



JERSEY GAMBLING COMMISSION

Policy Statement: Regulatory Settlements

Enforcement under the Gambling (Jersey) Law 2012

Statement first published July 2019

Introduction

This document describes those circumstances in which a Regulatory Settlement may lead to a more appropriate outcome than proceeding through the Commission's Decision Making Policy to the imposition of a civil financial penalty or other sanction.

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

- Policy Statement: Civil Financial Penalties
- Sanctions under the Gambling (Jersey) Law 2012: The Decision Making Process.

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.

Regulatory Settlements

In order to meet the duty placed by Article 4 of the Commission Law, there are various ways in which the Commission can deal with non-compliance by licensees. These range from enhanced compliance procedures to licence reviews and formal enforcement action. The imposition of additional conditions as well as the suspension or revocation of a licence all remain possible too. The Commission also has powers to launch investigations and bring criminal complaints against companies and individuals. Enforcement forms an essential part of the Commission's work to keep gambling fair and safe for all.

In addition to the measures already mentioned, Regulatory Settlements are among the enforcement measures available to the Commission.

Where concerns have been raised about a licensee the Commission may commence an investigation. Where appropriate, in certain specific cases, the Commission may seek to fulfil its statutory obligations and pursue the licensing objectives through means that stop short of action leading to formal sanction through its published Decision Making Process. One means for achieving this will be by way of a Regulatory Settlement. The route to a settlement is largely reliant on a series of factors based on the openness, transparency and professionalism of the licensee, for example:

- a history of transparency in its relations with the Commission
- prompt and accurate disclosure of the facts
- the ability to prove an understanding of the apparent failings
- the provision of a plan for remedial action curtailing the need for formal action by the Commission
- willing to divest itself of any gross win or financial benefits which accrued as a result of the contravention

- receptive to advice and willing to implement procedures to ensure there is no repetition
- prepared to contribute to the direct costs to the Commission of investigating the matter in respect of which the Regulatory Settlement is sought
- prepared to volunteer a payment in lieu of the financial penalty the Commission might otherwise impose for a contravention in accordance with the relevant provisions for determining financial penalties.

Even where the Decision Making Process has begun, and at any stage of it, if a licensee makes admissions and full disclosure of all the relevant facts, the Commission may consider whether the Decision Making Process needs to continue, or whether it is prepared to consider the alternative of a Regulatory Settlement.

The proceeds of all Regulatory Settlements, less the investigatory costs incurred by the Commission, go to benefit the Social Responsibility Fund maintained by the Commission in pursuance of its statutory responsibility in that regard.

The Route to a Settlement

For such a settlement to work, the Commission and the licensee need to agree findings and also, as listed above, the subsequent steps appropriate to the case, including financial matters.

The Commission is keen to encourage licensees to come forward and make full disclosure of all the relevant facts relating to a contravention as early as possible. The licensee must also propose those remedial undertakings that would render the imposition of formal sanctions unnecessary.

The Commission will set a clear and challenging timescale for settlement discussions to ensure that they result in a prompt outcome. Where timescales are not adhered to the Commission is likely to commence or continue more formal action under the Decision Making Process.

Regulatory Settlements should not be conflated with 'out of court' settlements in a commercial context. A Regulatory Settlement is a regulatory decision, taken by the Commission, the terms of which are accepted by the licensee concerned. When agreeing the terms of a settlement, the Commission will carefully consider its statutory duties and other relevant matters such as the importance of sending clear, consistent messages through enforcement action, the integrity of the sector and will only settle such cases where the agreed terms of the decision deliver the appropriate regulatory results.

It may be particularly important in this respect to provide redress to consumers who may have been disadvantaged by a licensee's misconduct, or to relieve licensees of the profits or gross gambling yield resulting from their failures.

The Commission will not normally initiate the Regulatory Settlement process, but may remind licensees at any stage that such an option exists, and that the Commission is available for discussion.

Furthermore, the Commission considers that in general the earlier settlement discussions can take place the better this is likely to be from a public interest perspective. However, the Commission will only engage in such discussions once it has sufficient understanding of the nature and gravity of the suspected misconduct or issue, to make a reasonable assessment of the appropriate outcome.

A Regulatory Settlement should not be considered a default position in relation to all contraventions. The Commission will examine each case on its merits and where a more formal regulatory enforcement direction is justified it will be pursued. All cases of criminality will be referred to the States of Jersey Police.

In deciding whether Regulatory Settlement is an appropriate course of action, the Commission will take the following matters into account (the list is not exhaustive):

- the nature and extent of the concerns
- whether concerns have been raised about the licensee in the past
- the scale of the concerns across the licensed entity
- the involvement of senior management
- the extent of any attempt to conceal any failure
- the impact on consumers
- the absence of internal controls or procedures intended to deal with the particular concern
- the way in which concerns were reported to the Commission
- whether the licensee has considered any applicable training of the guidelines published by the Commission.

In those cases where a Regulatory Settlement is considered more proportionate than the alternative enforcement action, the Commission will expect the licensee to act promptly, instituting all steps agreed under the terms of the settlement. If the licensee fails to do this, the Commission may reconsider its position and revert to more formal regulatory action by use of the Decision Making Process.

Prompt Disclosure: Early acknowledgement by a Subject of breaches of regulatory requirements - which effectively saves time and investigative resources - will always be considered favourably by the Commission.

A licensee should not underestimate the importance the Commission places on the prompt reporting of contraventions. Self-disclosure is a key element in determining the course of regulatory action, and the earlier acknowledgement is made during the investigation process, the greater the confidence the Commission places in the licensee's ability to initiate remedial action and maintain the health of its licence.

Without Prejudice: All settlement discussions will be conducted on a "without prejudice" basis. All without prejudice correspondence and other material shall not be relied upon at a later stage should no settlement be reached, and the matter dealt with through the formal Decision Making Procedure.

Jersey Gambling Commission

4th Floor Osprey House

5-7 Old Street

St. Helier

Jersey

JE2 3RG

Tel: +44 (0)1534 828 540

Email: info@jgc.je

Web: <http://www.jgc.je>