

**The Gambling Business Group submission to the Gambling Commission’s consultation  
on proposed changes to financial penalties and financial key event reporting (submitted online)**

	Consultation question	GBG submission
11.	To what extent do you agree that the wording in paragraphs 1.1 to 1.2 adequately describes the purpose of this statement of principles for determining financial penalties?	Disagree.
	Please give your reasons for your answer. If you do not agree, please suggest an alternative form of words.	The contents of paragraphs 1.1 and 1.2 do not constitute ‘a purpose’.
12.	To what extent do you agree that the wording in paragraph 1.3 adequately describes the framework of policies and procedures that the statement of principles for determining financial penalties should be read in conjunction with?	Neither agree nor disagree
	Please give your reasons for your answer. Please include here any other documents that you believe should be added to the list.	This is for the GC to outline therefore we are unable to confirm. Although the list appears correct, it might not be complete.
13.	To what extent do you agree that the wording in paragraph 1.4 adequately describes the legal framework within which the statement of principles for determining financial penalties sits?	Disagree
	Please give your reasons for your answer. If you do not agree, please include any description of the legal framework that you believe should be incorporated.	The wording does not reflect the wording of the Gambling Act 2005 (in particular s121 (5)(c))
14.	To what extent do you agree that the wording in paragraph 1.5 adequately describes the scope of the document?	Agree, although it seems to overlap with the wording attributed to the “purpose” of the document
	Please give your reasons for your answer. If you do not agree, please suggest an alternative form of words.	It appears to conform with the requirements of the 2005 Act.
15.	To what extent do you agree with the proposal to remove paragraph 1.6 – key considerations – to avoid duplication of content that appears later in the proposed document?	Agree.
	Please give your reasons for your answer.	The list of key considerations appears to be an unnecessary inclusion.
16.	Are there any other references, documents or content the Commission should consider including, or take account of, in this section of the SoPFDfP?	No.
17.	To what extent do you agree with the proposed wording at paragraph 2.1 and in particular the primary aims of financial penalties?	Strongly disagree.
	Please give your reasons for your answer.	The wording should reflect the Act and in particular section 22.

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18.	To what extent do you agree with the principles set out in paragraph 2.2 which underpin the detailed proposed amendments set out in this consultation?	Agree.
	Please give your reasons for your answer. If you disagree, please provide additional explanation here.	We would also add that consideration should be given to the potential of the risk caused to consumers by the breach, if it is not already implied in 'the nature of the breach'.
19.	To what extent do you agree with the proposed list of factors the Commission may have regard to when considering the imposition of a financial penalty, as set out in paragraph 2.4?	Agree subject to the comments below
	Please give your reasons for your answer. Please include here any factors you believe should not be included, and/or any additional factors you believe the Commission should consider.	<p>We agree with the aim of providing clarity but make the following suggestions:</p> <p>first bullet – expanded to whether the breach of a Licence condition is an example of repeat behaviour by the Licensee <b>and in particular whether the licensee has previously been subject to regulatory enforcement action</b></p> <p>eighth bullet – expanded where the breach of a Licence condition had an impact on consumers <b>and the extent of that impact.</b></p> <p>ninth bullet point should be slightly amended to read “where it could reasonably be concluded that the breach of a Licence condition might have damaged confidence in the gambling industry”.</p>
20.	To what extent do you agree with the proposed circumstances in which a financial penalty would not normally be imposed, as set out in paragraph 2.5?	Disagree.
	Please give your reasons for your answer. Please include here any factors you believe should not be included, and/or any additional factors you believe the Commission should consider.	We agree in principle but do not think that 2.5 is sufficiently clear given that the level of seriousness will not be dealt with until stage 2.
21.	To what extent do you agree with the overall proposal to move to a clearly defined six step approach?	Agree subject to the approach to quantum being clear.
	Please give your reasons for your answer.	<p>Transparency and consistency as to how financial penalties are calculated is important for fairness and also as an effective deterrent.</p> <p>We also agree with the transparency on proportionality.</p>
22.	To what extent do you agree with the proposal set out in paragraph 2.7, to separate the calculation of the disgorgement element of the fine from the calculation of the penal element, with these added together at Step 6?	Strongly agree.
	Please give your reasons for your answer.	Separation of the calculations is important for both transparency and for understanding the outcomes.
23.	To what extent do you agree with the steps proposed and the sequencing of these steps as set out in paragraph 2.8?	Agree.
	Please give your reasons for your answer.	We appreciate the transparency and consistency that this provides.
24.	Do you have any further comments on this section that the Commission should take into account?	No
25.	To what extent do you agree with the proposal for the Commission to attempt to identify the amount of detriment to consumers and/or financial gain to the Licensee as a direct result of the breach as the first distinct step in the process?	Disagree.

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	Please give your reasons for your answer.	It appears to be the most logical and fair approach to take, but it can only apply if a/the amount can be quantified.
26.	To what extent do you agree with the proposal that the amount of detriment to consumers and/or financial gain to the Licensee as a direct result of the breach should constitute the “disgorgement” sum added to the penal element of the fine?	Neither agree nor disagree
	Please give your reasons for your answer.	We cannot conclude a view on this as more clarity is needed to ensure a consistent approach.
27.	To what extent do you agree with the proposal that if the level of detriment to consumers and/or financial gain to the Licensee cannot be calculated at Step 1, this should be considered as a relevant factor in assessing seriousness under Step 2?	Agree.
	Please give your reasons for your answer.	It appears to be the most logical and fair process to use. However, the wording must align to wording used in this question.
28.	Do you have anything further to add in relation to this section, for the Commission to take into account?	No
29.	To what extent do you agree with the list of factors proposed under paragraph 2.11 that the Commission would consider in order to determine the seriousness of the breach?	Disagree.
	Please give your reasons for your answer. If you have comments about specific factors you believe should be added or instead be considered under Step 3 or Step 4, please provide those here.	We are concerned with the practical application of this part of the process. Where investigations identify factors in various boxes, inconsistencies in outcomes will then arise, especially if as is quoted in the question; ‘it is ultimately a matter of judgment for the Commission to consider’. It would therefore be both fairer and more transparent if there was a criteria framework presiding over this assessment that ensures the right outcome is reached every time.
30.	To what extent do you agree with the proposal for consideration of those factors to inform categorisation of the seriousness of the breach using a five-point scale?	Neither agree nor disagree.
	Please give your reasons for your answer.	Whilst we may agree with the intention here, we have the same reservations explained in answer 29 above.
31.	To what extent do you agree with the factors and descriptions proposed at paragraph 2.14 to determine the levels of seriousness of the breach?	Neither agree nor disagree.
	Please give your reasons for your answer.	Whilst we may agree with the intention here, we have the same reservations explained in answer 29 above.
32.	Do you have anything further to add in relation to this section, for the Commission to take into account?	No.
33.	To what extent do you agree with the proposal to use GGY generated during the period of the breach (rounded to the nearest month) as the starting point for determining the level of the financial penalty?	Disagree
	Please give your reasons for your answer.	Profit would be most proportionate and fair basis for the calculation. There would not be any greater burden on licensees. In terms of the period, whilst we agree with the principle of using the period of the breach as the starting point, we see no need or reason to suggest that any inaccurate rounding up is necessary in a digital business.
34.	In the case of one-off or events lasting short time periods, to what extent do you agree with the	Disagree.

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	proposal that GGY derived during the quarter preceding the end of the breach should be considered the starting point for determining the level of the financial penalty?	
	Please give your reasons for your answer.	We see no reason why the relevant/respective profit/GGY cannot be identified accurately. Quarterly GGY will not represent 'one off events.
35.	In the case of multiple breaches of varying duration, to what extent do you agree with the proposal to use the aggregated breach period, taking account of different levels of seriousness within that breach period, or if this is not appropriate, for the Commission to use judgement to reach a fair and proportionate period?	Strongly disagree.
	Please give your reasons for your answer.	This question does not represent the supporting narrative in this document. Neither is it fair on either the licensee or the Gambling Commission enforcement officer to revert to 'judgement' to determine the level of 'seriousness'. The assessment should be carried out on a scientific basis for each breach.
36.	To what extent do you agree with the proposal that the starting point for the financial penalty will be calculated by adopting a percentage of GGY derived during the period of the breach, where this percentage is set by reference to the level of seriousness of the breach?	Agree.
	Please give your reasons for your answer.	This is the logical starting point and will be easily understood by all parties.
37.	To what extent do you agree with the percentage ranges proposed to inform the starting point of the penal element, associated with the level of seriousness of the breach?	Disagree.
	Please give your reasons for your answer.	We believe that the percentage ranges proposed are reasonable save for level 5.
38.	To what extent do you agree with the proposal for the Commission to reserve the right to impose a percentage of GGY in excess of 15% in exceptional circumstances for the most serious breaches?	Strongly disagree.
	Please give your reasons for your answer.	. Step 3 would already allow the Gambling Commission to increase a penalty based on aggravating factors (or to reduce it based on mitigating factors). It would be disproportionate and unnecessary to further allow discretion as suggested.
39.	Do you have any comments on the circumstances in which it would not be appropriate to use GGY as the starting point for this calculation? Please include here any other examples we should consider adding to paragraph 2.20.	No
40.	Do you have any further comments to add on the proposals for Step 2(b) Determining the starting point of the penal element of the fine?	No
41.	To what extent do you agree with the proposed approach to provide clarity and transparency on the factors which may contribute to increasing or decreasing the sum of the financial penalty?	Disagree.
	Please give your reasons for your answer. Please include any comments you have regarding any other aggravating or mitigating factors the Commission should consider	It is only appropriate that mitigating and aggravating circumstances are taken into account with any form of regulatory process. However, previous failings that did not lead to a sanction should not be taken into account. An investigation that found no failings should not be relevant.

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42.	To what extent do you agree that this step should be separate from the process for determining the starting point for the penalty at Step 2?	Strongly agree.
	Please give your reasons for your answer.	They are two separate factors in the process.
43.	Do you have anything further to add in relation to this section, for the Commission to take into account?	Licencees should not be punished for being open and transparent with the Gambling Commission or for protecting their legal position and rights.
44.	To what extent do you agree with the proposal that any adjustment for deterrence should be separate from the process for determining the starting point for the penalty at Step 2?	Strongly disagree
	Please give your reasons for your answer.	The penalty is a deterrent on its own. The ultimate deterrent of a revocation of a licence (whether personal or operating is appropriate) also exists.
45.	To what extent do you agree with the proposal that any adjustment for deterrence should be applied after Step 3 – Mitigating and aggravating factors?	Disagree
	Please give your reasons for your answer.	See above
46.	Do you have anything further to add in relation to this section, for the Commission to take into account?	No
47.	To what extent do you agree with the proposed approach to provide transparency around the application of any discount for early resolution?	Agree.
	Please give your reasons for your answer.	This is an important element of the investigative process where transparency and cooperation are key factors. This proposal encourages such open and transparent relationships.
48.	To what extent do you agree that this step should be separate from the process for determining the starting point for the penalty at Step 2?	Agree.
	Please give your reasons for your answer.	As with our response to Q42, this has separate implications in the investigation and being separate, compels the enforcement team to properly evaluate the Licensees behaviour in this area.
49.	To what extent do you agree with the proposal that any discount for early resolution should be applied after Step 4 – Adjustment for deterrence?	Agree.
	Please give your reasons for your answer.	It makes for a basic mathematical calculation.
50.	Do you have any comments on the proposed percentage range which may be applied to determine the level of the discount?	No
51.	Do you have anything further to add in relation to this section, for the Commission to take into account?	No
52.	To what extent do you agree with the proposal that the final penalty amount will be the sum of the amount calculated at Step 1 (disgorgement, where it has been possible to identify) and that at the end of Step 5?	Agree.
	Please give your reasons for your answer.	This is logical
53.	To what extent do you agree with the proposal to take affordability into account, and to mitigate against financial hardship?	Strongly agree.

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	Please give your reasons for your answer.	Unnecessarily risking the solvency of a Licenced Operator could have negative implications for the customers which is not the intention here and should be avoided, as long as it doesn't undermine the purpose of the process.
54.	To what extent do you agree that when considering affordability, the Commission should take into account the financial resources of any parent or group or ultimate beneficial owner, in addition to the Licensee's own resources?	Disagree.
	Please give your reasons for your answer.	The entire regime is about the individual licensed entity in question.
55.	To what extent do you agree the Commission should also publish the level of financial penalty prior to any reduction applied at Step 6 in any publications regarding the case?	Strongly disagree.
	Please give your reasons for your answer.	There are too many negative implications to this proposal that benefit none of the parties, including inevitable headline accusations of the Gambling Commission being too soft on gambling operators.
56.	Do you have anything further to add in relation to this section, for the Commission to take into account?	No
57.	To what extent do you agree with the inclusion of the sections on Procedural matters, Time limits and Payments in lieu of financial penalties as part of the proposed new SoPДФP, as was the case in the existing SoPДФP?	Agree.
	Please give reasons for your answer.	The process is logical.
58.	To what extent do you agree the Commission should only consider payment plans in exceptional circumstances?	Disagree.
	Please give your reasons for your answer.	There is no reason to be as rigid as suggested. Room should be provided for such plans where appropriate.
59.	If you have any other comments on the proposed new SoPДФP that have not been addressed individually within this document, please state them here, using paragraph numbers for reference.	2.6.i. Should not be open-ended and should include the same criteria identified in vi.....approve the destination of monies to <i>socially responsible purposes that include purposes which address gambling related harm or in some way promotes one or more of the licensing objectives.</i> This will prevent these funds from being spent on biased and/or politically motivated research as has been the case on a number of occasions in recent years.
60.	To what extent do you agree that the amendments proposed to the Indicative sanctions guidance reflect the proposed Statement of principles for determining financial penalties as set out in this consultation?	Agree.
	Please give your reasons for your answer.	Nothing to add.
61-63	Equalities & Diversity Questions and option to add attachments	No comment
64.	To what extent do you agree with the proposed change to raise the reporting threshold at Licence Condition 15.2.1 paragraph 1 from 3% to 5% or more of direct ownership of issued share capital of the licensee or its holding company, to reflect a risk-based approach?	Strongly agree.
	Please give your reasons for your answers.	The changes appear to be sensible and an improvement on the current drafting.
65.	To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 1 to raise the reporting threshold from	Agree.

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	3% to 5% or more of direct ownership of issued share capital of the licensee or its holding company?	
	Please give your reasons for your answers.	As above
66.	Can you foresee any difficulties for gambling licensees in complying with the proposed change to raise the reporting threshold at Licence Condition 15.2.1 paragraph 1 from 3% to 5% or more of direct ownership of issued share capital of the licensee or its holding company?	No
	If yes, please give your reasons for your answers.	The changes are not significantly different to comply with.
67.	To what extent do you agree with the proposed change at Licence Condition 15.2.1 paragraph 2(a) to add the requirement to report 5% or more direct or indirect ownership of share capital, to reflect a risk-based approach?	Disagree
	Please give your reasons for your answers.	The proposed changes on indirect ownership proposals could be hugely onerous.
68.	To what extent do you agree with the proposed change to Licence Condition 15.2.1 paragraph 2(b) to add the requirement to report 5% or more direct or indirect control of the voting rights of the licensee, to reflect a risk-based approach?	Disagree.
	Please give your reasons for your answers.	See above
69.	To what extent do you agree with the proposed change to Licence Condition 15.2.1 paragraph 2(c) to add the requirement to report 5% or more direct or indirect entitlement to dividends or profits of the licensee, to reflect a risk-based approach?	Disagree
	Please give your reasons for your answers.	This information is not required as part of the application process..
70.	To what extent do you agree with the proposed change to Licence Condition 15.2.1 paragraph 2(d) to add the requirement to report becoming 5% or more direct or indirect beneficial owner of the licensee, to reflect a risk-based approach?	Strongly Agree.
	Please give your reasons for your answers.	This change is logical.
71.	To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 2(a) to add the requirement to report 5% or more direct or indirect ownership of share capital?	Disagree
	Please give your reasons for your answers.	See above. We are not comfortable that there are no unintended consequences/implications as a result of this proposal.
72.	To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 2(b) add the requirement to report 5% or more direct or indirect control of the voting rights of the licensee?	Disagree.
	Please give your reasons for your answers.	See above. We are not comfortable that there are no unintended consequences/implications as a result of this proposal.
73.	To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 2(c) to add the requirement to report 5% or more direct or indirect entitlement to dividends or profits of the licensee?	Disagree.

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	Please give your reasons for your answers.	We are not comfortable that there are no unintended consequences/implications as a result of this proposal.
74.	To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 2(d) to add the requirement to report becoming 5% or more direct or indirect beneficial owner of the licensee?	Disagree
	Please give your reasons for your answers.	See above. We are not comfortable that there are no unintended consequences/implications as a result of this proposal.
75.	Can you foresee any difficulties for gambling licensees in complying with the proposed change at Licence Condition 15.2.1 paragraph 2(a) to add the requirement to report 5% or more direct or indirect ownership of share capital?	Don't know
	If yes, please give your reasons for your answers.	We are not aware of all scenarios.
76.	Can you foresee any difficulties for gambling licensees in complying with the proposed change to Licence Condition 15.2.1 paragraph 2(b) to add the requirement to report 5% or more direct or indirect control of the voting rights of the licensee?	Don't know
	If yes, please give your reasons for your answer.	We are not aware of all scenarios.
77.	Can you foresee any difficulties for gambling licensees in complying with the proposed change to Licence Condition 15.2.1 paragraph 2(c) to add the requirement to report 5% or more direct or indirect entitlement to dividends or profits of the licensee?	Don't know but probably yes
	If yes, please give your reasons for your answers.	We are not aware of all scenarios but please see above.
78.	Can you foresee any difficulties for gambling licensees in complying with the proposed change to Licence Condition 15.2.1 paragraph 2(d) to add the requirement to report becoming 5% or more direct or indirect beneficial owner of the licensee?	Don't know
	If yes, please give your reasons for your answers.	We are not aware of all scenarios.
79.	To what extent do you agree with the proposed introduction of Licence Condition 15.2.1 paragraph 3 to add the requirement to report details of individuals who acquire the equivalent of £50,000 or more worth of new shares in a rolling twelve-month period or entities that acquire the equivalent of £1 million worth or more of new shares in a rolling twelve-month period, and also disclose the value of the acquisition and provide evidence of source of funds for that investment?	Disagree. (We believe that this and the following questions relate to proposal 4 (not 3))
	Please give your reasons for your answers.	This could be hugely and disproportionately burdensome for licensees. Further the GC need to be sure that there are no unintended consequences or implications from this proposal.
80.	To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 3 to add the requirement to report details of individuals who acquire the equivalent of £50,000 or more worth of new shares in a rolling twelve-month period or entities that acquire the equivalent of £1 million worth or more of new shares in a rolling twelve-month period, and also disclose the value of the acquisition and provide evidence of source of funds for that investment?	Agree.

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	Please give your reasons for your answers.	Whilst we agree, the Gambling Commission needs to be sure that there are no unintended consequences or implications from this proposal.
81.	Can you foresee any difficulties in complying with the requirement to add the requirement to report details of individuals who acquire the equivalent of £50,000 or more worth of new shares in a rolling twelve-month period or entities that acquire the equivalent of £1 million worth or more of new shares in a rolling twelve-month period, and also disclose the value of the acquisition and provide evidence of source of funds for that investment?	No
	If yes, please give your reasons for your answers.	
82.	Do you think the thresholds in the proposed introduction of Licence Condition 15.2.1 paragraph 3 of £50,000 (or equivalent) for individuals and £1 million (or equivalent) for entities, are right, and, if not, do you have any evidence to support where the thresholds should be set?	No
	If yes, please give your reasons for your answers.	They are very low and a fixed figure will not be appropriate for all licensees.
83.	To what extent do you agree with the proposed new requirement at Licence Condition 15.2.1 paragraph 6 to add any type of financial arrangement entered into with any persons not authorised by the FCA?	Disagree
	Please give your reasons for your answers.	It is important for the regulator to have transparency available to them but inter group loans should not be caught.
84.	To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 6 to add any type of financial arrangement entered into with any persons not authorised by the FCA?	Agree
	Please give your reasons for your answers.	It is important for the regulator to have this level of transparency available to them.
85.	Can you foresee any difficulties in complying with this requirement to add any type of financial arrangement entered into with any persons not authorised by the FCA?	No
	If yes, please give your reasons for your answers.	
86.	To what extent do you agree with the proposed change to raise the threshold of shareholders to be listed from 3% to 5% or more within the Licensing, Compliance and Enforcement Policy Statement under the Gambling Act 2005, under the section about Licensing (under the heading, 'Identity and Ownership'?)	Agree
	Please give your reasons for your answers.	It is important for the regulator to have this level of transparency available to them.
87.	Can you foresee any difficulties in complying with this requirement to list shareholders from 5% or more instead of 3% or more?	No.
	If yes, please give your reasons for your answers.	
88.	Please provide an estimate, including any evidence, of the direct costs associated with implementing these proposals, identifying to which proposals the estimated costs relate.	This question is not applicable to the GBG.

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89-90	Equalities and additional info questions	No comment