 2.8? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

Do you have any further comments on this section that the Commission should take into account? [Free text box]

Step 1: Detriment to consumers and/or gain to the Licensee

In certain circumstances, the evidence available through individual casework does not always enable us to precisely quantify the detriment to consumers and/or gain to the Licensee as a direct result of the breach – we refer to this as “disgorgement”. This may occur where there are social responsibility failings, when a breach occurs part way during a business relationship, or where there are multiple consumers affected by the breach. Under the existing SoPfDFP, the Commission often has to rely on estimates provided by the Licensee to calculate the estimated consumer detriment or financial gain to the Licensee within the calculation of the overall penalty.

We propose to make two changes to the current approach.

Firstly, in circumstances where an accurate divestment amount cannot be calculated from information provided by the Licensee, we propose that no sum will be calculated under Step 1. Instead, the detriment to consumers and/or gain to the Licensee will be factored into the penal element of the penalty under Step 2 – considering the seriousness of the breach. Our proposed amendments in relation to Step 2 are set out later in this consultation.

As an illustration, the following situations would normally lead to the level of disgorgement being accurately identified:

- Where the Commission has identified a Licensee’s customer who has misappropriated a defined amount of funds which has been gambled and lost with the Licensee resulting in a quantifiable amount.
- Where the Commission reviews a customer during a compliance assessment with the Licensee and the Licensee accepts that at a certain point in the customer spend it should have taken action.
- Where the Licensee identifies the gain it made from a marketing arrangement in breach of a Licence condition.

Secondly, where it is possible to calculate an accurate divestment amount, this will be calculated under Step 1, and then the Commission will add the disgorgement element to the penal element at Step 6, to reach the total amount of the fine. We believe this approach will make clear the level of detriment/gain as a direct result of the breach.

Proposed wording

Step 1: Detriment to consumers and/or financial gain to the Licensee

2.9 Where the Commission can accurately identify (based on information provided by the Licensee) the financial detriment suffered by consumers and/or the financial gain to the Licensee derived directly from the breach, this sum will constitute the disgorgement element. At Step 6, the disgorgement element will be added to the penal element of the financial penalty calculated at Steps 2-5.

2.10 Where the disgorgement cannot be accurately calculated, detriment to consumers/ financial gain to the Licensee will not result in a disgorgement element under Step 1 although these factors may be relevant in assessing seriousness under Step 2.

QUESTIONS on Step 1: Detriment to consumers and/or gain to the Licensee

To what extent do you agree with the proposal for the Commission to attempt to identify the amount of detriment to consumers and/or financial gain to the Licensee as a direct result of the breach as the first distinct step in the process? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree with the proposal that the amount of detriment to consumers and/or financial gain to the Licensee as a direct result of the breach should constitute the “disgorgement” sum added to the penal element of the fine? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree with the proposal that if the level of detriment to consumers and/or financial gain to the Licensee cannot be calculated at Step 1, this should be considered as a relevant factor in assessing seriousness under Step 2? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

Do you have anything further to add in relation to this section, for the Commission to take into account? [Free text box]

Step 2: The seriousness of the breach to determine the starting point of the penal element

The Commission currently considers a number of factors in order to determine the seriousness of the breach. These include – but are not limited to – factors such as the size of the customer base affected, knowledge and involvement of senior management and company boards, and the scale of the breach across the entity.

Under the existing process, factors which determine the seriousness of the breach are considered at the same time and in concert with factors more associated with mitigating or aggravating factors, and feedback from stakeholders has suggested the current process presents the risk of double-counting or duplication.

Therefore, in order to address these issues, our proposals for Step 2 consist of two distinct stages:

- Step 2(a) Determining the seriousness of the breach
- Step 2(b) Determining the starting point of the penal element of the fine.

Step 2(a) Determining the seriousness of the breach

Under Step 2(a) we propose setting out a non-exhaustive but detailed list of factors to which the Commission may have regard in assessing seriousness to provide clarity for Licensees and other interested parties in understanding the matters which the Commission considers are relevant to the seriousness of the breach.

In order to address the risk or perceived risk of duplicating factors at different stages of the methodology, we propose making clear the factors the Commission may take into account when determining the seriousness of the breach, separate and distinct from factors which may be considered mitigating or aggravating factors. As stated, we propose considering aggravating and mitigating factors, or those relevant to the question of deterrence, under proposed Step 3 and Step 4.

Our reasons for this proposal are to ensure we initially focus on factors relevant to the seriousness of the breach itself. Following that step, other factors would then be taken into account, such as action taken to remedy the breach and cooperation with the investigation. These factors would not impact the seriousness of the breach, however, they could lead to adjustments to the final penalty amount. This should avoid the risk of the duplication of factors where it would not be appropriate to do so.

We propose to categorise the seriousness of the breach using a five-point scale. This will provide clarity and transparency for Licensees on how the Commission will determine the seriousness of the breach.

In developing this proposal to move to a five-point scale to categorise the seriousness of the breach, we have considered the approaches taken by other regulators including OFGEM and the FCA who have adopted a similar approach. We consider the tiered approach offers benefits to the industry in clearly understanding how we view the seriousness of the breach and how this relates to the calculation of the financial penalty.

We considered three levels would not cover the full range of seriousness that we have previously encountered with cases, and five levels would be sufficient to

capture and distinguish the full range of seriousness we have observed or can reasonably foresee.

While it is not possible to foresee and therefore include all potential scenarios, these proposals include sufficient detail in relation to the factors that the Commission would consider against each of the five levels of seriousness, to ensure that Licensees are aware of how the Commission would have reached its position. Our reasons for doing so are to embed as much objectivity and consistency into this process as is feasible, and reducing where possible the level of reliance on individual judgement to determine the seriousness of the breach. We believe this transparency will provide clarity about how the seriousness of the breach would be determined, which should reduce the risk of challenge to the Commission's decision-making when determining the penalties.

Proposed wording

Step 2(a) Determining the seriousness of the breach

2.11 The Commission will first make an assessment to determine the level of seriousness of the breach(es) taking account of all of the circumstances to the case, which may include but are not limited to consideration of:

- the impact on the licensing objectives
- the nature of the breach
- the scale of the breach across the licensed entity
- the duration or frequency of the breach whether the breach was carried out deliberately or recklessly
- the impact on consumers and the general public (to the extent not already calculated under Step 1)
- the number of consumers affected by the failings
- whether the breach had an effect on vulnerable consumers, whether intentionally or otherwise
- the level of any potential financial gain, financial gain or intended financial gain from the breach either directly or indirectly
- whether the breach continued after the Licensee became aware of it (and prior to the Commission's point of knowledge)
- the extent of any attempt to conceal the failure or breach

- the involvement of middle and senior management including consideration as to whether they are complicit in the failings or ignorant of them
- the absence of internal controls or procedures intended to prevent the breach
- the awareness and involvement of company boards including consideration as to whether they conducted the business with integrity.

2.12 Based on the Commission’s assessment of the relevant factors a level of seriousness will be assigned. The levels range from Level 1 (least serious) to Level 5 (most serious). Level 5 is reserved for the most serious cases.

2.13 The determination of the level of seriousness will be a matter of judgement for the Commission based on a holistic assessment of the factors.

2.14 As a general guide, the factors which may lead the Commission to conclude that a particular breach be assigned a particular level of seriousness are set out in the table below, although this is not intended to be prescriptive and it is ultimately a matter of judgment for the Commission to consider, by reference to the circumstances of a particular case. It is not necessary for all factors listed to be present in order to determine a breach at a particular level, in some circumstances a minimal number of factors may be sufficient to determine that a breach falls within a particular category of seriousness.

Level	Factor(s)
1	<ul style="list-style-type: none"> • the breach was a limited threat to the licensing objectives • the breach ceased immediately after the Licensee became aware of it • the breach was minimal in scale across the licensed entity • a minimal number of consumers suffered detriment • a minimal amount of actual, potential or intended financial gain from the breach either directly or indirectly • there was minimal impact on consumers and the general public • weaknesses in internal controls or procedures intended to prevent the breach were minimal • the breach was a one-off occurrence or of minimal duration.
2	<ul style="list-style-type: none"> • the breach was a moderate threat to the licensing objectives • the breach continued for a short period after the Licensee became aware of it • the breach was small in scale across the licensed entity • middle and senior managers were not complicit in failings but demonstrated a minimal lack of oversight/awareness

	<ul style="list-style-type: none"> • a low number of consumers suffered detriment • a low amount of actual, potential or intended financial gain from the breach either directly or indirectly • there was a low impact on consumers and/or the general public • weaknesses in internal controls or procedures intended to prevent the breach were low • the duration of the breach was short.
3	<ul style="list-style-type: none"> • the breach was a substantial threat to the licensing objectives • the breach continued for a moderate period after the Licensee became aware of it • the breach was moderate in scale across the licensed entity • middle and senior managers were not complicit in failings but demonstrated a moderate lack of oversight/awareness • the breach could have been prevented/there were elements of recklessness demonstrated • a moderate number of consumers suffered detriment • a moderate amount of actual, potential or intended financial gain from the breach either directly or indirectly • there was moderate impact on consumers and/or the general public • weaknesses in internal controls or procedures intended to prevent the breach were moderate • company boards demonstrated a lack of awareness but were uninvolved in the breach, and conducted the business with integrity • the duration of the breach was moderate.
4	<ul style="list-style-type: none"> • the breach was a serious threat to the licensing objectives • the breach continued for a considerable period of time after the Licensee became aware of it • the breach was widespread across the licensed entity • middle and senior management were not complicit in the failings but demonstrated a lack of oversight/awareness and/or were inexcusably ignorant (for example, previous failings of a similar nature) • the breach was reckless or had an element of deliberate risk • a high number of consumers suffered detriment • a high amount of actual, potential or intended financial gain from the breach either directly or indirectly • there was some attempt to conceal the failure or breach • there was a high impact on consumers and/or the general public • weaknesses in internal controls or procedures intended to prevent the breach were high • company boards demonstrated a clear lack of governance, and were either aware

	<p>or inexcusably ignorant (for example, previous failings of a similar nature), and/or conducted the business with a lack of integrity</p> <ul style="list-style-type: none"> • the duration of the breach was long.
5	<ul style="list-style-type: none"> • the breach was a very serious threat to the licensing objectives • the breach continued for a very long period of time after the Licensee became aware of it • the breach occurred across all aspects of the licensed entity, or impacted the entire entity • middle and senior management were seemingly complicit in the failings, or inexcusably ignorant (for example, previous failings of a similar nature) and/or demonstrated a total lack of oversight. • a very high number of consumers suffered detriment • a very high amount of actual, potential or intended financial gain from the breach either directly or indirectly • the breach had elements of being deliberate • there was a deliberate and wide-ranging attempt to conceal the failure or breach • there was very high impact on consumers and/or the general public • weaknesses in internal controls or procedures intended to prevent the breach were very high • company boards demonstrated poor governance and were aware or demonstrated elements of complicity or were inexcusably ignorant (for example, previous failings of a similar nature), and conducted the business with a total lack of integrity • the duration of the breach was very long.

QUESTIONS on Step 2(a) Determining the seriousness of the breach

To what extent do you agree with the list of factors proposed under paragraph 2.11 that the Commission would consider in order to determine the seriousness of the breach? [Multiple choice answer]

Please give your reasons for your answer below. If you have comments about specific factors you believe should be added or instead be considered under Step 3 or Step 4, please provide those here. [Free text box]

To what extent do you agree with the proposal for consideration of those factors to inform categorisation of the seriousness of the breach using a five-point scale? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree with the factors and descriptions proposed at paragraph 2.14 to determine the levels of seriousness of the breach? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

Do you have anything further to add in relation to this section, for the Commission to take into account? [Free text box]

Step 2(b) Determining the starting point of the penal element of the fine

When the level of seriousness of the breach has been determined, we propose using this to inform the starting point of the penal element of the fine. We propose that in most cases, this figure will be determined by reference to a percentage of the GGY derived during the period of the breach, or the preceding quarter if the period of the breach itself is not appropriate.

We propose the percentage of GGY for the relevant period will be calculated by reference to the seriousness of the breach on an escalating five-point scale, with percentage bands for each of the five-point scale, up to a maximum in normal circumstances of 15% of GGY derived during the breach period for the most serious breaches.

Based on experience of previous casework, and considering the factors listed under 'Level 5' with regard to our proposals for determining the seriousness of the breach, we believe that 'Level 5', and therefore a maximum of 15% GGY derived during the breach period is likely to represent the most serious cases we investigate. However, we propose to retain the ability to identify a starting point for the penalty that under the proposals set out here would constitute the equivalent of more than 15% of GGY derived during the period. We anticipate that this circumstance would be very unlikely and invite views and responses on the inclusion of this within the proposed process, in the questions at the end of this section.

This will provide greater clarity and transparency for Licensees on how the Commission will calculate the penal element of the fine.

In developing this proposal we have considered the approaches taken by other regulators including OFGEM and the FCA who use revenue as a basis for determining the level of fines for breaches by firms.

In summary we are proposing:

- in most cases, based on the level of seriousness assessed under Step 2(a) the penal element of the financial penalty will be calculated by reference to an appropriate percentage of gross gambling yield (GGY) for the period of the breach (calculated to the nearest month),
- where the breach period is less than 3 months or is a 'one off' event, we will use the GGY derived in the quarter preceding the breach,
- where the breach period is sustained such that a GGY based penalty would be disproportionate, we will set out our rationale as to the period of GGY to be considered, and
- in cases where the GGY methodology of calculation is not appropriate, such as Licensees who do not generate GGY or income is from other sources such as 'white label' arrangements, we will set out our rationale for not using GGY to the Licensee and how the Commission will assess the starting point, which would be based on the Commission's experience, knowledge and judgement of previous cases.

We believe it is appropriate to start with GGY derived in the preceding three months for short breach periods. In the event of a one-off breach, where the breach is of very short duration, or where the Licensee becomes aware of a breach and remedies it quickly, it is likely to be determined at a lower 'seriousness' level than a breach of moderate or long duration, and therefore attract a lower percentage of GGY from the preceding quarter as the starting point for the penal element of the fine.

The Commission considers GGY from GB-licensed activities to be the measure most closely aligned to revenue and would enable a consistent and proportionate approach across all Licensees. Licensees are already required to report GGY to the Commission on a quarterly or annual basis, and Commission officials can easily identify and verify GGY reported (the frequency of regulatory returns is currently subject to consultation, with proposals to move all regulatory return reporting to a quarterly basis).

For breaches of very short duration we believe a lower percentage of GGY over a fixed period is preferable to attempting to calculate an exact figure of GGY derived in a very short time frame, which may have a disproportionate impact on resources of both the Licensee and the Commission to identify and verify an accurate starting point. We believe the lower 'seriousness' level that would normally apply for breaches of very short duration to be sufficient to ensure starting points would not be disproportionately high. We invite responses to this approach in the questions at the end of this section of the consultation.

In developing these proposals, the Commission considered using profit as the relevant figure for the starting point of the penal element. We decided against this approach because Licensees are not required to report their profits and this would place an additional burden on the Licensee and the Commission to establish and verify, and because operating costs can vary significantly, so it would be challenging to maintain a consistent approach.

We also considered taking into account any 'parent company' or 'group' GGY, or globally generated GGY as the starting point for the penal element (for example, penalties issued by the ICO take into account annual global turnover). However, our view is that GGY derived from GB-licensed activities by the named Licensee would be the most appropriate and proportionate starting point, as it is the Licensee, not the group, that is in breach of the regulatory requirements, and those regulations apply to GB-licensed activities. We are proposing to use the percentage of GGY derived by the Licensee during the breach period as we believe it is the fairest and most proportionate way to link the starting point for the penal element to the actual breach and our current view is that it would not be proportionate to consider GGY derived during periods other than the relevant breach period.

In order to identify an appropriate starting point in relation to Licensees who do not generate GGY, we have proposed an alternative approach, drawing on experience, knowledge and judgement of previous cases. We propose that this would only apply where GGY is not an appropriate starting point, such as white label operators, cases relating to personal functional and management Licences, or where no GGY was generated from the breach, such as a failure to report key events.

We invite responses on the proposed approach to identifying a starting point in circumstances where GGY would not be appropriate, in the questions at the end of this section of the consultation.

Multiple breaches over varying time periods

The Commission plans to cater for calculating the period of the breach and the level of seriousness where there are multiple breaches. The period or periods of the breach or breaches will dictate the number of months GGY that is input into the calculation for the starting point of the penal sum.

There are various circumstances presented during casework where multiple breaches are identified. As examples of these periods:

- more than one breach of the same type over the same period of time or more than one breach of different types over the same period of time (the breach period)
- more than one breach of the same type or of different types but occurring over differing time periods. This would include where those time periods do not overlap and also where the time periods do overlap (the multiple breach periods).

The Commission will, where possible, set out within its preliminary findings what it considers to be the breach period or multiple breach period.

Where multiple breaches occur over the same breach period we propose to determine the level of seriousness by taking a holistic assessment of the breaches present. Where there are multiple breach periods over varying dates the Commission proposes to consider each distinct breach period in isolation to assess the seriousness of breaches for that specific breach period. The level of seriousness for each identified period would be determined using a holistic assessment of the breaches present to determine the overall level of seriousness. Each identified period would then be added together to give an aggregated figure covering the whole period(s).

The following examples are the most common seen in previous casework:

- if the Commission found two breaches and it was established they had both been in place over an 8 month period, and the period is assessed as a Level 3 breach. The breaches in this scenario start at the same time and are rectified at the same time giving a total 8 months breach period. The Commission would find the total breach period of 8 months and would calculate the starting point based on 8 months at Level 3. A relevant percentage GGY for this period would be identified to form the total starting point sum. This figure would be used to then go through steps 3 – 6.
- if the Commission found two breaches running over a total period of 8 months, one assessed as a Level 3 breach and the other assessed as a Level 2 breach. The breaches started at the same time, but the Level 3 breach ended after 6 months, and the Level 2 breach continued for another two months. The Commission would find the total breach period of 8 months and would calculate the starting point based on 6 months breach at Level 3 i.e., the higher level of seriousness, and 2 months at Level 2 of seriousness. A relevant percentage GGY for each of these two periods would be identified

separately, and then added together to form the total starting point sum. This aggregated figure would be used to then go through steps 3 – 6.

- if the Commission identified two breaches which may occur over two distinct separate periods. In this scenario a Level 1 breach may have taken place during a four-week period in May in respect of marketing issues. The Commission may discover a separate Level 2 breach between July and November in respect of AML issues. Whilst potentially forming part of the same review each period would be considered separately i.e. 4 weeks assessed at Level 1 of seriousness to reach a starting point; separately 5 months breach period assessed as a Level 2. As the two periods are distinct they would be assessed separately resulting in starting points relating to 5 months calculated at Level 2 i.e., the higher level of seriousness, and 4 weeks calculated at Level 1 of seriousness. The two figures would then be added together to form the total starting point sum. This aggregated figure would be used to then go through steps 3 – 6.

Proposed wording

Step 2(b) Determining the starting point of the penal element of the fine

2.15 The 'level of seriousness' assessed under Step 2(a) is used to determine the appropriate starting point for the penal element. In most cases, the Commission will determine the starting point by reference to a percentage of the Licensee's Gross Gambling Yield (GGY)¹ derived during the period of the breach. The breach period will be calculated to the nearest month. Where the breach period lasted less than 3 months, or was a one-off event, the GGY will be that derived by the Licensee in the 3 months preceding the end of the breach.

2.16 The GGY will be ascertained from the Licensee's regulatory returns² for its licensed activities in the UK. It will not include GGY accrued from activities which do not fall to be licensed by the Commission or from activities which fall outside the Licence that has been breached.

2.17 The period of the breach(es) will dictate the number of months GGY that is input into the calculation for the starting point of the penal sum. There are various circumstances presented during casework where multiple breaches are identified. As examples of these periods:

- more than one breach of the same type over the same period of time or more than one breach of different types over the same period of time (the breach period)
- more than one breach of the same type or of different types but occurring over differing time periods. This would include where those time periods do not overlap and also where the time periods do overlap (the multiple breach periods).

The Commission will, where possible, set out within its preliminary findings what it considers to be the breach period or multiple breach period.

2.18 The Commission plans to cater for calculating the breach periods where there is a clear distinct period by determining the level of seriousness by taking a singular or holistic review of the breaches present during the distinct period. Where there are multiple breach periods over varying dates the Commission proposes to consider each distinct breach period in isolation to assess the seriousness of breaches for that specific breach period. The level of seriousness for each identified period would be determined using a holistic review of the breaches present to determine the overall level of seriousness. Each identified period would then be added together to give an aggregated figure covering the whole period(s).

2.19 Having determined the GGY for the relevant period, the Commission will then decide on the percentage of that GGY which will form the starting point of the penal element of the fine. The appropriate percentage range will be determined by the 'level of seriousness' assigned at Step 2(a). The Commission will use its judgement on a case-by-case basis to decide upon the appropriate percentage within that range.

Level of seriousness	Percentage of GGY over relevant period
1	0% to 0.99%
2	1% to 2.99%
3	3% to 4.99%
4	5% to 9.99%
5	10% to 15% (in exceptional circumstances the Commission reserves its position to increase the upper limit higher and should it do so will provide rationale for this)

2.20 The Commission recognises that it in some circumstances it will not be appropriate for the starting point to be based on a percentage of GGY. Examples may include, but are not limited to:

- the Licensee’s business model is not reliant on GGY (such as white label operators)
- in cases relating to Personal Functional and Management Licence (PFL/PML) holders
- in cases where there may be a specific single issue relating to a part of a Licensee’s business (such as failings at a single premises within an estate of licensed premises) or
- where there is no potential of GGY being generated from the breach such as failing to report key events.

2.21 In those cases, where the use of a percentage of GGY as the starting point for the penal element is not appropriate, the Commission will use an appropriate alternative starting point for the penal element. The Commission will adopt a similar approach by assessing seriousness in accordance with Step 2(a) taking into account the relevant factors, but the starting point will be assessed based on the Commission’s experience, knowledge and judgement of previous cases. In these cases, the Commission will confirm its rationale for not using GGY to the Licensee in its decision.

[Footnotes]

¹ Gross Gambling Yield (GGY) is the total amounts paid to the Licensee by way of stakes, plus the total of any amounts that will otherwise accrue to the Licensee, minus the total amounts deducted in respect of the provision of prizes or winnings. Further details of how GGY is calculated are available on the Commission’s website.

² For the Licensee that is under investigation.

QUESTIONS on Step 2(b) Determining the starting point of the penal element of the financial penalty

To what extent do you agree with the proposal to use GGY generated during the period of the breach (rounded to the nearest month) as the starting point for determining the level of the financial penalty? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

In the case of one-off or events lasting short time periods, to what extent do you agree with the proposal that GGY derived during the quarter preceding the end of the breach should be considered the starting point for determining the level of the financial penalty? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

In the case of multiple breaches of varying duration, to what extent do you agree with the proposal to use the aggregated breach period, taking account of different levels of seriousness within that breach period, or if this is not appropriate, for the Commission to use judgement to reach a fair and proportionate period? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree with the proposal that the starting point for the financial penalty will be calculated by adopting a percentage of GGY derived during the period of the breach, where this percentage is set by reference to the level of seriousness of the breach? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree with the percentage ranges proposed to inform the starting point of the penal element, associated with the level of seriousness of the breach? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree with the proposal for the Commission to reserve the right to impose a percentage of GGY in excess of 15% in exceptional circumstances for the most serious breaches? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

Do you have any comments on the circumstances in which it would not be appropriate to use GGY as the starting point for this calculation? Please include here any other examples we should consider adding to paragraph 2.20. [Free text box]

Do you have any further comments to add on the proposals for Step 2(b) Determining the starting point of the penal element of the fine? [Free text box]

Step 3: Mitigating and aggravating factors

In proposing this new approach to determining financial penalties, the Commission intends to continue to consider any aggravating or mitigating factors that may warrant an increase or reduction to the penal element. In setting out these proposals, we want to provide transparency and clarity on the types of aggravating and mitigating factors we propose to consider.

As stated above, separating these mitigating or aggravating factors from those factors associated with determining the seriousness of the breach would enable the Commission to isolate the decision-making for each element or part-element of the fine. This approach separates our consideration of how the Licensee responds to the breach in terms of their own actions and how they engage with the Commission during the investigation of the breach, from the seriousness of the breach itself.

Our reasons for providing examples of the factors we would consider at this step are to promote transparency and consistency at each step of the process, and to reduce the level of reliance on individual judgement to determine whether the way in which the Licensee has engaged with the Commission during the investigation, or the actions the Licensee had taken when becoming aware of the breach should necessitate an adjustment to the starting point of the penal element of the fine. We believe this transparency will provide assurance to Licensees about how any adjustments to the penalty had been made, which should reduce the risk of challenge to the Commission's decision-making when determining the penalties.

Our proposed aggravating factors include repeated breaches by the Licensee or those similar to previous breaches either by the Licensee or others which have been the subject of 'public statements', the Licensee's regulatory history, deliberate targeting of vulnerable customers, and attempts to conceal information or mislead the Commission's investigation team.

Our proposed mitigations include the timeliness of remedial actions taken by the Licensee and disclosure to the Commission of the breach, accurate and comprehensive reporting and prompt action to address identified issues.

The Commission will weigh up any aggravating and mitigating factors and consider whether, considered in the round, it is appropriate to increase or decrease the starting point for the penal element and if so, by what sum.

Proposed wording

Step 3 Mitigating and aggravating factors

2.22 The Commission may increase or decrease the sum calculated at Step 2, to take into account factors which aggravate or mitigate the breach.

2.23 The following list of factors may have the effect of aggravating the breach (this list not exhaustive):

- whether there has been a repeated breach or failure by the Licensee or other Licensee's within the same group of companies
- whether the Licensee had previously undertaken to carry out a particular course of action but did not
- whether the breach arose in circumstances that were similar to previous cases the Commission has dealt with which resulted in the publication of guidance such as 'Public statements' or guidance documents alerting the wider industry
- the Licensee's regulatory history (such as previous sanctions imposed, whether the Licensee has been through the special measures process defined within the Licensing, compliance and enforcement policy (LCE))
- the failure to take action at pace to address the failings after becoming aware of the commencement of the Commission's investigation
- the deliberate targeting of a vulnerable group of consumers
- any attempt to conceal relevant information or provide misleading information to the Commission's investigation team
- any other factor deemed relevant and not already considered at Step 2.

2.24 The following list of factors may have the effect of mitigating the breach (the list is not exhaustive):

- the timeliness of the Licensee's senior management in taking steps to stop the breach
- the extent of steps taken to address or remedy the breach and ensure future similar failings were prevented
- the Licensee's early and voluntary reporting of the breaches to the Commission
- timeliness and degree of co-operation the Licensee showed with any investigation undertaken by the Commission

- any other factor deemed relevant and not already considered at Step 2.

2.25 Having considered any aggravating and mitigating factors, the Commission will consider whether it is appropriate to increase or decrease the starting point for the penal element calculated at the end of Step 2 by an appropriate sum.

QUESTIONS on Step 3: Mitigating and aggravating factors

To what extent do you agree with the proposed approach to provide clarity and transparency on the factors which may contribute to increasing or decreasing the sum of the financial penalty? [Multiple choice answer]

Please give your reasons for your answer below. Please include any comments you have regarding any other aggravating or mitigating factors the Commission should consider [Free text box]

To what extent do you agree that this step should be separate from the process for determining the starting point for the penalty at Step 2? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

Do you have anything further to add in relation to this section, for the Commission to take into account? [Free text box]

Step 4: Adjustment for deterrence

One of our core principles is that non-compliance should be more costly than compliance, and that our enforcement should deliver effective deterrence against future non-compliance. This is consistent with the existing SoP/DFP and our current practices. Under the six-step process proposed in this consultation, we propose that any adjustment to the level of the fine for deterrence be considered separately to the process for determining the seriousness of the breach for clarity and transparency.

Adjustment for deterrence is part of the existing process for determining financial penalties, but under the current process is considered at the same time as other factors. We propose to only include consideration of any adjustment for deterrence as a distinct step separate from the process of assessing the seriousness of the breach, aggravating, and mitigating factors, and any discount for early resolution.

Our reasons for including an adjustment for deterrence as a distinct step in the process is to provide transparency on how adjustments to the starting point for the penal element will be calculated to take account of factors not associated with assessing the seriousness of the breach. This should reduce the risk or perceived risk of duplication of this as a factor considered. We believe this transparency will provide assurance to Licensees about how any adjustments to the penalty have been made, which should reduce the risk of challenge to the Commission's decision-making when determining the penalties.

Proposed wording

Step 4 Adjustment for deterrence

2.26 Having regard to the principle that non-compliance should be more costly than compliance, and that enforcement should deliver strong deterrence against future non-compliance of the Licensee or others, if the Commission considers the figure arrived at after Step 3 is insufficient to deter the Licensee, or the wider industry, from committing further or similar breaches the Commission may increase the penal element. The Commission will exercise its judgement as to what additional sum for deterrence is required on the facts of an individual case. The uplift will be applied to the figure determined after Step 3.

QUESTIONS on Step 4: Adjustment for deterrence

To what extent do you agree with the proposal that any adjustment for deterrence should be separate from the process for determining the starting point for the penalty at Step 2? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree with the proposal that any adjustment for deterrence should be applied after Step 3 – Mitigating and aggravating factors? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

Do you have anything further to add in relation to this section, for the Commission to take into account? [Free text box]

Step 5: Discount for early resolution

The Commission aims to encourage early notification and cooperative engagement by Licensees during any investigation. Enforcement casework can be costly in terms of time and resources on behalf of both the Commission and the Licensee, and we consider it appropriate and proportionate to allow for a deduction for early engagement and disclosure to recognise Licensees who cooperate with the Commission and support a speedy conclusion. We consider that this will provide an incentive for Licensees to engage with and co-operate with the Commission.

Discount for early resolution is part of the existing process for determining financial penalties, but under the current process is considered at the same time as other factors. We propose to include consideration of a discount for early resolution as a distinct step separate from the process of assessing the seriousness of the breach, aggravating and mitigating factors, and any adjustment for deterrence.

We propose that the level of discount to the penal element that could be applied to account for early resolution will range between 5% and 30%, which we consider is in line with other regulators and criminal procedures.

Proposed wording

Step 5 Discount for early resolution

2.27 The Commission may apply a discount to the penal element if it considers there have been early and voluntary admissions and/or disclosures leading to an early resolution of the Commission's investigation/enquiries.

2.28 If admissions and/or disclosures occur prior to, or immediately after, the issuing of the Commission's preliminary findings or at an appropriately early stage in enquiries made outside of a review then a discount may be applied for early resolution.

2.29 The level of discount will range between 5% and 30% and will be assessed on a case-by-case basis. The key determining factors will be based on the level of insight and speed of resolution. The discount will be applied to the figure determined after Step 4.

QUESTIONS on Step 5: Discount for early resolution

To what extent do you agree with the proposed approach to provide transparency around the application of any discount for early resolution? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree that this step should be separate from the process for determining the starting point for the penalty at Step 2? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree with the proposal that any discount for early resolution should be applied after Step 4 – Adjustment for deterrence? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

Do you have any comments on the proposed percentage range which may be applied to determine the level of the discount? [Free text box]

Do you have anything further to add in relation to this section, for the Commission to take into account? [Free text box]

Step 6: Affordability

Following calculation of the penal elements of the financial penalty and any adjustments for aggravation, mitigation or early resolution, we will add this to any figure calculated under Step 1 and will then, under Step 6, review and make adjustments to ensure the total sum is affordable, to safeguard against serious financial hardship on behalf of the Licensee.

It is not the intention of these proposals to impact on the solvency of the Licensee or its ability to continue trading, and this final proposed step includes this consideration. When considering affordability, we propose to be able to also take into account the financial resources of any parent or group company or ultimate beneficial owner of the licensed entity.

If this review results in a reduction of the final penalty amount, we propose to publish the original penalty amount as well as the adjusted amount to take account of affordability concerns. We propose to publish both figures so that there is transparency for stakeholders in terms of the nature and seriousness of the breach,

of our process in determining the financial penalty, and in order to maintain the deterrence effect.

Proposed wording

Step 6 Affordability

2.30 The total amount to be paid by the Licensee will be either the sum of the figures determined at Step 1 (if calculated) and Step 5, or Step 5 alone if there is no figure calculated at Step 1.

2.31 It is recognised that the impact of financial penalties on Licensees may differ depending on the nature of the Licensee. Accordingly, the Commission may consider a reduction on affordability grounds if the total penalty is likely to cause financial hardship such as to endanger the solvency of the Licensee or its ability to continue trading.

2.32 The Commission may request financial information regarding the financial resources available to a Licensee, including but not limited to its own resources and those of any parent or group company or ultimate beneficial owner as set out at paragraph 5.29 of LCE. In the absence of sufficient information, the Commission will infer that the Licensee has the resources to pay such financial penalty as is appropriate in the circumstances of the case.

2.33 In circumstances where the total has been reduced at this step, the Commission will still set out the financial penalty it would have imposed (prior to any reduction on affordability grounds) in its sanctions register and any other publications.

QUESTIONS on Step 6: Affordability

To what extent do you agree with the proposal that the final penalty amount will be the sum of the amount calculated at Step 1 (disgorgement, where it has been possible to identify) and that at the end of Step 5? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree with the proposal to take affordability into account, and to mitigate against financial hardship? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree that when considering affordability, the Commission should take into account the financial resources of any parent or group or ultimate beneficial owner, in addition to the Licensee's own resources? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

To what extent do you agree the Commission should also publish the level of financial penalty prior to any reduction applied at Step 6 in any publications regarding the case? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

Do you have anything further to add in relation to this section, for the Commission to take into account? [Free text box]

Procedural matters, Payment plans, Time limits and Payments in lieu of financial penalties

With the exception of the additional proposed section on payment plans, these elements of the proposed new SoPfDFP are largely unchanged and therefore the wording of these sections of the proposed new SoPfDFP largely replicates the existing SoPfDFP, with the majority of changes being the re-numbering of paragraphs. In this section of the consultation, we are seeking views on the proposal regarding payment plans and payments in lieu of financial penalties and the remaining wording for completeness and are not proposing material changes to the existing SoPfDFP.

Payment plans

Under the existing SoPfDFP, on some occasions the Commission has considered and approved requests from Licensees to agree a payment plan.

While some payment plans have been agreed and met without issues, in some cases the use of payment plans has led to protracted engagement between the Commission and the Licensee to ensure the penalty is paid in full. This has impacted

on the resources of both the Commission and the Licensee and carries a risk that the penalty may not be paid in full.

We propose to make clear in the new SoPfdFP that payment plans would only be considered in exceptional circumstances. We are therefore also seeking views on this proposal in this section of the consultation.

Payments in lieu of financial penalties

The current SoPfdFP includes some content in relation to regulatory settlements. We note here that DCMS has been [consulting on their Gambling Act Review White Paper commitment to implement a statutory levy as provided for under Section 123 of the Act](#). Regulatory settlements which include a payment in lieu of a financial penalty should not be seen as part of the core funding system for research, prevention and treatment. If a levy is introduced post the DCMS consultation, the Commission will work with government to consider how the process for approving the destination of any payments in lieu of a financial penalty could complement a levy system to ensure the coordination of activity and avoid any duplication of work being funded. This could mean some further amendments to the SoPfdFP on this topic over time.

In the meantime, we have proposed some minor edits and points of clarification to the existing wording of the SoPfdFP around payments in lieu of financial penalties and are seeking views on these minor revisions. In particular, we propose amendments to clarify that any regulatory settlements which include a financial element should be demonstrably over and above any levy amounts due under Section 123 of the Act, as is the case currently for any 'normal' Research, Prevention and Treatment (RET) contributions.

Proposed wording

Proposed deletions in comparison with the existing SoPfdFP are shown using strike-through, and additions underlined.

Procedural matters

2.34 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 it 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.

2.35 The Commission will normally give Licensees 14 days to make representations and these representations will be considered prior to a final decision being made.

Payment plans

2.36 The Commission anticipates that it will not accept payment plans unless there are exceptional circumstances which necessitate such an arrangement, and the Commission is satisfied that the arrangement will ensure the penalty will be paid in full.

Time limits

2.37 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.

Payments in lieu of financial penalties

2.38 Payments made in lieu of a financial penalty as part of a regulatory settlement do not need to be paid into the Consolidated Fund in the same way that financial penalties imposed under section 121 of the Act do. As a result there is more flexibility about how such monies may be used. However, the Commission will apply the following principles in approaching such agreed payments:

- i. The Commission reserves the power to approve the destination of monies paid as part of a regulatory settlement
- ii. ~~Operators~~ Licensees must not generate positive publicity from the regulatory settlement
- iii. Payments need to be demonstrably over and above 'normal' ~~RET~~ Research, Prevention and Treatment (RET) contributions, or any levy amounts due under Section 123 of the Act

- iv. Where practicable, the operator should return money to any identified victims
- v. If victims cannot be identified or there are no victims, the monies should be given to charity for socially responsible purposes
- vi. Socially responsible purposes would include purposes which address gambling related harm or in some way promotes one or more of the licensing objectives
- vii. where payments are made with the aim of addressing gambling-related harm, the presumption is that the money would be paid to GambleAware (~~formerly Responsible Gambling Trust~~) to be used for specific agreed purposes that accelerate their commissioning plans
- viii. ~~Operators~~ Licensees should have no interest in organisations who will receive divested funds
- ix. There should be meaningful evaluation of the effectiveness of projects or research funded by a specific regulatory settlements
- x. Research findings must be made public to help raise standards
- xi. Clear timeframes should be set for payment of monies and for delivery of work paid for from those monies.

QUESTIONS on the minor edits to the sections on Procedural matters, Time limits and Payments in lieu of financial penalties

To what extent do you agree with the inclusion of the sections on Procedural matters, Time limits and Payments in lieu of financial penalties as part of the proposed new SoPfDFP, as was the case in the existing SoPfDFP? [Multiple choice answer]

Please give reasons for your answer below. [Free text box]

To what extent do you agree the Commission should only consider payment plans in exceptional circumstances? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

If you have any other comments on the proposed new SoPfDFP that have not been addressed individually within this document, please state them here, using paragraph numbers for reference. [Free text box]

Full version

Attached here is the proposed Statement of principles for determining financial penalties in full.

Amendments to the Indicative sanctions guidance

The Statement of principles for determining financial penalties is supported by the [Indicative sanctions guidance](#). To ensure consistency across these documents we propose to amend paragraph 2.19 of the current version of the Indicative sanctions guidance to reflect the Applicable principles of the proposed new Statement of principles for determining financial penalties. The relevant section of the Indicative sanctions guidance is set out below, with proposed changes marked. A marked-up version of the full Indicative sanctions guidance showing the proposed amendments in context is attached for information.

Proposed wording

Proposed deletions are shown using strike-through and additions underlined.

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 By virtue of section 121(7) of the Act, in considering the imposition of a penalty, the Commission must have regard to:

- the seriousness of the breach of 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).

2.20 The Commission may also have regard to:

- whether the breach of a Licence condition is an example of repeat behaviour by the Licensee
- whether the breach of a Licence condition arose in circumstances that were similar to previous cases the Commission has dealt with which resulted in the publication of lessons to be learned for the wider industry
- the timeliness of any admissions made by the Licensee and actions taken to remediate the breach of a Licence condition
- where the breach of a Licence condition was committed intentionally or recklessly
- where the breach of a Licence condition could have been prevented by the Licensee
- a breach of a Licence condition arising from a systemic failure
- where the breach of a Licence condition gave rise to financial gain for the Licensee
- where the breach of a Licence condition had an impact on consumers
- where the breach of a Licence condition may have damaged confidence in the gambling industry
- where the Licensee was aware but did not report the breach of a Licence condition
- where there is a lack of timely and effective remedial action after the breach of a Licence condition or failure becomes apparent to the Licensee
- where a financial penalty is necessary to deter future contraventions or failures and to encourage compliance.

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 systematic 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.~~

QUESTIONS on Amendments to the Indicative sanctions guidance

To what extent do you agree that the amendments proposed to the Indicative sanctions guidance reflect the proposed Statement of principles for determining financial penalties as set out in this consultation? [Multiple choice answer]

Please give your reasons for your answer below. [Free text box]

Equalities considerations – financial penalties

The Commission is committed to giving consideration to potential equalities impacts, having regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

The proposals in this section of the consultation constitute a new approach and methodology to ensure consistency and provide greater clarity and transparency to Licensees about how the Commission will determine financial penalties as an outcome of investigations into breaches of regulatory requirements by Licensees. Implementation of these proposals would be made through a new Statement of principles for determining financial penalties. This document is of interest primarily to Licensees and their representatives, and as such does not directly relate to the interaction or engagement between the Commission and consumers, or Licensees and consumers.

Our initial assessment is that the proposals do not present a negative impact on the protected characteristics stated within the Equality Act 2010, and they do not

contribute towards unlawful discrimination, harassment or victimisation and/or other conduct prohibited by the Act.

We currently do not consider that the proposals reduce equality of opportunity or foster poor relations between people who share a protected characteristic and those who do not.

We will continue to keep this position under review and would welcome views in relation to this.

Do you have any evidence or information which might assist the Commission in considering any equalities impacts, within the meaning of section 149 of the Equality Act 2010, in the context of any proposal considered in this consultation?

Further information: [Section 149 Equality Act 2010](#)

[Free text box - medium]

Do you have any further comments?

[Free text box - large]

Proposed amendments to Licence Conditions and Codes of Practice (LCCP) and the Licensing, Compliance and Enforcement Policy Statement under the Gambling Act 2005: Reporting changes in ownership and interests

Summary – financial key event reporting

We are consulting on proposed changes to our requirements on gambling businesses. All stakeholders, including consumers, gambling licensees and members of the public are invited to share their views on these proposals. This consultation section covers the following topics:

Proposal: Key event reporting requirements (LCCP 15.2): ensuring gambling licensees report changes to ownership and interests at the appropriate levels. Our proposals clarify and extend the key event reporting requirements and will allow the Commission to apply the requirements consistently across all licensees. This change would also be reflected in the [Licensing, Compliance and Enforcement Policy Statement under the Gambling Act 2005](#).

We consider that the proposals in this section will primarily be of relevance to industry, although we welcome responses from all stakeholders.

Currently, gambling licensees are required to report when persons become 3% or more shareholders in the gambling licensee (or its holding company) and also if the gambling licensee enters into a loan with an entity that is not regulated by the Financial Conduct Authority (FCA).

The proposed changes are driven by gambling licensees being linked to complex, modern day, global business structures such that the ownership and interests are not always clear. Similarly, their financing arrangements are not always straightforward.

The current requirements risk potential gaps in the Commission's understanding of licensees' financial positions and associations with others.

Furthermore, many gambling licensees are now linked to jurisdictions where the governance arrangements mean that some licensees cannot meet the 3% shareholder reporting requirement because they cannot access information about shareholdings below this level. This has required certain gambling licensees to have additional licence conditions added to their licence to allow a 5% threshold reporting requirement to apply to them.

The current reporting requirements are therefore difficult to apply consistently across all gambling licensees.

We are therefore consulting on changes to [Licence Condition 15.2.1 Reporting key events](#) to ensure that the Commission is notified of changes to ownership and interests within gambling businesses at the appropriate levels.

This includes:

1. Raising the reporting threshold for 'operator status' and 'relevant persons and positions' from 3% to 5% (paragraphs 1 and 2). This change would also be reflected in the Licensing, Compliance and Enforcement Policy Statement under the Gambling Act 2005 at paragraph 3.25.
2. Expanding the application of 'relevant persons' to include not only shareholders, but other entities with an interest in the gambling licensee (including, but not limited to, partnerships, trusts, charities and investment funds) and to include both direct and indirect interests in the gambling licensee of 5% or more (paragraph 2).
3. Amendment of the wording of existing paragraph 3 of the condition to include the reporting of entering into financial agreements or arrangements with third parties and/or the receipt of financial assistance from a group. This requirement would become paragraph 6 (changing the current paragraph 6 and paragraph 7 to paragraph 7a and paragraph 7b, accordingly).
4. Introducing a new requirement at paragraph 3 for gambling licensees to report details of individuals who acquire the equivalent of £50,000 or more worth of new shares in a rolling twelve-month period or entities that acquire the equivalent of £1 million worth or more of new shares in a rolling twelve-month period, and also disclose the value of the acquisition and provide evidence of source of funds for that investment.

These licence conditions would apply to all operating licences.

The effect of these proposals would be to narrow the scope of information we require from licensees in some areas (point 1, above) and to significantly, but proportionately, expand the scope of information we require from licensees in other areas (points 2, 3 and 4, above).

Overview

A key event is an event that could have a significant impact on the nature or structure of a licensee's business and gambling licensees are required to report the occurrence of key events to the Commission as soon as reasonably practicable and in any event within five working days of the licensee becoming aware of the event's occurrence.

Licence Condition 15.2.1. (Reporting Key Events) sets out specific key events relating to operator status, relevant persons and positions, as well as financial events which gambling licensees are required to report to us.

In accordance with paragraph 2.15 of [Our statement of principles for licensing and regulation \(gamblingcommission.gov.uk\)](https://www.gamblingcommission.gov.uk), the Commission expects all gambling licensees to work with the Commission in an open and co-operative way in respect of these key events. Ordinary code provision 8.1.1 also expects licensees to work with the Commission in an open and cooperative way and to inform us of any matters that we would reasonably need to be aware of in exercising its regulatory functions. These include, in particular, matters that will have a material impact on the licensee's business or on the licensee's ability to conduct licensed activities compliantly and consistently with the licensing objectives.

We are proposing to amend the condition and introduce some additional key reporting requirements aimed at providing us with relevant information about the finances and interests of a gambling licensee to allow us adapt and maintain our risk-based approach to regulation. This is particularly important given the changes we have seen within the sector over recent times, specifically the increase in complexity of mergers and acquisitions and the globalisation of gambling. The changes suggested would apply to all operating licences.

Why are we consulting?

Licence Condition 15.2.1 sets out specific key events relating to operator status, relevant persons and positions, as well as financial events which operators are required to report to us.

In exercising its functions under the Gambling Act 2005, the Commission has a duty to promote the licensing objectives ([section 22](#)), including keeping crime out of gambling.

The Commission must be satisfied that all persons relevant to an application have been identified and must assess the suitability of all such persons in relation to an application as well as the applicant entity, including new 'controllers'. Further details can be found in the [Licensing, Compliance and Enforcement policy statement](#) under the Gambling Act 2005.

Through our licensing, compliance and enforcement casework, we have identified a need to modify our key events reporting requirements to ensure gambling licensees report significant funding, new monies flowing into the gambling licensee through the issue of new shares and other matters which are of material interest to the Commission. Our proposals relate to four areas:

1. Amendment to paragraph 1 and 2 of licence condition 15.2.1 to raise the reporting threshold for 'operator status' and 'relevant persons and positions' from 3% to 5%.
2. Amendment to paragraph 2 of licence condition 15.2.1 to expand the application of 'relevant persons' to include shareholders, but also other entities with both direct and indirect interests in the gambling licensee of 5% or more so that these are reported to the Commission
3. Amendment to paragraph 3 of licence condition 15.2.1 to include the reporting of entering into financial agreements or arrangements with third parties and/or the receipt of financial assistance from a group company so that these are reported to the Commission (and moving the requirement to become Licence Condition 15.2.1 paragraph 6, changing the current paragraphs 6 and 7 to paragraphs 7a and 7b, accordingly).
4. Introduce a new requirement for gambling licensees to report to the Commission the details of individuals who acquire the equivalent of £50,000 or more worth of new shares in a rolling twelve-month period or entities that acquire the equivalent of £1 million or more worth of new shares in a rolling twelve-month period, along with the value of the acquisition and evidence of source of funds for that investment (to become paragraph 3 at Licence Condition 15.2.1).

Our proposals

To ensure that we continue to meet our statutory licensing objectives, we propose to amend Licence Condition 15.2.1 and Paragraph 3.25 of the Licensing, Compliance and Enforcement Policy Statement under the Gambling Act 2005 relating to 'Identity and Ownership', as detailed below.

The first two changes proposed also interact with the following other legislation and policy documents that demonstrate that a relevant person is, and will remain, a widely framed term:

1. Relevant persons are mentioned in the **Licensing, Compliance and Enforcement Policy Statement under the Gambling Act 2005** published in June 2022 at paragraph 3.10, as follows: *“In considering operating licence applications the Commission will include assessment of the suitability of those persons considered relevant to the application. The persons considered relevant may vary depending on the information provided in the operating licence application and on company structure, but are likely to exercise a function in connection with, or to have an interest in, the licensed activities. It may also include persons or entities who, whether or not likely to exercise such a function or have such an interest, are shadow directors, controllers of the applicant and/or ultimate beneficial owners. General guidance on who may be considered relevant is available on the Commission’s website and in regulations”*.
2. Relevant person is defined in the **Gambling Act 2005 Section 70(9)(b)** as *“a person is relevant to an application if, in particular, he is likely to exercise a function in connection with, or to have an interest in, the licensed activities.”*

We are not proposing to alter the existing definition of a relevant person, but to expand its application, as explained below.

Raising the reporting threshold for ‘operator status’ and ‘relevant persons and positions’ from 3% to 5%

We propose amendment to paragraph 1 and 2 of [licence condition 15.2.1](#) to raise the reporting threshold for ‘operator status’ and ‘relevant persons and positions’ from 3% to 5%.

Currently gambling licensees are required to report new 3% plus shareholders of a gambling licensee’s (or its holding company’s) shares. This threshold is historical and is linked to the Financial Conduct Authority’s reporting requirement threshold for listed companies of 3%.

Gambling licensees are being linked to complex modern day, global business structures and in certain jurisdictions where the reporting requirements are at a threshold of 5%. To be consistent with our risk-based approach, we therefore propose raising the reporting threshold from 3% to 5%. In practice, the Commission

is effectively already waiving the 3% threshold for licensees who can only comply with a 5% ownership threshold by adding a specific alternative condition to their licences which sets the threshold at 5%.

Since we have proposed to raise the reporting threshold for 'relevant persons and positions' at Licence Condition 15.2.1 paragraph 2, to ensure consistency throughout the LCCP we also propose to raise the same threshold referred to Licence Condition 15.2.1 paragraph 1 for 'operator status'.

Similarly, we also propose to amend paragraph 3.25 of the [Licensing, Compliance and Enforcement Policy Statement](#) relating to 'Identity and Ownership' to raise the reporting threshold from 3% to 5%.

Expanding the application of 'relevant persons' to include shareholders or other entities with direct or indirect interests in the gambling licensee of 5% or more so that these are reported to the Commission

We propose amending paragraph 2 of licence condition 15.2.1 to expand the application of 'relevant persons' to include shareholders, but also other entities (including, but not limited to, partnerships, trusts, charities and investment funds) with both direct and indirect interests in the gambling licensee of 5% or more so that these are reported to the Commission. Indirect interests are where the interest is held through additional entities rather than directly with the gambling licensee or its holding company.

Currently this key event does not require gambling licensees to report information relating to shareholders or entities obtaining indirect interests in the gambling licensee (or its holding company) of between 3% and 10% (Note: The acquisition of an interest in 10% or more of the ownership or voting rights of a gambling licensee (or its parent undertaking) triggers the requirement to report a Change of Corporate Control (for a gambling licensee or parent undertaking with no share capital the threshold for reporting a change of corporate control is 10% of rights to share in the capital of the undertaking.)

As a result, the Commission could be unaware of unsuitable entities or individuals who obtain 3% to 10% indirect interests in gambling licensees once they have been licensed.

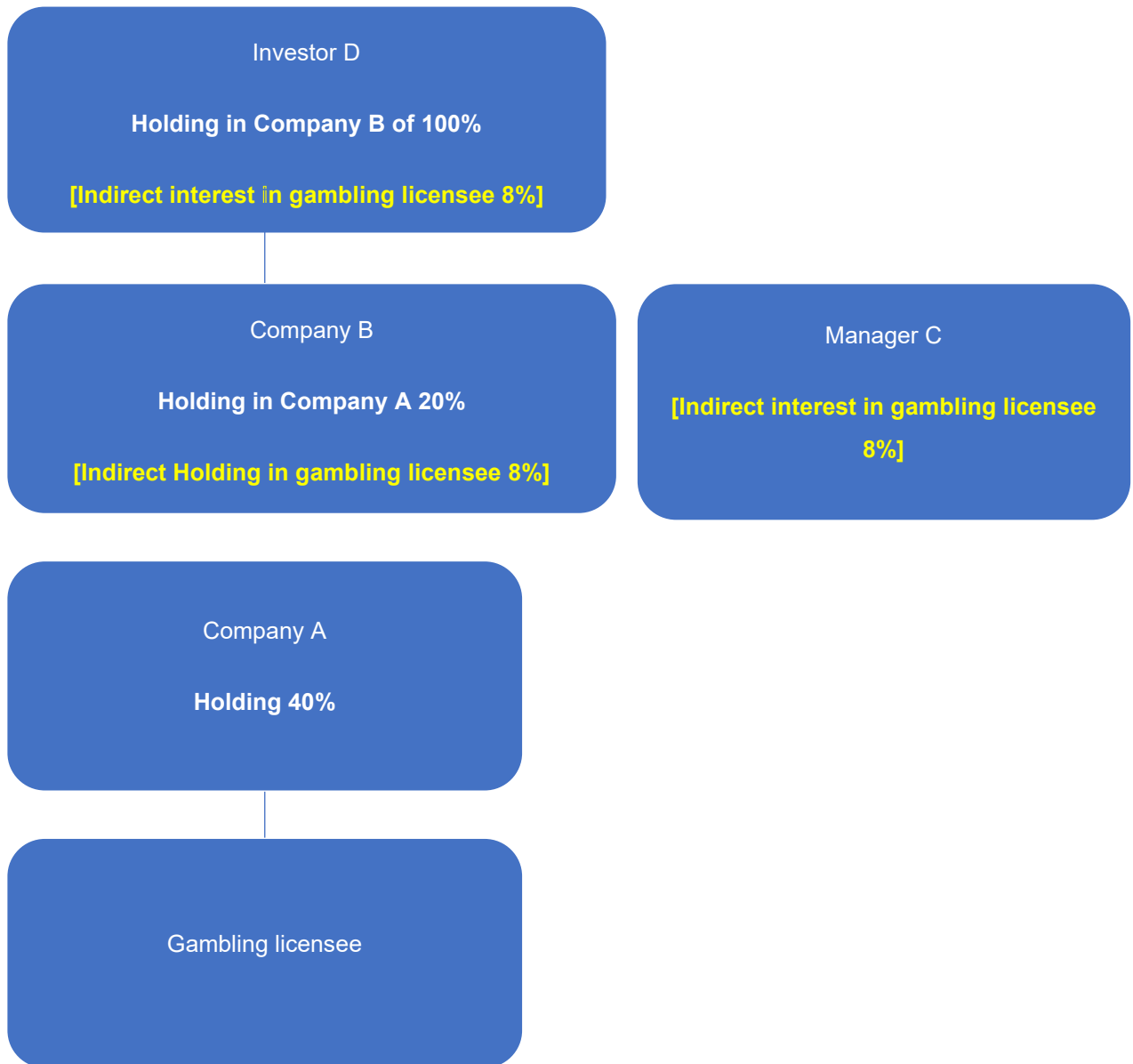
We therefore propose to expand the requirement for gambling licensees to report changes to 'relevant persons and positions' so that it includes such shareholders or entities, as per the proposed revisions to the draft LCCP wording. This proposed

wording also captures those having voting rights and/or entitlement to dividends or profits of 5% or more, as well as those who become a 5% or more beneficial owner (again, whether held directly or indirectly).

The onus would be on the licensees to obtain and provide to the Commission information about those with indirect interests. This change would give the Commission a better oversight of a licensee's associations and the beneficiaries of gambling profits.

By way of an example - If a gambling licensee has 40% of its shares owned by Company A and 20% of the shares of Company A are owned by Investment Company B (investment managed by Investment Manager C) on behalf of Investor D (with a 100% interest in Company B), Company A would be a 40% direct shareholder of the gambling licensee and Investment Company B would be an 8% (40% x 20%) indirect shareholder of the gambling licensee; Manager C would have an indirect interest in over 8% of the voting rights of the gambling licensee; and Investor D would have indirect rights to 8% of the dividends paid by the gambling licensee (ultimate beneficial ownership). Currently under key event reporting, the Commission would be unaware if Manager C or Investor D changed and the proposed amendments to Licence Condition 15.2.1.2 look to close this information gap.

Figure 1



Amendment of the wording of existing [Licence Condition 15.2.1 paragraph 3](#) to include the reporting of entering into financial agreements or arrangements with third parties and/or the receipt of financial assistance from a group company so that these are reported to the Commission

Previously there was a requirement for gambling licensees to report “Any investment in a licensee which is not by way of subscription for shares” but this was removed during a previous consultation because most investments reported at the time were by way of loans. (See [‘Consultation on the information requirements in the licence](#)

[conditions and codes of practice \(LCCP\), regulatory returns, official statistics and related matters'](#) (2020) after which it was removed as a key event.) This reportable key event was removed pre-pandemic. Since then, the Commission has seen examples of gambling licensee financial distress, with gambling licensees utilising Coronavirus and bounce back loan schemes, and increases in complex groups and structures involved in mergers and acquisitions within the industry. Experience of other key events and licence application case work has also shown us that investments are being made into gambling licensees (often complex in nature that would not necessarily just fall under a loan). This current gap presents a potential risk to the licensing objectives.

Currently, gambling licensees are required to report the taking of loans from any persons not authorised by the FCA. However, in addition to loans, the Commission is aware of other financial arrangements with persons not authorised by the FCA that can be used to introduce large amounts of money into the gambling licensee's business, for example warrants, convertible notes, debentures, informal cash transfers from group companies to the gambling licensee for short-term working capital requirements, payment by subsidiaries in foreign currencies on behalf of the gambling licensee etc. This means that the Commission is currently unaware of when such arrangements occur and has no means of assessing the source of funds. This puts the licensing objectives at risk, specifically preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.

Rather than reintroduce the previous key event, we propose to expand the wording of the key event relating to loans. This includes the reporting of entering into financial agreements or arrangements with non-FCA regulated individuals or entities and the receipt of financial assistance from a company in the group that has carried out a similar transaction.

The proposed change would require the gambling licensee to report any type of financial arrangement it enters into with any persons not authorised by the FCA. This would give the Commission a more complete and ongoing understanding of the monies entering into the gambling industry it regulates. The proposed change would reduce the risk to the licensing objectives, specifically preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.

We propose to move this to LCCP 15.2.1 paragraph 6 (changing the current paragraphs 6 and 7 to paragraphs 7a and 7b, accordingly).

Introducing a new requirement that gambling licensees report to the Commission the details of individuals who acquire the equivalent of £50,000 or more worth of new shares in a rolling twelve-month period or entities that acquire the equivalent of £1 million or more worth of new shares in a rolling twelve-month period, along with the value of the acquisition and evidence of source of funds for that investment

'Source of funds' are the monies or monetary instruments that are used to fund the specific transaction being assessed as part of the key event. It is not enough to know the money came from the bank account of an individual or entity. The Commission's aim is to establish the provenance of the funds used in the transaction and understand the activity that generated those specific funds (for example savings from employment or proceeds from the sale of shares).

Currently, through follow-up work on Key events notified to us, the Commission tests source of funds when a loan is reported under Licence Condition 15.2.1.3 and certain levels or conditions are met. The proposed new condition is in line with this follow up work on loans but is focused on investment raised through the issue of new shares by the gambling licensee. Given that this proposed new key event is focused on the raising of investment by the gambling licensee by issuing new shares, our expectation is that the source of funds evidence is gathered upfront as part of the share issuing process and should be reportable in the normal key event reporting timeframe.

At present there is no requirement for a gambling licensee to report to the Commission the issuance of new shares when it does not create a new shareholder with an interest of 3% or more. (When new shares are issued the cash for the shares flows into the issuer (the gambling licensee or its group), but when existing shares are passed between investors any monies raised flow to the seller, not the gambling licensee).

Typically, gambling licensees that are large or part of a large group, are able to raise significant amounts of capital which is only identified to the Commission when we are looking at the finances of the gambling licensee in relation to other matters. This means that large amounts of money may be introduced into the gambling licensee for which the source of funds has not been checked. Currently the Commission tests source of funds when a loan is reported under Licence Condition 15.2.1.3 and certain levels or conditions are met. This proposed new condition aligns the

Commission's ability to test source of funds that are being invested into gambling licensee through different routes.

Given that this proposed new key event relates to the raising of investment by the gambling licensee issuing new shares, our expectation is that the source of funds evidence is gathered as part of the share issuing process and should be reportable in the normal key event reporting time frame.

As such, we propose an additional requirement to the key event reporting licence condition which would require gambling licensees to report the details of individual investors who acquire the equivalent of £50,000 or more worth of newly issued shares in a rolling twelve-month period, or entities that acquire the equivalent of £1 million or more worth of newly issued shares in a rolling twelve-month period. Such reporting would include the value of the acquisition and evidence of source of funds for that investment.

Below is an example of the various thresholds that could be applied to actual investments made by entities into a gambling licensee that the Commission is aware of. To give some context to the table below, we have explained the first line as follows. During a twelve-month period a holding company of a gambling licensee issued shares totalling £57.8m and if all shareholders acquiring £100k or more of the new shares were selected for source of funds testing then 56.3% of the £57.8m would have been tested. Similarly, if all shareholders acquiring £10m or more of the new shares were selected for source of funds testing then 48.5% of the £57.8m would have been tested.

Figure 2

Period	Issued instrument	Total	Value tested			
			£'m	£100k	£1m	£5m
12 months	Shares	57.8	56.3%	56.3%	48.5%	48.5%
7 months	Convertible loan notes	113.9	71.0%	69.4%	65.5%	49.8%
12 months	Redeemable Convertible Preferred Shares	93.9	76.5%	76.5%	72.4%	72.4%
12 months	Redeemable Convertible Preferred Shares	114.6	78.5%	77.2%	65.0%	45.1%
2 months	Convertible Promissory Note	83.5	73.9%	73.9%	64.2%	35.9%

We consider £1m or more worth of newly issued shares in a twelve-month rolling period to be a significant sum and that this represents a proportionate threshold for entities to report to the Commission. The proposed change would result in the Commission having a more complete, ongoing understanding of the monies entering the gambling industry it regulates. It is considered that this change will reduce the risk to the licensing objectives, specifically preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime because the Commission will be testing the source of funds for these key events reported.

Because previously these were not reportable events, there is limited data to identify the appropriate quantum for a trigger to report. Therefore, we are proposing £50,000 for individuals and £1 million for entities as proportionate reporting thresholds but we specifically welcome views on this aspect of the consultation.

For the avoidance of doubt, if a financial key event creates a new Controller, it is reportable as a Change of Corporate Control under Section 102 of the Gambling Act 2005 and no key event notification is required as long as all of the information that would be included in the Key Event notification is included in the COCC application.

Proposed changes

We have set out five distinct paragraphs below, to demonstrate the impact on the LCCP and the Licensing, Compliance and Enforcement Policy Statement under the Gambling Act 2005 of each proposal separately.

In this section, new or amended text is shown in bold, deleted text is struck through.

Proposal 1

Updated Licence Condition 15.2.1, paragraph 1

1. Any of the following applying to a licensee, any person holding a key position for a licensee, a group company or a shareholder or member (holding ~~3%~~ **5%** or more of the issued share capital of the licensee or its holding company):

- a. presenting of a petition for winding up
- b. making of a winding up order
- c. entering into administration or receivership
- d. bankruptcy (applying to individuals only)
- e. sequestration (applicable in Scotland), or
- f. an individual voluntary arrangement.

Original Licence Condition 15.2.1, paragraph 1

Any of the following applying to a licensee, any person holding a key position for a licensee, a group company or a shareholder or member (holding 3% or more of the issued share capital of the licensee or its holding company):

- presenting of a petition for winding up
- making of a winding up order
- entering into administration or receivership
- bankruptcy (applying to individuals only)
- sequestration (applicable in Scotland), or
- an individual voluntary arrangement.

Proposal 2

Updated Licence Condition 15.2.1 paragraph 2

2. In the case of licensees who are companies, bodies corporate ~~having a share capital~~ **or other legal entities**, the name and address of any person **or entity** who (whether or not already a shareholder ~~or member~~):

- a) becomes a **direct or indirect** shareholder ~~or member~~ holding ~~3%~~ **5%** or more of the issued share capital of the licensee ~~or its holding company~~
- b) directly or indirectly controls 5% or more of the voting rights of the licensee

c) are directly or indirectly entitled to 5% or more of the dividends or profits of the licensee

d) becomes a 5% or more direct or indirect beneficial owner of the licensee

Original Licence Condition 15.2.1, paragraph 2

2. In the case of licensees who are companies or other bodies corporate having a share capital, the name and address of any person who (whether or not already a shareholder or member) becomes a shareholder or member holding 3% or more of the issued share capital of the licensee or its holding company.

Proposal 3

Amend what was paragraph 3 of Licence Condition 15.2.1 and make it paragraph 6 (changing the current paragraphs 6 and 7 to paragraphs 7a and 7b, accordingly)

6. The gambling licensee: The taking of any loan by the licensee

a. taking of any loan from, or entering into any financial agreement or arrangement with or from, any person or entity not authorised by the Financial Conduct Authority; or

b. receiving financial assistance from a group company which has carried out such a transaction.

In each case a copy of the **relevant contract or loan** agreements must be supplied.

Original Licence Condition 15.2.1 (originally at paragraph 3)

The taking of any loan by the licensee, or by a group company who then makes an equivalent loan to the licensee, from any person not authorised by the Financial Conduct Authority: a copy of the loan agreement must be supplied.

Proposal 4

New content for insertion at paragraph 3 of Licence Condition 15.2.1

(The original content at current paragraph 3 will be moved later in the provision and edited as set out in Proposal [3], above)

3. In the case of licensees who are companies, bodies corporate or other legal entities who issue new shares, where any individual **acquires the equivalent of £50,000 or more worth of shares (or equivalent value when converted into £**

sterling) or any entity acquires the equivalent of £1million or more worth of shares (or equivalent value when converted into £ sterling), as calculated at the time of purchase, in a rolling 12 month period in circumstances that do not fall within Key Event 15.2.1 paragraph 2, the gambling licensee must provide:

- a. the name and address of the person or entity acquiring shares
- b. the value of the acquisition, and
- c. evidence of source of funds for that investment.

Original Paragraph 3.25 of the Licensing, Compliance and Enforcement Policy Statement under the Gambling Act 2005

3.25 The Commission will also want to ensure that it can establish who benefits from the gambling provided and therefore require that any shareholders with a 3% holding are listed and that those with over 10% holding complete an Annex A form to enable further checks to be carried out on them. This requirement is without prejudice to the Commission's decision-making authority. If the beneficiary of any business is a Trust then the Commission will want to know who the beneficiaries of that Trust are. Similarly, where a person or entity holds shares as a nominee the Commission will want to know who the true owners are.

Proposal 5

Paragraph 3.25 of the Licensing, Compliance and Enforcement Policy Statement under the Gambling Act 2005 relating to 'Identity and Ownership'

Updated paragraph

'The Commission will also want to ensure that it can establish who benefits from the gambling provided and therefore require that any shareholders with a ~~3%~~ **5%** per cent holding are listed and that those with over 10 per cent holding complete an Annex A form to enable further checks to be carried out on them. This requirement is without prejudice to the Commission's decision-making authority. If the beneficiary of any business is a Trust then the Commission will want to know who the beneficiaries of that Trust are. Similarly, where a person or entity holds shares as a nominee the Commission will want to know who the true owners are.'

Reporting of ownership and interests in gambling businesses – consultation questions

Licence condition 15.2.1 paragraph 1

To what extent do you agree with the proposed change to raise the reporting threshold at Licence Condition 15.2.1 paragraph 1 from 3% to 5% or more of direct ownership of issued share capital of the licensee or its holding company, to reflect a risk-based approach?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give your reasons for your answers below.

[Free text box]

To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 1 to raise the reporting threshold from 3% to 5% or more of direct ownership of issued share capital of the licensee or its holding company ?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give your reasons for your answers below.

[Free text box]

Can you foresee any difficulties for gambling licensees in complying with the proposed change to raise the reporting threshold at Licence Condition 15.2.1 paragraph 1 from 3% to 5% or more of direct ownership of issued share capital of the licensee or its holding company?

Yes

No

Don't know

If yes, please give your reasons for your answers below.

[Free text box]

Licence condition 15.2.1 paragraph 2

To what extent do you agree with the proposed change at Licence Condition 15.2.1 paragraph 2(a) to add the requirement to report 5% or more direct or indirect ownership of share capital, to reflect a risk-based approach?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give your reasons for your answers below.

[Free text box]

To what extent do you agree with the proposed change to Licence Condition 15.2.1 paragraph 2(b) to add the requirement to report 5% or more direct or indirect control of the voting rights of the licensee, to reflect a risk-based approach?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give your reasons for your answers below.

[Free text box]

To what extent do you agree with the proposed change to Licence Condition 15.2.1 paragraph 2(c) to add the requirement to report 5% or more direct or indirect entitlement to dividends or profits of the licensee, to reflect a risk-based approach?

Strongly agree

Agree
Neither agree nor disagree
Disagree
Strongly disagree

Please give your reasons for your answers below.

[Free text box]

To what extent do you agree with the proposed change to Licence Condition 15.2.1 paragraph 2(d) to add the requirement to report becoming 5% or more direct or indirect beneficial owner of the licensee, to reflect a risk-based approach?

Strongly agree
Agree
Neither agree nor disagree
Disagree
Strongly disagree

Please give your reasons for your answers below.

[Free text box]

To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 2(a) to add the requirement to report 5% or more direct or indirect ownership of share capital?

Strongly agree
Agree
Neither agree nor disagree
Disagree
Strongly disagree

Please give your reasons for your answers below.

[Free text box]

To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 2(b) add the requirement to report 5% or more direct or indirect control of the voting rights of the licensee?

Strongly agree
Agree
Neither agree nor disagree
Disagree
Strongly disagree

Please give your reasons for your answers below.

[Free text box]

To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 2(c) to add the requirement to report 5% or more direct or indirect entitlement to dividends or profits of the licensee?

Strongly agree
Agree
Neither agree nor disagree
Disagree
Strongly disagree

Please give your reasons for your answers below.

[Free text box]

To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 2(d) to add the requirement to report becoming 5% or more direct or indirect beneficial owner of the licensee?

Strongly agree
Agree
Neither agree nor disagree
Disagree
Strongly disagree

Please give your reasons for your answers below.

[Free text box]

Can you foresee any difficulties for gambling licensees in complying with the proposed change at Licence Condition 15.2.1 paragraph 2(a) to add the requirement to report 5% or more direct or indirect ownership of share capital?

Yes

No

Don't know

If yes, please give your reasons for your answers below.

[Free text box]

Can you foresee any difficulties for gambling licensees in complying with the proposed change to Licence Condition 15.2.1 paragraph 2(b) to add the requirement to report 5% or more direct or indirect control of the voting rights of the licensee ?

Yes

No

Don't know

If yes, please give your reasons for your answers below.

[Free text box]

Can you foresee any difficulties for gambling licensees in complying with the proposed change to Licence Condition 15.2.1 paragraph 2(c) to add the requirement to report 5% or more direct or indirect entitlement to dividends or profits of the licensee ?

Yes

No

Don't know

If yes, please give your reasons for your answers below.

[Free text box]

Can you foresee any difficulties for gambling licensees in complying with the proposed change to Licence Condition 15.2.1 paragraph 2(d) to add the requirement to report becoming 5% or more direct or indirect beneficial owner of the licensee?

Yes

No

Don't know

If yes, please give your reasons for your answers below.

[Free text box]

Licence Condition 15.2.1 paragraph 3 (existing paragraph 3 proposed to become paragraph 6)

To what extent do you agree with the proposed introduction of Licence Condition 15.2.1 paragraph 3 to add the requirement to report details of individuals who acquire the equivalent of £50,000 or more worth of new shares in a rolling twelve-month period or entities that acquire the equivalent of £1 million worth or more of new shares in a rolling twelve-month period, and also disclose the value of the acquisition and provide evidence of source of funds for that investment?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give your reasons for your answers below.

[Free text box]

To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 3 to add the requirement to report details of individuals who acquire the equivalent of £50,000 or more worth of new shares in a rolling twelve-month period or entities that acquire the equivalent of £1 million worth or more of new shares in a rolling twelve-month period, and also disclose the value of the acquisition and provide evidence of source of funds for that investment?

Strongly agree
Agree
Neither agree nor disagree
Disagree
Strongly disagree

Please give your reasons for your answers below.

[Free text box]

Can you foresee any difficulties in complying with the requirement to add the requirement to report details of individuals who acquire the equivalent of £50,000 or more worth of new shares in a rolling twelve-month period or entities that acquire the equivalent of £1 million worth or more of new shares in a rolling twelve-month period, and also disclose the value of the acquisition and provide evidence of source of funds for that investment?

Yes
No
Don't know

If yes, please give your reasons for your answers below.

[Free text box]

Do you think the thresholds in the proposed introduction of Licence Condition 15.2.1 paragraph 3 of £50,000 (or equivalent) for individuals and £1 million (or equivalent) for entities, are right, and, if not, do you have any evidence to support where the thresholds should be set?

Yes
No
Don't know

If yes, please give your reasons for your answers below.

[Free text box]

Licence Condition 15.2.1 paragraph 6 (new – existing paragraph 6 to become paragraph 7a)

To what extent do you agree with the proposed new requirement at Licence Condition 15.2.1 paragraph 6 to add any type of financial arrangement entered into with any persons not authorised by the FCA?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give your reasons for your answers below.

[Free text box]

To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 6 to add any type of financial arrangement entered into with any persons not authorised by the FCA?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give your reasons for your answers below.

[Free text box]

Can you foresee any difficulties in complying with this requirement to add any type of financial arrangement entered into with any persons not authorised by the FCA?

Yes

No

Don't know

If yes, please give your reasons for your answers below.

[Free text box]

Licensing, Compliance and Enforcement Policy Statement under the Gambling Act 2005 relating to 'Identity and Ownership'

To what extent do you agree with the proposed change to raise the threshold of shareholders to be listed from 3% to 5% or more within the Licensing, Compliance and Enforcement Policy Statement under the Gambling Act 2005, under the section about Licensing (under the heading, 'Identity and Ownership'?)

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give your reasons for your answers below.

[Free text box]

Can you foresee any difficulties in complying with this requirement to list shareholders from 5% or more instead of 3% or more?

Yes

No

Don't know

If yes, please give your reasons for your answers below.

[Free text box]

Please provide an estimate, including any evidence, of the direct costs associated with implementing these proposals, identifying to which proposals the estimated costs relate.

[free text box]

Equalities considerations – financial key event reporting

The Commission is committed to giving consideration to potential equalities impacts, having regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

The proposals in this section of the consultation on reporting changes in ownership and interests are operational changes for gambling licensees that do not have a direct impact on consumers. Therefore, the Commission does not currently consider that the proposals set out in this section of the consultation give rise to known negative impacts in the context of the above objectives. This position will be kept under review. We would welcome views in relation to this topic.

Do you have any evidence or information which might assist the Commission in considering any equalities impacts, within the meaning of section 149 of the [Equality Act 2010](#), in the context of any proposals considered in this section of the consultation?

[free text box]

End