



# **Policy Statement: Civil Financial Penalties**

**July 2013**

## Introduction

The Commission regulates all permitted gambling in Jersey. The extent of this gambling, whether charitable or commercial, is controlled by degrees of accountability to the Commission. Commercial gambling is governed under Licence and this Licence is not a right, it is a strict contract awarded on the understanding that the applicant is fit and proper and will (demonstrably) comply with all the conditions a particular Licence attracts.

This document proposes the principles the Commission will apply when levying a financial penalty. The Gambling (Jersey) Law 2012 makes provision for financial penalties under Article 39 and compels the Commission to publish a statement setting out those circumstances that will attract financial penalties and the procedures it will follow.

It is not the Commission's intention to level a fine for every contravention it discovers through inspection or has reported to do it; this statement sets out a process where remedial action may be possible to avoid a financial penalty. However, the Commission must take into account the gravity of a contravention with reference to the guiding principles of the Commission Law:

- gambling should be regulated in accordance with generally accepted international standards to prevent fraud and money laundering, and should not be permitted to be a source of crime;
- gambling should be verifiably fair to consumers of those services;
- gambling should always be conducted responsibly and with safeguards necessary to protect children and vulnerable people.

To that end the Commission proposes 2 cases from the outset that will attract a civil penalty:

- No licensee may financially profit from a breach. Depending on the circumstance, severity and duration of the contravention the Commission may consider the surrender of the Gross Gaming Yield as penalty enough, or require a higher amount using the mechanism detailed later on in this document.
- Denying a customer the right to self-exclude. Self-Exclusion Systems are a key licensing condition, any evidenced incident of a licensee refusing a customer's request to be excluded from gambling will lead to the Commission serving a Final Notice for the maximum fixed penalty, that being £5000.

## **Why impose a Civil Financial Penalty?**

No licensee may profit from a breach or ignore a licence condition because it is considered an inconvenience, or indeed wilfully misinterpret a licence condition to suit their business model or preferred way of working. The Commission must ensure fairness and transparency for the public in gambling services in Jersey and importantly, these services must also adhere to social responsibility principles.

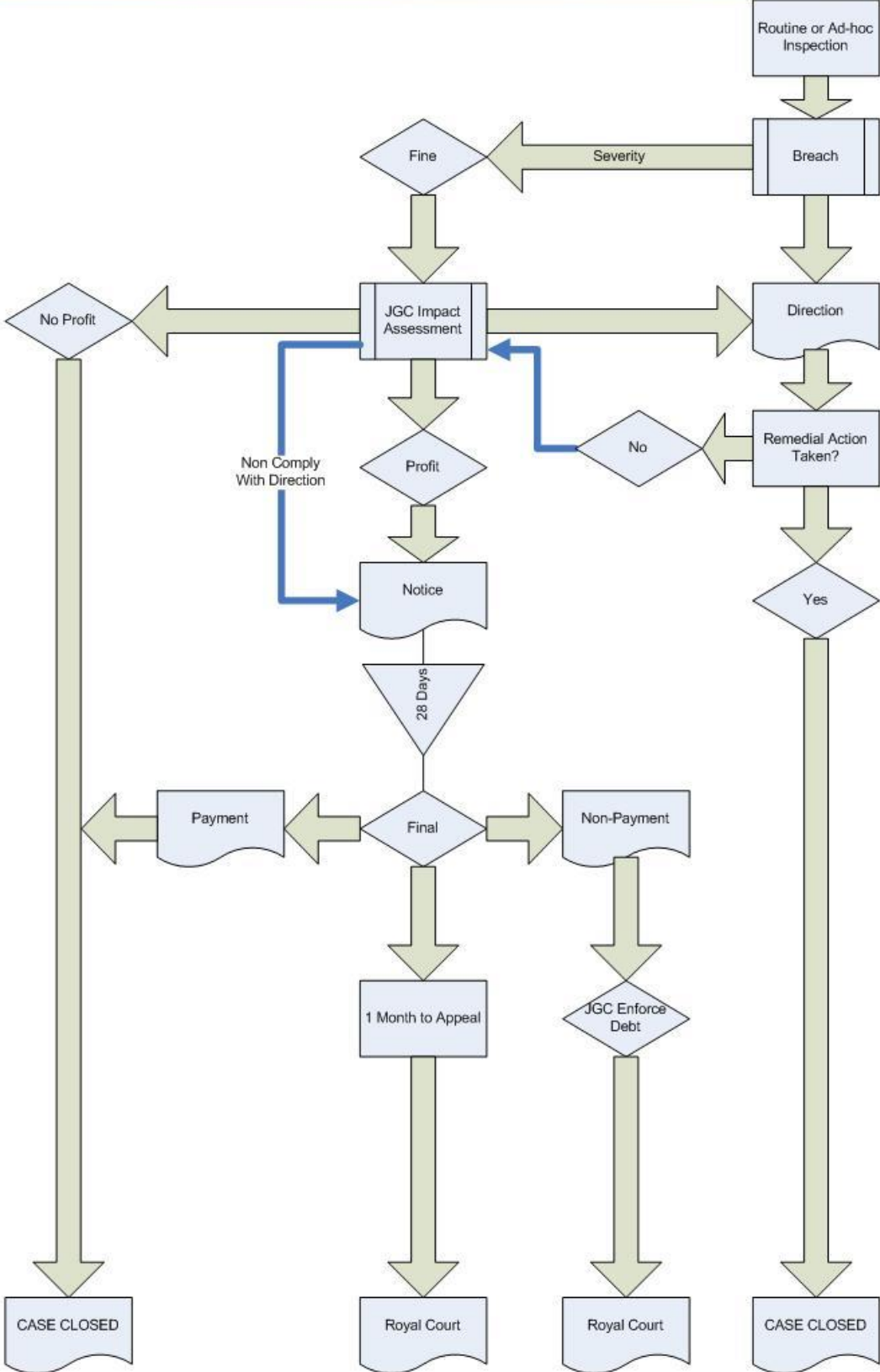
A penalty is a corrective measure and not one the Commission applies lightly. The fact the Commission has the power to impose a penalty acts as both a deterrent and a tool in relation to non-compliance. The Commission Law compels the Commission to consider its actions in light of the *undue burden test*, meaning the application of a sanction must be balanced, evidenced and proportionate to the scale of the breach.

A penalty is the price of a failure and may fall just short of revocation proceedings for a Licence. Alternatively, upon renewal the behaviour of the licensee will be considered and non-compliance may compel the Commission to impose further Licence conditions.

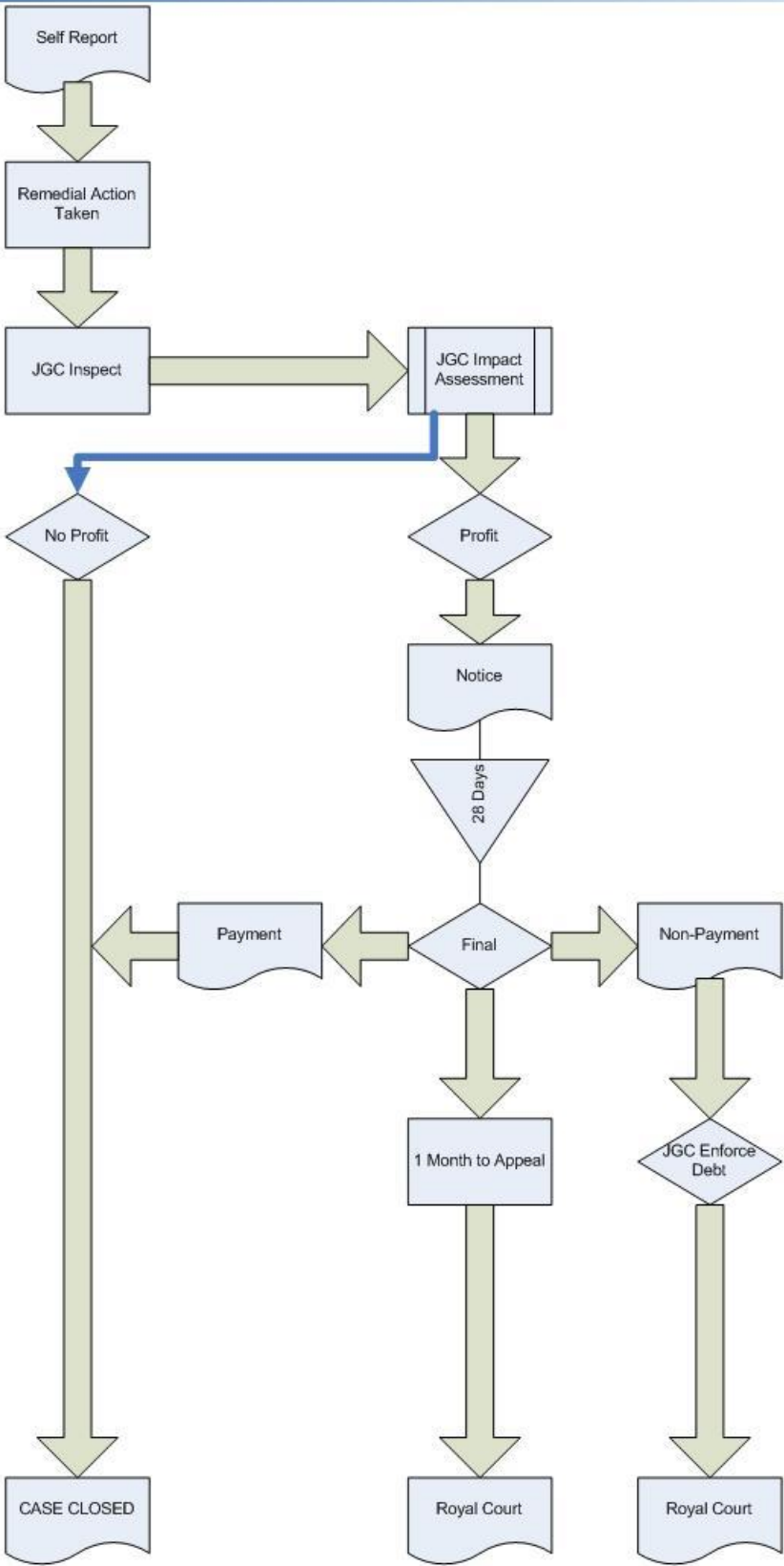
### **Process**

The following diagrams illustrate the process the Commission will follow in relation to certain contraventions. It should be noted that this is a generic overview; certain cases may have their own unique set of circumstances, however, the aim of these diagrams is to give an indication of the mostly likely regulatory actions and outcomes including those events leading to a financial penalty.

# Civil Penalties Flowchart – Routine/Ad-Hoc Inspection



# Civil Penalties Flowchart – Self Reporting



## Points to Consider

Before considering the imposition of a penalty, the Commission is bound by legislation to take the following matters into consideration:

- The seriousness of the contravention of the relevant provision;
- Whether the contravention has been remedied (complied with a Notice or oral requirement);
- Whether the contravention is likely to be repeated (safeguards instituted);
- Whether the licensee knew or should have known of the contravention;
- Whether the licensee voluntarily reported the contravention;
- The nature of the licensee (single site or multi-site), including in particular the financial resources of the licensee;
- The aim of ensuring licensees generally cannot expect to profit from contraventions.

The Commission will also consider whether the application of a non-prescribed condition or part of a Code of Practice was in fact a proportionate requirement imposed on a licensee. For example, if the breach or contravention occurred in one or more licensees and in respect of the same requirement, it may be the case that the Commission has imposed a burden on the industry, or a certain condition is in fact unrealistic. In respect of minor infractions, the Commission will consider whether regulatory action in the form of Directions or other notices is a more appropriate course of action.

In relation to the seriousness of the contravention, the Commission will consider whether the breach was deliberate or the product of incompetence. If the latter is proven and culpable individuals identified, the Commission may exercise other powers in relation to Article 45 and issue a Direction (see below).

Repeated breaches by a licensee, whether of the same subject (having undertaken required remedial action) or contraventions of other requirements, would be counted in the same manner of the licensee having been given so many chances by the Commission to make good multiple failures.

The Commission will consider the effect of the contravention on the licensee's customers, if for example the breach resulted in altering the fairness of the gambling or mislead the customer in any way. Deliberately misleading the customer as to the fairness of a gambling service and in so doing creating a disadvantage to the customer would also be a cause for revocation proceedings as well as a fine.

## Notice of Intent

A Notice of Intent is a warning notice that the Commission serves upon a licensee stating that it is minded to impose a financial penalty. It is sent in response to a breach of a Licence condition or information notice or other requirement. The Commission must be satisfied that the breach or contravention occurred and the penalty must be justified by the nature of the contravention, taking into account whether it has been remedied and how serious it was.

In a Notice of Intent, the Commission will detail reasons for believing that the licensee has contravened *relevant permissions* (see below) and that a penalty should be imposed. The

notice will also state that the Commission proposes the licensee to pay a penalty and contain the amount of that penalty.

The licensee will have 28 days to make representation to the Commission starting from the date of receiving the Notice Intent.

### **Relevant Permissions**

For the purposes of this Statement a *relevant permission* is a Licence condition, a Code of Practice in respect of a condition, a Notice or a Direction. For completeness and ease of reference, the content of Notices and Directions is explained below with a view to how they figure as relevant permissions and how a licensee could contravene their requirements.

### **Notices: Licences (Article 30)**

A Notice under this heading means a notice in writing served on a current or former licensee, principle persons associated with a current or former licensee and any associates of the latter.

The Commission will specify in the Notice:

- The information and documentation it requires the licensee to provide and the time and place for delivery of these stipulated items.
- In relation to the inspection of equipment, the Commission will specify what it needs to inspect and require the licensee to make available equipment while stipulating the time and place.
- In respect of persons, the Notice will contain the place and time for the person to attend and answer questions relevant to the licenced activity and their function in respect of those services.

The Commission's powers in relation to the content of Notices is restricted to the provision of information, documentation and individual accountability in relation, but not limited, to the following:

- the gambling business of the licensee or former licensee concerned;
- the integrity, competence, financial standing or organisation of that person or associated persons;
- the compliance by any of those persons in respect to the following:
- the Gambling Law, Commission Law and any enactment under either of them,
- a code of practice,
- a condition,
- a direction.

However, allied to the power to request the provision of any stipulated document or any information from the category of persons described above, the Commission also has the power to require the provision of information or documentation from any person who appears to be in possession of it.

The Commission may also require the named recipient to provide a report on the matters outlined in the Notice. The Commission may also request a report from an accountant or relevant professional it has nominated or approved for that purpose.

### **Notices: Unlicensed Gambling (Article 31)**

The right to issue a Notice is not limited to licensees. The Law provides a mirrored regime for the Commission to issue Notices where it has reasonable grounds to suspect a contravention of the Law and, therefore, conducts an investigation into these suspicions. The Commission may ask for the provision of information, documentation, inspection rights and

request persons to attend to answer questions, if it has reasonable grounds to suspect that a person or persons are providing:

- unlicensed commercial gambling services;
- a type of ancillary service that would require a permit (whether or not these services are generated for insular or external use Jersey);
- a charitable or membership gambling service that should require a permit;
- any other such service that is not categorised as private, commercial, ancillary, charitable or membership gambling services.

### **Directions (Article 35)**

A Direction is a notice in writing, issued by the Commission requiring a licensee to take action in respect of the conduct of gambling or the maintenance of the Licence itself. A Direction will set out what the Commission believes to be wrong and how the licensee should put these matters right. The circumstances prompting a Direction may be one or all of the following situations:

- any requirement in relation to the granting of the licence to the licensee is no longer satisfied,
- failure to comply with any requirement of or under the Law or the Commission Law,
- failure to comply with any code of practice applicable to the Licence;
- it is in the best interests of:
  - the creditors of the licensee,
  - persons who are or may become customers of the licensee,
  - persons who have received or may receive the benefit of services to be provided or arranged by the licensee,
  - one or more licensees.

A Direction may also be issued in order to protect the reputation and integrity of Jersey in gambling matters, as well as the reputation of commercial and financial services if they are at risk of being affected by commercial gambling. Moreover, circumstances may arise that make it necessary to issue a specific or general direction to all holders of a Licence type to promote and uphold the guiding principles.

### **Content of a Direction**

The content of a Direction will of course differ depending on the context of the Commission's concerns. However, the Law expands on 3 areas for the focus of Directions: Operational, Individual and Advertising.

**Operational:** the content of a Direction may require the recipient to undertake remedial action in respect of any gambling activity, it may set out that which should be done and that which should cease. It may impose a prohibition, restriction or limitation or any other requirement, with respect to any transaction or other act, or to any equipment or assets, or to any other thing whatsoever.

**Individual:** this Direction has an equally broad scope and will only be issued if the employment of an individual would be detrimental to the reputation and integrity of Jersey in gambling matters, or indeed the fitness and properness of a particular licensee. In some cases an operator may well be fit and proper but the inclusion of certain individuals could have a negative impact on operations, or it could be the fact that the actions of certain individuals could have caused the breach wittingly or through incompetence. Or the operator proposes to employ a person as a director and Commission due diligence checks reveal that the individual does not meet the criteria necessary for involvement in commercial gambling activity under a Jersey Licence. Under these circumstances the Commission may require



that any principal person, or person having functions, in relation to a licensee be removed or removed and replaced by another person acceptable to the Commission.

A Direction may require that any individual should not perform a specified function or any function at all, not engage in specified employment (or any employment at all), and finally not hold a specified position (or any position at all) in the business of a particular licensee or any licensee at all.

**Advertisements:** the Commission has published an Advertising Policy and adherence to this policy forms a condition for Permits, Registrations and Licences. If a holder of any these permissions breaches this Policy or the Commission considers publicity materials to be at variance with the requirements of the Policy, it will issue a Direction which may state the following:

- Prohibit the issue, re-issue or continuance of a particular gambling advertisement;
- Require any particular gambling advertisement be modified in a specified manner;
- Prohibit the issue, re-issue or continuance of gambling advertisements of any description;
- Require that gambling advertisements of any description be modified in a specified manner.

Any person or licensee subject to a Direction may apply to the Commission to have it withdrawn or varied. The Commission must withdraw or vary the Direction in whole or in part if it considers that there are no longer any grounds that justify the Direction or vary it to reflect any remaining pertinent concerns.

### **General Content**

The Commission has the right to vary or withdraw any Direction, it may also issue further Directions that may or may not be case-related. A Direction may last for an unlimited period or be time critical, in either case the Direction will detail this information. The Commission must ensure that the Direction contains the date on which the requirement is to have effect.

### **Postponement of the Effect of a Decision (Article 44)**

Postponements are applicable to a Direction in relation to an individual. Requirements related to the removal or limitations of an individual subject to a Direction may not have immediate effect unless the licensee or subject person agrees with the Commission that it should take effect at an earlier date.

The Law makes provision for requirements to have effect from (which ever is latest):

- one month after the date on which the Direction was given,
  - or
- a month after a date specified in the Direction,
  - or
- the date on which any appeal against the Direction is determined by the Royal Court or withdrawn.

### **Offences**

A person, other than a licensee, is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine if they contravene any provision of a Direction. A person is subject to the same penalties if they allow an individual to perform a function, engage in employment or hold a position, where the person knows that such performance, engagement or holding is in contravention of a Direction.

**NB:** The record of the conviction of any person for an offence detailed above is admissible in any civil proceedings as evidence of the facts constituting the offence.

### **Final Notice**

A Final Notice is as it sounds, and the Commission having received and investigated information requested in other notices, such as a Notice of Intent, concludes that the licensee is liable to receive a penalty.

The Final Notice will set out:

- the reasons for imposing the penalty;
- the formulae for reaching the prescribed amount;
- how payment must be made;
- the period in which the payment is to be made.

The licensee has the right of appeal against the imposition or amount of a penalty, and a Final Notice will reiterate this right. The right of appeal is detailed under the heading Appeals further on in this Statement.

The Final Notice will also contain the fact that a penalty may be enforced as if it were a debt owed by the licensee to the Commission.

The Commission cannot benefit from a licensee's infraction and on receipt of payment to the Commission, the amount of the penalty will be paid to the Treasurer of the States.

### **Specified Standard Penalties (Fixed)**

The Law allows the Commission to impose penalties of specified standard amounts, not exceeding £5,000, for stated types of contraventions or for contraventions in specified circumstances, unless there are exceptional reasons to impose a lower or higher amount. The following headings articulate those circumstances and contraventions that will attract standard penalties. (39 (10))

### **Social Responsibility Conditions**

**Signage – Help Providers:** if a commercial licensee still fails to display information in respect of problem gambling and the provision of counselling services, after having received a Notice to take remedial action, the Commission will serve a Final Notice for a penalty of £1000.

**Prohibitive Signage – Age Limits:** if a commercial licensee still fails to display prohibitive signage in respect of age after having received a Notice to take remedial action, the Commission will serve a Final Notice for a penalty of £1000.

**Under Age Gambling [Mystery Shopping]:** the Commission reserves the right to test the robustness of a licensee's processes and this includes the deployment of mystery shoppers. If a commercial licensee fails in challenging the age of patently young customers and allows them to gamble they will receive a notice to take remedial action. If a licensee fails a second test purchase, the Commission will serve a Final Notice for a penalty of £5000.

**Self-Exclusion Systems** - if a commercial licensee is found to have no system for facilitating a customer's self-exclusion request or has refused to process a customer's self-exclusion they will receive a Direction and Notice of Intent demanding immediate remedial action. If after a period of 7 days no such remedial action has been taken the Commission will serve a Final Notice for a Penalty of £5000.

### **Calculating Gross Gaming Yield<sup>1</sup>**

---

<sup>1</sup> The method for calculating GGY is retained from Regulation 12, Gambling (Remote Gambling Disaster Recovery) (Amendment) (Jersey) Regulations 2011:  
'... gambling yield in a relevant period is the excess... of the sums received... from customers, over the sums paid... to customers, by the holder of the licence as a result of conducting... gambling...'

Gross Win is the raw amount of money (staked/wagered) the licensee has 'won' from customers. Gross Win is also referred to as Gross Gaming Yield (GGY), which is calculated as money won from customers **MINUS** any pay-out to customers in the form of prizes. No other deductions may be set against the licensee's Gross Win (e.g. GST or costs associated with providing the gambling).

### **Scaled Penalties Calculated by Gross Gaming Yield**

As previously stated: no licensee may profit from a contravention of his or her Licence. A contravention could be one or more of the following examples:

- form of gambling is not permitted by the type of Licence they hold,
- the type of gambling promoted to the public is direct contravention of a Licence condition,
- the type of gambling is not allowed in Jersey,
- the gambling game has not been approved for public use.

The list is not exhaustive, and its purpose is to illustrate some circumstances where the Commission would likely take punitive action and serve a Final Notice for a penalty. Mitigating factors for not serving a Final Notice have been detailed above; the touchstone however is this question: did the licensee profit from a breach? If the answer is yes, the licensee cannot keep these funds and a fine may be levied to ensure this rule.

Once the Commission is satisfied that the licensee has supplied all information relevant to calculating the gross win attributable to a contravention of a relevant provision it will impose a penalty and the defined fine. However, the amount of the penalty imposed by the Commission may not exceed twice the gross win attributable to the contravention.

For example:

- If the gross win is £4000 the Commission may impose a penalty doubling the amount to £8000 and then apply a further £5000 fine<sup>2</sup>.

### **Time Limitations for Notices of Intent (Article 39 (3))**

The Commission may not serve a Notice of Intent in respect of a contravention of a relevant provision after the end of the period of 2 years. While this places a limitation on any action in respect of a historical breach, the Article sets out the definition of what constitutes 2 years, namely two years beginning from the day on which the contravention occurred or began to occur, or, if later, the day on which the contravention came to the knowledge of the Commission.

### **Appeals (Article 45)**

The right of appeal extends to Civil Penalties. Any person in receipt of a Final Notice and aggrieved by the Commission's decision may appeal to the Court on the grounds that the decision was unreasonable, having regard to all the circumstances of the case.

---

<sup>2</sup> Article 39 (11), Gambling (Jersey) Law 2012:

The amount of a penalty imposed by the Commission may not exceed whichever is the higher of –

- (a) £5,000; **and**
- (b) twice the gross win attributable to the contravention of the relevant provision.

An appeal cannot be made later than one month from the date on which the Final Notice was served.

On hearing an appeal the Court may confirm, reverse or vary the decision of the Commission, or remit the decision to the Commission; and may make such order as to the costs of the appeal as it thinks fit.