

Statement of principles for determining financial penalties

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Full proposal for consultation , December 2023

1 Introduction

The purpose of this statement of principles for determining financial penalties

- 1.1 This statement sets out the principles that the Gambling Commission (the Commission) will apply 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 Act provides that the Commission may require the holder of an operating Licence to pay a penalty if the Commission thinks that a condition of the Licence has been breached. The Commission may impose a financial penalty following a review under section 116(1) or (2) of the Act. The Commission also has the power to impose a financial penalty without carrying out a Licence review. 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.

2 Applicable principles

The purpose of imposing a financial penalty

- 2.1 The primary purpose of the Commission's exercise of its regulatory powers is to protect the interests of consumers and the general public and uphold the licensing objectives. In exercising our regulatory powers 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.

- 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.

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.

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 license, 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).

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.

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

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 or breaches 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 • 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

	<ul style="list-style-type: none"> • 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 or inexcusably ignorant (for example, previous failings of a similar nature), and/or conducted the business with a lack of integrity • 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.

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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 figure 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 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 occulting 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%

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.

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 rational for this)

2.20 The Commission recognises that in some circumstances it will not be appropriate for the starting point to be based on at 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 operator)
- in cases relating to Personal Functional and Management Licence (PFL/PML) holders
- in cases where there may be a specific single issues 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.

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 is 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.

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 judgment 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.

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 disclosure 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.

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 no figure is 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.

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 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.** Licensees must not generate positive publicity from the regulatory settlement
 - iii.** Payments need to be demonstrably over and above 'normal' Research, Education 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 to be used for specific agreed purposes that accelerate their commissioning plans
 - viii.** 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 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.

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