



JERSEY GAMBLING COMMISSION

Policy and Statement of Principles: Civil Financial Penalties

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Introduction

This document is the statement of the Jersey Gambling Commission (the “Commission”) regarding those powers conferred by Article 39 of the Gambling (Jersey) Law 2012 (the “Law”) and in relation to civil financial penalties imposed on licensees and (commercial) permit holders in cases where they have contravened a ‘*relevant provision*’.

This statement proposes the principles the Commission will apply when levying a financial penalty and is the statement setting out those circumstances that will attract financial penalties and the procedures it will follow.

This statement should be read in conjunction with the following publications:

- Sanctions under the Gambling (Jersey) Law 2012: The Decision Making Process
- Regulatory Settlements Policy

This statement also supplies the calculation in relation to Gross Win as required by Article 39 (12) of the Law (“Gross Win”).

Guiding Principles

Commercial gambling is conducted under licence. A licence is not a right, it is awarded on the understanding that the applicant is fit and proper and will (demonstrably) comply with all the conditions a particular licence attracts.

All permitted gambling is subject to conditions contained in the Law, along with those Policy Statements and Codes of Practice dedicated to the good governance of the various types of gambling allowed in Jersey. Gambling is therefore controlled by these published degrees of accountability to the Commission.

Article 4 of the Gambling Commission (Jersey) Law, 2010 (the “Commission Law”) places the Commission under a duty to ensure that the gambling services which it licences are:

- conducted responsibly and with safeguards necessary to protect children and vulnerable people;
- not permitted to be a source of crime and regulated in accordance with generally accepted international standards to prevent fraud and money laundering; and
- are verifiably fair to customers.

Gross Win

It is important to state from the outset that 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 Win as penalty enough, or require a higher amount using a mechanism defined by the Law and detailed later on in this statement.

In accordance with duties placed on the Commission and specifically in relation to Article 39 (8) of the Law, the following statement is made concerning the determination of Gross Win for the purposes of calculating a civil financial penalty:

- Gross win will be calculated by taking the amount wagered by the relevant players less the winnings returned to them; taxes, salaries and other expenses will not feature in the calculation in any way.
- Where the nature of the gambling product is such that the activity cannot be described in that way, Gross Win will be calculated by taking 'wagered' to mean the amount invested with or through the agency of, the licensee and 'winnings' will be taken to mean the aggregate amounts by which that sum has increased from time to time since the investment was made and benefits the licensee.

While Gross Win is the stated term under Article 39 of the Law, some licensees may be more familiar with, or use by way of business, the term Gross Gaming Yield or Gross Gambling Yield, both terms mean Gross Win and are therefore wholly substitutable.

Specified Standard Penalties

Article 39 (10) of the Law introduces the principle that the Commission may impose penalties of specified standard amounts, not exceeding £5,000, for specified types of contraventions or for contraventions in specified circumstances, unless there are exceptional reasons to impose a lower or higher amount.

Should the Commission seek to impose specified standard amounts it will be in those circumstances where the infraction did not generate a pecuniary interest for the licensee, but nevertheless be serious enough to attract a penalty, and most especially in cases where remedial action has been directed but not been undertaken within the specified timeframe, satisfactorily or at all.

The Law however, controls the Commission's actions by limiting its fining power in the following way:

Article 39 (11) of the Law:

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.

In relation to paragraph (b) of the above formula, a breach (contravention) will be accountable in relation to the likely impact on each customer, meaning that a penalty is cumulative. For example, it is a condition of a licence that once a person self-excludes, no marketing materials or other inducements to gamble may be sent directly to them in any format e.g. letter, text, email. Although a licensee might have sent out one marketing email to multiple email addresses, for the purposes of this contravention the breach will be calculated in terms of the numbers of recipients of that email.

Why impose a Civil Financial Penalty?

No licensee may profit from a breach whether through ignorance or incompetence or through disregard of a licence condition because it is considered an inconvenience, or indeed wilfully misinterpret a licence condition to better suit a 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 that 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 be consistent in the execution of its powers (the Law, *passim*) and ensure that in carrying out these functions, it does not give rise to or maintain *unnecessary burdens* (the Commission Law Article 3 (5)). These duties, therefore translate that the application of sanctions 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 application for a new licence, the past compliance behaviour of the licensee must be considered; non-compliance may compel the Commission to impose further licence conditions.

Matters for consideration

The Commission, when exercising the power to impose a civil penalty, will consider the following matters, which include those principles which Art 39(6) of the Law requires the regulator to take into account:

- the seriousness of the contravention;
- whether or not the licensee knew, or ought to have known, of the contravention;
- whether or not the licensee voluntarily reported the contravention;
- whether or not the licensee has taken steps to rectify the contravention and to prevent its recurrence;
- the potential financial consequences to the licensee and to third parties (including customers and creditors of the licensee) of imposing the penalty;
- the principle of ensuring that the licensee cannot expect to profit from the contravention;
- the penalties imposed by the Commission in other cases;
- factors that the Commission considers aggravate or mitigate the contravention.

Factors that the Commission will regard as aggravating a contravention include (i.e. this is a non-exhaustive list):

- a failure to bring promptly and completely the contravention to the attention of the Commission;
- a business model that encourages a disregard for requirements of the Law;
- a poor compliance record (this will include a failure to follow any direction(s) issued);
- a failure to pay appropriate attention to relevant guidance issued by the Commission;
- a failure to follow its own procedures;
- an absence of relevant procedures;
- a failure to implement recommendations made by the licensee's compliance officer or money laundering compliance officer in order to ensure compliance with the relevant requirements;
- clients of the licensee experiencing a significant loss as a result of the contravention or not making a profit that would otherwise have accrued absent the contravention.

Factors that the Commission will regard as mitigating a contravention (i.e. this is a non-exhaustive list):

- the contravention being brought promptly and completely to the attention of the Commission;
- co-operating fully with any investigation;
- an evidenced previously strong compliance record;
- the licensee's procedures were amended to address the contravention;
- swift resolution of any customer losses arising as a result of the contravention or swift payment of compensation to make good any benefit that the client would otherwise have accrued absent the contravention.

Multiple Licences: A Jersey licensee may also be licensed by other jurisdictions and, where information sharing agreements are in place, the Commission will liaise with the other regulator to achieve a reasonable and proportionate approach to enforcement action, including civil financial penalties.

Where the breach has affected players outside Jersey, and in a country where the licensee holds a separate licence, it could be considered as disproportionate to level a penalty equal to that of the host country. This would form part of any consideration, as any punitive action is not designed to destabilise a licensee financially, and the Commission may then, having assessed the initial penalty, conclude the element of financial benefit from the contravention has already been removed by the imposition of a penalty levelled elsewhere. In light of this possibility and the duty placed by Article 39 (6)(e) of the Law, where a penalty is to be imposed the penalty could be reduced to reflect the regulatory sanction of another jurisdiction for the same offence.

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