



**JERSEY GAMBLING COMMISSION**

## **Policy Statement: The Decision Making Process**

**Sanctions under the Gambling (Jersey) Law 2012**

**Statement first published July 2019**

## **Introduction**

The process described in this document applies in cases in which a regulatory sanction has become necessary for breaches of provisions of the gambling legislation and in which no Regulatory Settlement<sup>1</sup> has been reached. This document details the Commission's decision making process and key stages necessary to reach a conclusion as to the proper sanction necessary to meet the case.

It is important that this policy statement is read in conjunction with the following document:

- Policy Statement: Civil Financial Penalties.

## **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 Gambling (Jersey) Law 2012 (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.

## **Overview**

The Commission's decision-making process has these key stages:

1. The investigation and gathering of papers;
2. The sharing of those materials with the licensee for verification and additions, if any;
3. Review by the officers;
4. Referral of the papers to the Board if the matter is to be dealt with at Board level;
5. First meeting of the Board to form provisional view of what the outcome should be;
6. Second meeting of the Board to hear representations from its officers and from the licensee;
7. Board decision.

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<sup>1</sup> Sanctions under the Gaming (Jersey) Law 2012: Regulatory Settlements

## **The stages explained**

### **1. The investigation and gathering of papers**

Using its powers under the Law and / or with the co-operation of the licensee, officers of the Commission will investigate the alleged breach, drawing in all relevant papers.

### **2. The sharing of those materials with the licensee for verification and additions, if any**

Copies of all of those papers will then be sent to the licensee with notification that they will be the basis on which the matter is to be adjudicated. The objective of this stage is to ensure that the licensee is provided with all the information on which the Commission will rely in making its decision; and for that information to be confirmed as reliable and complete in all material respects before any decision is taken. 'Papers' will be taken to include materials electronically stored and materials summarised by agreement between the Commission's officers and the licensee.

The licensee will therefore be requested to consider the information that has been provided and respond to the Commission, in writing:

- confirming that the facts as presented are correct or, if not, suggesting what changes might be made so that they are correct; and
- providing any additional information considered material or relevant in any way to the matter.

Time limits for a response will be reasonable taking account of the amount of material to be verified in the way described, and its nature.

### **3. Review by the officers**

Once the papers are finalised, the Chief Executive Officer and his Deputy will review them as an entity and reflect on the picture which they reveal.

Particular attention will be given to:

- matters indicating non-compliance;
- any known mitigating factors;
- any known aggravating factors; and
- the degree of confidence that the Commission may have in the reliability of the information.

A decision will then be taken about what is to happen next. The choice will be between dealing with the matter at officer level or elevating it to the Board. It is anticipated that in all but the most minor matters, the case will be elevated to the Board.

The Executive of the Commission is not extensive and there may be occasions on which the Chief Executive Officer and his Deputy are at this stage reviewing their own work. In such cases those officers are relied on to proceed objectively, as in all others.

#### **4. Referral of the papers to the Board if the matter is to be dealt with at Board level**

This is the stage at which the papers are delivered to the Board for consideration. Typically, they will include the officers' report and the response, if any, of the licensee together with the recommendations of the Executive. The delivery of the papers is confined to a simple act, unaccompanied by any comment by the officers or the licensee.

The procedure is such that the licensee will have all of the information placed by the Executive before the Board.

#### **5. First meeting of the Board to form provisional view of what the outcome should be**

After considering the papers, the Board may decide that it is minded to take the recommended action, or some other action. It may require additional information at any point.

If the Board is minded to exercise its statutory powers to impose a regulatory sanction, the licensee will be notified in writing of that fact and of the nature of the intended sanction. Where the Board is minded to impose a financial penalty notification will be by means of a 'notice of intent' issued under Article 39 of the Law.

The notification referred to in the previous paragraph will:

- state the date on which the second meeting of the Board will meet to consider whether or not to adopt the proposed course of action;
- offer the licensee an opportunity to make a written submission to the Board within a specified time frame;
- request that the licensee advise the Board within a specified time frame whether the licensee intends to make an oral submission and, if so, and the licensee will be accompanied (e.g. by a legal adviser), the name of that person; and
- set out the consequences of failing to respond within the time frame set.

Where a written submission is made by, or on behalf of, the licensee within the Commission's specified time frame, the Chief Executive Officer may prepare comments on the submission. If considered appropriate, those comments will give reasons for any recommendation to reject points made in the submission. The comments of the Chief Executive Officer and reasons for recommending the rejection of any points will be submitted to the Board and disclosed to the licensee prior to the **second** meeting of the Board.

#### **6. Second meeting of the Board to hear representations from its officers and from the licensee**

Prior to the second meeting, the Board and the Executive will be provided with:

- any written submissions made by, or on behalf of, the licensee; and
- comments of the Chief Executive Officer on any written submission, including the reasons for any recommendation that any of the submissions be rejected or disregarded.
- Any other material thing that has arisen since the first meeting of the Board.

The Board will meet on the date advised to the licensee in the notification referred to above. Members of the Commission's staff may attend the meeting. The Board may also invite anyone else that it considers will assist it in its deliberations, such as the Commission's legal adviser.

### **Oral submissions to the Board**

If the licensee elects to make an oral submission to the Board, those submission by, or on behalf of, the licensee should explain why the proposed decision is inappropriate or not justified.

Following the oral submission, the licensee may be required to answer questions from the Board and clarify issues that may arise.

The Chief Executive Officer may be invited to comment on any matter raised by the licensee and to answer questions from the Board or clarify issues.

In exceptional circumstances, if information is introduced by the licensee during the oral submission that has not previously been made available to the Commission, the Board may decide to defer taking a decision to allow more time for the Executive to comment on the information and to disclose any such comments to the licensee.

The process is intended to be interactive rather than adversarial in nature. For the avoidance of doubt, court rules, process and procedures do not apply.

The meeting will be formally recorded through the use of audio equipment: one of the audio copies made at the meeting will be provided on written request by, or on behalf of, the licensee.

## **7. Board decision.**

### **Deliberations of the Board**

When the Board has received all submissions, the licensee, all officers of the Commission including the Chief Executive Officer, any legal advisers, and all other persons who are not Commissioners will leave the meeting.

If any new information or matters emerge during the Board's deliberations, the licensee and the Executive will be given an opportunity to comment thereon. In such a case, the Board will delay taking its final decision for a reasonable period to allow the person(s) concerned to make comments.

In reaching its decision, the Board will have regard to the written and oral submissions received and all other information in the documents before it. It is for the Board to decide which, of the matters before it, it accepts and which it does not.

As soon as reasonably practicable, the licensee will be given written notice of the Board's decision. If that decision is to exercise one or more of its statutory powers to impose a regulatory sanction, the notice will be that required by the Law (in the case of the imposition of a financial penalty this will be a 'final notice' issued under Article 39 of the Law and will include the reasons for the decision and particulars of the rights of appeal).

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