



National Lottery  
Commission

# Consultation on the National Lottery Commission's Enforcement Policy

Consultation Document

Consultation

September 2009

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## 1. About this consultation

1.1 We are seeking the views from a range of people on our draft Enforcement Policy. You may be a regulator, or a regulated body, or an expert in enforcement approaches. You may be none of these but have an interest in the National Lottery. We welcome views from all parties and are asking for views to be returned to us by 1 December 2009 (for further details please see Section 5).

1.2 The first fifteen years of the National Lottery have been a great success with £23 billion raised for good causes, 317,000 Lottery grants awarded and £34 billion for players in prize money. We want to make sure that this success continues. The presence of an independent regulator, together with a carefully tailored regulatory regime and a competent commercial operator have been critical in ensuring the National Lottery is operated fairly and is trusted by players and the public.

1.3 The Commission is committed to providing transparency about its regulation and has to date published details on public interest cases, licence breaches and any related enforcement actions on its website, [www.natlotcomm.gov.uk](http://www.natlotcomm.gov.uk). Details on licence breaches are also made available in the Commission's Annual Reports.

The Commission strives for excellence and constantly looks at ways in which its regulatory model can be improved. Our 'Principles of Regulating with Excellence' paper was published in January 2009 and sets out how we will implement our regulatory approach over the current licence period. One of the elements of this is to consider our approach to enforcement.

1.4 We are seeking to provide even greater transparency about how we regulate by publishing our approach to enforcement and the enforcement policy we use to determine whether regulatory action is necessary. We are also seeking to incorporate best practice still further into our policy making wherever it is appropriate to do so in the National Lottery context and the draft Enforcement Policy we have developed reflects this.

1.5 It is important that, in refining our approach to enforcement, a continued balance between being proportionate in our actions and ensuring the integrity of the National Lottery and the protection of players is properly reflected. By publishing our Enforcement Policy we will provide for improved openness and clarity in how the Commission makes these decisions. The Enforcement Policy document will not go into detail about investigation processes and the implementation of enforcement action, each of which will be dealt with separately.

1.6 This paper provides background to the draft Enforcement Policy attached (Appendix 2) and details the questions that we would like respondents to consider. We do not, however, wish to constrain you in providing feedback and welcome any wider comments that you may wish to provide.

## **Background**

### **2. Developing the Commission's approach**

- 2.1 Following the grant of the third licence to operate the National Lottery on 1 February 2009 the Commission is looking to improve its risk assessment and operator assessment tools, to improve information provided on the Commission's website and to seek greater feedback on the public perceptions of the National Lottery. Camelot has fifteen years experience of running the National Lottery and being regulated by the Commission and this should also allow for a more focused and increasingly risk-based and efficient approach. All these, along with the Enforcement Policy, seek to build on and update our way of working.
- 2.2 We will regularly review our performance against the Enforcement Policy once formalised and the extent that enforcement actions bring about future compliance. The Commission's Annual Reports will include assessments on these points.

### **3. Content of Enforcement Policy**

- 3.1 The Enforcement Policy will outline the Commission's enforcement approach, the actions available, the decision-making process and will provide for enhanced accountability to all those with an interest in the National Lottery.
- 3.2 Our view is that a sliding scale of sanctions is required to cater for a range of enforcement issues. Within this procedural flexibility and discretion is required for minor licence breaches, which it may be appropriate to resolve through informal discussion. These arrangements are dealt with in the attached draft Enforcement Policy.
- 3.3 To date there has been no formalised procedures for Undertakings (formal agreements) between the operator and the regulator, although these have been used on an ad hoc basis. We intend to formalise arrangements to govern these. It is proposed that these Undertakings may be used alongside other actions. If needed arrangements may include an explicit consideration of sanctions for Undertakings not implemented. (See comments on Voluntary Undertakings and Enforceable Voluntary Undertakings at Table 1 and at 4.6 in the draft Policy).

It is hoped that Undertakings will become increasingly used, in line with good practice. The potential benefits from this are enhanced operator self management and control.

- 3.4 Our current view is that the introduction of framework guidance for enforcement recommendations and decision-making, referred to in the draft Policy (at 5.1 to 5.4

and Table 2), will provide a consistent basis for decisions and for the justification of actions.

- 3.5 We consider that the draft Policy through its principles and relevant factors will assist us to achieve our aims. It should provide for fair and effective enforcement.

#### **4. Impact Assessment**

- 4.1 We have not provided a formal Impact Assessment (IA) on the costs and benefits of our approach to enforcement. This is because we are not implementing new legislation or a new regulatory regime. The rationale in publishing an Enforcement Policy is to provide greater clarity and openness as opposed to making fundamental changes to enforcement.
- 4.2 Operator costs related to enforcement and sanctions imposed are totally dependent on the regulatory compliance levels that the operator achieves.
- 4.3 Although there is likely to be a removal of some administrative burdens for low impact events, a more targeted approach as proposed may lead to more in-depth investigations in a few cases. There will probably be no change in overall procedural costs or savings for a generally compliant operator. Implementation of the Enforcement Policy as drafted is therefore considered to be cost neutral.

#### **5. Questions for respondents**

- 5.1 The Commission welcomes views from all interested parties on the proposals contained in this paper.

Respondents are invited to respond to the questions set out at paragraph 5.2.

Respondents should not feel bound by the list of questions. Any wider response on any of the issues covered in the draft Enforcement Policy or on this consultation process would be welcomed.

- 5.2 The Commission would like to hear your opinions and views on the following:

- Q1** For regulating the National Lottery, do you agree with the seven proposed regulatory and enforcement principles detailed at 2.4 to 2.5 of the draft Enforcement Policy?

If you disagree with any of the principles please elaborate upon this.

If you think there are principles that should be added to this list please provide details and supporting comments.

**Q2** For regulating the National Lottery, do you agree with the six proposed sanction principles detailed at 2.6 of the draft Enforcement Policy?

If you disagree with any of the principles please elaborate upon this.

If you think there are principles that should be added to this list please provide details and supporting comments.

**Q3** It is proposed, as detailed at 4.6 and 5.6 of the draft Enforcement Policy, to provide clarity on the use of Undertakings. Do you think that this has been achieved?

If you have concerns related to this please provide supporting comments.

**Q4** Should the Commission seek any new powers additional to those listed in Table 1 in the draft Enforcement Policy?

If, yes, please provide details on what these powers should be including supporting evidence to support this opinion.

**Q5** Do you agree with the factors for consideration in decision-making detailed at Step 1 in Table 2 in the draft Enforcement Policy?

If you disagree with any of the factors please elaborate on this.

Are there any general factors that should be added to the list for consideration? If, yes, please provide details including supporting evidence and comments.

**Q6** Do you agree with the processes to support decision making detailed at Steps 2 to 5 in Table 2 in the draft Enforcement Policy?

If not please elaborate on your concerns.

**Q7** Do you agree with the broad explanations for anticipated enforcement actions detailed in Table 3 in the draft Enforcement Policy?

If not please elaborate on your concerns.

**Q8** Is the level of proposed publicity to be given to enforcement decisions and enforcement issues suitable (see Section 7)?

Please elaborate on your opinion if you think changes to the proposals are needed.

**Q9** How else could we improve on the Policy?

## **6. Next Steps**

6.2 Responses to this paper should be submitted by **01/12/2009**.

We would prefer to receive responses by email to Stuart Grice, email: [s.grice@natlotcomm.gov.uk](mailto:s.grice@natlotcomm.gov.uk)

If you would prefer to post your response, please send it to:

Stuart Grice  
Head of Enforcement  
National Lottery Commission  
101 Wigmore Street  
London  
W1U 1QU

6.3 The Commission will only use the information you give for the purpose of the consultation. We may contact you if we need clarification on any comments made. We intend to publish all responses subsequent to completion of the consultation process. If you do not want your response to be published please indicate this on the covering e mail or letter.

6.4 Please also be aware that information provided in response to this consultation may be disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000, FOIA). Please also be aware that if you want the information you provide to be treated as confidential under FOIA there is a statutory Code of Practice with which public bodies must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you seek to keep information confidential it would be helpful if you could explain why you regard this to be the case. We will take account of your explanation but we cannot for all circumstances give an assurance that confidentiality can be maintained.

## **Appendix 1, Statutory sanctions**

In summary the statutory basis for sanctions are as outlined below. (Reference should be made to legislation and Directions, as indicated, for precise wording and procedures. Details can be found at [www.natlotcomm.gov.uk/CLIENT/content.ASP?ContentId=45](http://www.natlotcomm.gov.uk/CLIENT/content.ASP?ContentId=45) ).

### **Revocation of licence**

Section 10 of the National Lottery etc. Act 1993 (as amended) (The Act) requires the Commission to revoke a licence/s granted under section 5 or 6 of The Act, if the Commission is satisfied that the licensee no longer is, or never was, a fit and proper body to run the National Lottery.

The Commission may also seek revocation if any of the matters below apply:

- 'A condition in the licence has been contravened.'
- Any information given connected with the licence or a condition was materially false.
- Insolvency, receivership or pending wind up of licensee's business.

In the case of an operating licence granted under Section 5 the Commission may also seek revocation if any of the matters below apply:

- 'Not providing or proposing to provide facilities that are necessary or desirable for running the National Lottery.'
- A manager or beneficiary is not a fit and proper person.

In the case of a lottery game licence granted under Section 6 the Commission may also seek revocation if any of the matters below apply:

- Not taking or proposing to take steps for preventing fraud by participants.
- A manager or beneficiary is not a fit and proper person.

Procedures to be followed are detailed in The Act and The National Lottery (Imposition of Penalties and Revocation of Licences) Procedure Regulations 1999 (Statutory Instrument 1999 No. 137).

The licensee has a right to make representation to the Commission and a subsequent right of appeal to the High Court or, in Scotland, to the Court of Session.

### **Injunction/ interdict or court order**

In the case of a licence contravention section 9 of The Act gives the Commission the power to seek an injunction 'restraining contravention' or, in Scotland, 'an interdict prohibiting the contravention.' Alternatively the Commission can seek a court order requiring the licensee 'to take such steps as the court may direct to remedy a contravention.'

The court will grant an injunction/ interdict or order where satisfied:

- of the reasonable likelihood of contravention of a licence condition;
- that there has been contravention of a licence condition and there is a reasonable likelihood this will continue or be repeated; or
- there has been contravention of a licence condition and there are steps that could be taken to remedy this.

### **Variation of conditions in licences**

Section 8 of The Act gives the Commission the power to vary any condition granted under section 5 or 6\* unless the variation would result in the transfer of property or rights, or the licence provides that the condition can only be varied with the consent of the licensee.

Variation includes to add a condition to the licence or omit a condition from it.

### **Financial penalty**

Section 10 A of The Act gives the Commission the power to impose a financial penalty if satisfied that the licensee has contravened a condition of its licence under section 5 or 6. The Act states that in imposing a financial penalty matters to have regard to include the desirability of both:

- (a) deterring contravention of licence conditions; and

\*Subject to giving the licensee an opportunity to make representation

- (b) recovering any loss in the sums paid to good causes which is attributable to the contravention.

The Commission is also required to comply with any Directions that may be given by the Secretary of State. The Direction of 14 December 2005 reaffirmed an extract from an earlier Direction 'Financial Penalties: Principles and Procedures' (10 July 1998). It details some of the factors to be taken into consideration, both in whether to impose a financial penalty and on the amount to apply. In outline summary these are:

1. to 'act reasonably and proportionately;'
2. to consider whether the following key principles underlying the relevant licences have been infringed:
  - 'ensure that the National Lottery is run with all due propriety;
  - to protect the interests of every participant; and
  - subject to these factors, to do best to secure that the net proceeds are as great as possible;'(i.e. the Commission's statutory objectives as quoted in Director General's statement).
3. to 'take due account of any likely effect on the commercial viability of the license;'
4. 'the desirability of deterring future contraventions;'
5. the desirability of recovering any financial loss to the National Lottery Distribution Fund/  
Olympic Lottery Distribution Fund,  
(Not necessarily to seek to recover all the loss but will take account both of the size of the loss and the profitability of the licensee');
6. 'whether the National Lottery has been brought into disrepute;'
7. 'extent of any financial advantage that the licensee may have derived from the contravention;'

8. 'capacity of the licensee to have avoided the contravention;'
9. whether the contravention was 'the result of deliberate action or negligence;'
10. extent 'to which the licensee has committed similar contraventions in the past;'
11. 'financial position of the licensee, calculated on the basis that distribution of profits have been within the limits set in the licence.'

The Direction makes it clear that 'consideration need not be limited to the matters' outlined above.

Procedures to be followed are detailed in The Act, The National Lottery (Imposition of Penalties and Revocation of Licences) Procedure Regulations 1999 (Statutory Instrument 1999 No. 137) and in the Direction 'Financial Penalties: Principles and Procedures.'

## **Appendix 2, National Lottery Commission's draft Enforcement Policy**

### **1. Purpose**

- 1.1 The National Lottery Commission Enforcement Policy is a public statement; it aims to set out clearly the Commission's approach to enforcement and to demonstrate how we will use our powers in an appropriate and proportionate manner. It details enforcement measures available and the factors to be considered by the Commission when deciding on action to be taken.
- 1.2 Our general approach is to focus Commission resources on the matters of greatest importance and risk and to be proportionate in our response, particularly in any sanctions imposed or other actions taken.
- 1.3 The regulatory functions of the Commission linked to enforcement include, to:
  - set licence conditions;
  - carry out compliance audits;
  - monitor operator performance against standards;
  - respond to player complaints or enquiries to the Commission; and
  - carry out investigations.

The Enforcement Policy is a key contribution to the overall regulatory regime implemented by the Commission.

- 1.4 Although not bound by it, the Commission is committed to taking enforcement actions consistently with this Enforcement Policy. In the event of any departures from this, required in particular circumstances, we will explain our reasons for doing so.
- 1.5 The Commission also commits to review the success or otherwise of implementing this Policy at appropriate times and to comment on this in its Annual Reports.

### **2. Regulatory objectives and principles**

#### **Overall aim: To fulfil our statutory duties**

- 2.1 The overall aim of the Commission's regulatory work is to fulfil the Commission's statutory duties as set out in Section 4 of the National Lottery etc. Act 1993 (as

amended) (The Act). These are to exercise its functions ‘in the manner it considers the most likely to secure:

- that the National Lottery is run, and every lottery that forms part of it is promoted, with all due propriety; and
- that the interests of every participant in a lottery that forms part of the National Lottery are protected;’

and subject to the above:

- ‘in exercising those functions do its best to secure that the net proceeds<sup>1</sup> of the National Lottery are as great as possible.’

2.2 The Commission grants a licence, under section 5 of The Act, to operate the National Lottery and licences, under section 6 of The Act, to promote National Lottery games.

2.3 Effective, appropriate and fair enforcement plays an important role in achieving the Commission’s regulatory duties. It creates incentives to comply with licence conditions.

### **Regulatory and enforcement principles**

2.4 All enforcement activities will be undertaken in line with seven overall regulatory principles<sup>2</sup>.

2.5 The principles that the Commission seeks to implement are to be:

#### **1) Proportionate**

To only intervene when necessary with enforcement actions appropriate to the risk posed to securing the Commission’s statutory duties and where there is a benefit to taking enforcement action.

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<sup>1</sup> Net proceeds are the sums that are paid by the lottery operator into the National Lottery Distribution Fund and the Olympic Lottery Distribution Fund with subsequent distribution through distribution bodies to good causes

<sup>2</sup> These, with the two additions to be evidence based and to reflect the Commission’s obligations under the Human Rights Act 1998 requirements, are in line with those specifically referred to in the Legislative and Regulatory Reform Act 2006. Although the Commission is not covered by this particular legislation it has made a commitment to adopt regulatory best practice where appropriate and beneficial.

## **2) Consistent**

Not to treat similar cases differently without good reason. However consideration will be given to trends and recurrences of events which may result in enforcement action escalation in line with the other principles detailed here.

## **3) Targeted**

To be targeted and focused on the most important operational issues, factors and risks.

## **4) Evidence based**

To seek and make use of the best available information when making enforcement decisions.

## **5) Accountable**

To explain to key stakeholders how enforcement decisions are made and what actions have been taken. Key stakeholders include Camelot, players, potential players, Parliament, the Government, consumer groups and any other interested parties.

## **6) Transparent**

To provide clarity and openness about the Commission's enforcement decisions. This will help to ensure that there can be an understanding of the Commission's regulatory concerns and how regulatory and enforcement actions seek to address these.

## **7) Respect human rights compliance**

To comply with the Commission's obligations under the Human Rights Act 1998.

## **Sanction principles**

- 2.6 Enforcement activities may lead to the imposition of sanctions. In applying sanctions the Commission will seek to act in line, as appropriate, with the six sanction principles set out in the Macrory Report and endorsed by Government<sup>3</sup>.

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<sup>3</sup> Macrory Report. 'Regulatory Justice: Making Sanctions Effective.' Cabinet Office November 2006. Although the Commission is not covered by this review it has made a commitment to adopt regulatory best practice where appropriate and beneficial.

To reflect the unique regulatory position of the Commission, in that it regulates one business operation and has a specific duty to maximise the returns to good causes (see 2.1), the wording of the principles has been adapted for appropriate application by the Commission.

**1) A sanction should aim to change non-compliant behaviour.**

A sanction should not only focus on punishment but also provide incentives to ensure changes in behaviour which result in regulatory compliance.

**2) A sanction should aim to eliminate any operator financial gain or benefit from non-compliance.**

In doing so, sanctions will remove any incentives for non-compliance.

**3) A sanction should aim to be responsive and consider what is appropriate for the operator and the regulatory issue, including any related ‘public stigma.’**

Discretion should be used in imposing sanctions, taking into account the reason for compliance failure.

**4) A sanction should aim to be proportionate to the offence and harm caused.**

The individual circumstances of the case should be considered, taking into account the nature and duration of the non-compliance and also the consequences including the extent of harm caused.

**5) A sanction should aim to restore the harm caused by regulatory non-compliance, where appropriate.**

In addition to ensuring the operator takes responsibility for its actions, consideration should be given to arrangements for compensating disadvantaged players and of restoring any detriment to good causes.

**6) A sanction aims to deter future non-compliance.**

It is important that the operator should expect that any significant non-compliance with regulatory requirements will be investigated, and if appropriate, be subject to enforcement action in accordance with this Enforcement Policy.

### **3. Investigations**

- 3.1 There are a number of triggers to commence investigatory and subsequent enforcement action. Matters may come to the attention of the Commission through a number of channels. Principally:
- formal incident reports provided under licensing requirements;
  - formal performance reports provided under licensing requirements;
  - player complaints or enquiries to the Commission;
  - compliance reviews undertaken by the Commission’s compliance staff;
  - the analysis of trends associated with the above; and
  - issues raised by the operator’s staff and subcontractors and their staff (in accordance with procedures approved under licensing requirements).
- 3.2 The extent of Commission investigations will be dependent on the nature and extent of actual and potential risk exposure. Investigations will therefore be targeted and focused at the most important operational issues, factors and risks.
- 3.3 A fact will be found proved if it is judged more likely than not to have happened (i.e. the civil standard of proof, or “on the balance of probabilities”).

#### **4. Actions available**

- 4.1 Following an investigation, the Commission will consider the circumstances giving rise to the investigation, and assess the level of concern resulting from those circumstances. Where the concern is sufficiently serious, the Commission will then answer the following questions:
- (i) is it satisfied that the operator as licence holder has contravened, or is contravening, any relevant licence condition;
  - (ii) if so, is it appropriate to impose a sanction; and
  - (iii) if so, what sanction is appropriate in all the circumstances of the case?

Enforcement actions available range from informal resolution and notification of licence breaches with no sanction, through to the sanctions and/or other actions listed in Table 1 below.

In the event that the operator has not contravened a relevant licence condition, but the circumstances of the case are such that the Commission determines that some

other action(s) available are appropriate, it may determine that one or more of these actions is applicable.

- 4.2 Informal resolution of issues with the operator may be appropriate where there is no or limited impact on propriety, consumer protection and/or returns to good causes.
- 4.3 There may be circumstances when it is appropriate to conclude that a licence requirement has been breached, but the imposition of a sanction is unnecessary.

(Publicity arrangements in these and other circumstances are covered at Section 7 of this policy).

- 4.4 The sanctions and other actions available to the Commission are detailed in Table 1 and the procedures governing specific sanctions are covered in legislation, Secretary of State Directions and licence conditions (*as amended to reflect Undertaking provisions*).

**Table 1: Sanctions and other actions available**

- Voluntary Undertakings (VUs)  
May also be used initially alongside sanctions (e.g. financial penalties). No direct penalty attached for failure to implement requirements.
- Enforceable Voluntary Undertakings (EVUs)  
May also be used initially alongside sanctions (e.g. financial penalties). A sanction is also considered for failure to implement requirements to the agreed timescales in EVUs. Likely to be used in preference to VUs where the issues are of greater concern.
- Requirement for an independent review\*
- Imposing new or amended licence condition/s
- Financial penalty
- Court injunction or interdict
- Court order
- Licence revocation

\* Conditions 17.1 and 17.2 of the third Licence to operate the National Lottery, granted under Section 5 of the National Lottery etc Act 1993 (as amended)

- 4.5 For any enforcement activity, the Commission will consider the arrangements and factors set out in Section 5 ('Deciding on regulatory approach') below to determine which enforcement tool to use and any sanction or other action.
- 4.6 Undertakings are a set of commitments in which the operator undertakes to implement explicit actions. The Commission may consider an offer of an Undertaking from the operator up until it has made a decision on the outcome of investigations. The Commission may also consider these alongside sanctions and may include in the Undertaking an explicit requirement for sanctions when actions are not implemented (Enforceable Voluntary Undertakings).

The operator cannot be required to enter into an Undertaking and there is no requirement for the Commission to accept any offer made. It is extremely unlikely that circumstances will result in Voluntary Undertakings and Enforceable Voluntary Undertakings being accepted in confidence (see Section 7, Publicity).

- 4.7 The Commission's approach is to have regard to the full range of enforcement actions and sanctions available. The availability of a suite of enforcement measures recognises that a range is needed to provide, dependent on circumstances, suitable penalties for contravention and incentives for compliance in the future. The next Section of this policy (5) details how decisions are made and provides examples on the general circumstances when these will be applied.

## **5. Deciding on regulatory approach**

- 5.1 The framework used for guiding recommendations and decision-making is detailed in Table 2. This includes ensuring that the Commission complies with legislation and the Secretary of State's Directions (see Appendix A). At Steps 1 and 2 it allows for a methodical consideration of regulatory concerns and to provide an overall rating for these. The output from this will be a judgement on whether the case is of high, medium or low significance.
- 5.2 The rating provides guidance to inform the Commission on proportionate and appropriate enforcement decisions and actions.
- 5.3 Step 3 of the guidance framework provides for procedural reference to legislation and to the Secretary of State's Directions. Final verification against this Policy and providing explanatory statements on proposed actions is covered in the last two steps.
- 5.4 This guidance framework assists in determining the overall level of regulatory concern, and subsequently whether sanctioning or any other regulatory action is warranted and provides a basis for making judgements on the most appropriate regulatory approach.

**Table 2: Guidance framework for recommendations and decision making on regulatory approach.**

This framework has two intended uses:

1. for those undertaking investigations and making recommendations in relation to: (i) whether, and if so which sanctions and/or other available actions are appropriate; and (ii) what sanction and/or other action should be used in the circumstances; and
2. for those subsequently, and separately, considering these recommendations and authorising actions in line with the Commission's Scheme of Delegation. The recommendations made at 1 above to be assessed against the framework.

The Commission seeks to act in line with the principles detailed in this Enforcement Policy.

In considering the enforcement approach to adopt the following steps will be taken.

**Step 1**

The first stage is to consider the case against each of the factors listed below:

**Outcomes for the National Lottery:**

- A. The extent that the statutory objectives of running the National Lottery have been infringed or placed at risk. Namely that:
  - the National Lottery is run and promoted with all due propriety;
  - the interests of every participant in the Lottery are protected; and
  - subject to the above the greatest possible net proceeds for good causes are secured.
- B. The extent that the National Lottery reputation been affected or potentially affected.
- C. The duration of the circumstances giving rise to the investigation and whether these continued after the trigger for the investigation.
- D. The effectiveness and timeliness of any corrective action.
- E. The level of public interest shown or anticipated in the case.

**Outcomes for the player involved:**

- F. The extent that any players involved were disadvantaged, misled, and/or treated unfairly.
- G. The operator's proactive role in making players aware of their complaints procedure and their referral of issues if dissatisfied to the Commission.
- H. The restorative measures taken or proposed for players who have been disadvantaged.

**Outcomes for good causes**

- I. The extent that proceeds to good causes were impacted upon.
- J. Any compensatory measures taken or proposed to reduce the loss in sums paid to good causes.

**Operator's financial gain from non-compliance:**

- K. The operator's financial gain or potential financial gain from non-compliance.

**Operator's governance and controls:**

- L. The adequacy of operator management arrangements taken to secure compliance, and steps taken to prevent the contravention recurring.
- M. Whether the contravention would have been apparent to a diligent operator.
- N. Whether the contravention was the result of reckless or negligent action/s.
- O. Whether the contravention was a result of deliberate action/s.
- P. The extent of similar licence contraventions or root cause problems in the past.
- Q. The effectiveness in controlling licensee staff, contractors and retailers in aspects of the licence contravention, including the related causes.
- R. The actions taken in bringing the case to the Commission's attention and the degree of cooperation with the Commission.
- S. The extent to which the operator attempted to conceal the contravention from the Commission.
- T. The involvement of, or lack of action on the part of, senior management to

address the contravention.

**Additional factors specific to circumstances:**

U. The impact of any sanction or other action on the commercial viability of the licensee.

V. Other relevant factors to the case.

**Step 2**

Subsequent to a consideration of all relevant factors in Step 1, a judgement will be made on the overall level of concern for the case. This will give an overview of the case as of high, medium or low regulatory significance. This judgement will then provide a reference point and indicator towards the most appropriate and proportionate enforcement action. It will assist in determining whether sanctions are to be imposed and/or other actions taken and, if so, the type/s and extent of sanction and/or other action. For each case there is an escalating range of potential sanctions and/or actions available. This is case specific, dependent on circumstances, but is likely to reflect the model detailed at Table 3.

**Step 3**

Specific legal provisions and procedures will then be taken into account in the case of statutory actions. (See Appendix A).

**Step 4**

Final verification against this Enforcement Policy will then be undertaken focused on the regulatory objectives and principles as set out in the Policy (see section 2).

**Step 5**

An explanation for sanctions and/or other actions will then be prepared. Additionally if there is any variance from the approach suggested by this guidance and/ or from the rationale in following steps 1 to 4, a specific explanation on this will be made available.

- 5.5 Decisions on sanctions and other actions are likely to be taken on the basis as listed in Table 3, with higher levels of significance resulting in a more serious sanction(s). This should however only be considered an indication. Case specific reasons may lead to this model not being followed. The justifications provided for sanctions and/or

other actions will in such cases provide clarity on why a particular approach is being taken.

**Table 3: Expected enforcement sanctions/ actions**

A. If achieving one of the Commission's statutory objectives is compromised along with licensing requirements, it is likely one or more of the following sanctions and/or actions may be used:

- Voluntary Undertaking (VU);
- Enforceable Voluntary Undertaking (EVU);
- mandatory independent audit;
- imposed new or amended licence condition/s;
- financial penalty;
- court injunction;
- licence revocation.

B. If achieving one of the Commission's statutory objectives is compromised and there is a public interest case but no breach of licensing requirements, it is likely one or more of the following actions may be used:

- Voluntary Undertaking (VU);
- imposing new or amended licence condition/s.

C. If the Commission's statutory objectives are not compromised but a licensing requirement is breached, it is likely one or more of the following actions may be used:

- informal resolution;
- notification of a regulatory decision where there has been a licence breach but no financial penalty will be imposed;
- Voluntary Undertaking (VU);
- mandatory independent audit.

5.6 The Commission will only accept an Undertaking where it is an appropriate enforcement response and if implemented will achieve an effective outcome.

The capacity to use an Undertaking will enable efficient and effective resolution of some issues without the need for costly and time consuming enforcement proceedings. They provide an opportunity to tailor requirements and to put in place arrangements that promote certain changes. This enforcement approach by itself will not be appropriate for all circumstances.

Previous use should not be taken as a binding precedence for future acceptance. The success or otherwise of earlier agreements will be a key factor in determining suitability.

- 5.7 Following the use of any sanction or other action, the Commission will undertake compliance checks on case issues. This will be in a timely manner dependent upon the seriousness of the regulatory concerns and as to whether adequate assurance can be obtained by other means. This approach is adopted to assist in both focusing the operator on future compliance and in measuring regulatory success. It will also enhance regulatory transparency and accountability for the National Lottery.

## **6. Appeals**

- 6.1 Rights of appeal by the operator against sanctions are detailed in legislation governing the National Lottery.

Enforcement actions taken by the Commission may be open to Judicial Review initiated by the operator (save where a statutory appeal provides an adequate alternative route), players or representative groups.

- 6.2 Opportunities are available for the operator and other stakeholders to make representations to Commission staff and Commissioners.

Where the Commission is satisfied that the operator has breached a licence condition but has decided in the circumstances not to impose a sanction, it will have allowed the operator to make written representations prior to that finding of breach.

- 6.3 In circumstances where the Commission has not found the licence holder to be in breach but, nevertheless, decides to publish a statement of the circumstances of the case due to the public interest engaged (in accordance with section 7 below), the Commission will provide a copy of the draft statement to the licence holder for comments. The Commission will take these comments into account prior to finalising the statement and will provide a final draft version to the licence holder to ensure the factual accuracy of the document only before placing on the Commission's website.

## **7. Publicity**

- 7.1 We are empowered by legislation {paragraph 9 of Schedule 2A to the National Lottery etc. Act 1993 (as amended)} to publicise our decisions. The Commission would expect as a minimum to publish details on public interest cases, Undertakings, rejections of offers of Undertakings, licence breaches and any related enforcement actions in its annual reports and on its website [www.natlotcomm.gov.uk](http://www.natlotcomm.gov.uk). The aim is to ensure player, public and other stakeholders' confidence in the enforcement measures taken.

- 7.2 "Public interest" is for the purposes of this Policy deemed to be where the Commission considers events have, or are anticipated to have, adverse effects on the reputation or integrity of the National Lottery, the interest of players or, subject to these, the proceeds of the National Lottery, in accordance with the Commission's statutory duties under section 4(1) and (2) of The Act. It includes, but is not restricted to, events that have had or are anticipated to have a detrimental effect(s) on:
- (a) the National Lottery's reputation for fairness or players' perceptions of fairness;
  - (b) the ability of players to make informed purchases;
  - (c) the ability of players to play without enhanced risks of problem and underage gambling and/or contractual problems;
  - (d) systems integrity including accuracy, restricted access, security and freedom from corruption;
  - (e) player satisfaction with games and services related to playing the National Lottery and the handling of enquiries and complaints;
  - (f) public trust and confidence in the National Lottery; and
  - (g) the maximising of benefits to good causes.
- 7.3 Public interest incidents may not necessarily be instances where there has been a breach of licence Conditions. Publicity in these instances will be determined on a case by case basis. There will be a presumption in favour of transparency unless there are good reasons and business confidentiality dictates otherwise.
- 7.4 The Annual Report will, where possible comment on subsequent compliance levels on matters arising from licence breaches. This is to demonstrate the extent that enforcement actions and sanctions achieve future compliance. Clearly however the biggest success for the National Lottery would be if initial regulatory compliance levels are such that no enforcement action is necessary.

## **8. Working with other regulators**

- 8.1 We will, as necessary, work with other regulators to ensure we coordinate our respective powers. This will avoid duplication and inconsistencies and ensure that the most appropriate action is taken.

## **9. Other information**

- 9.1 This document sets out the Commission's Enforcement Policy. It is not intended to be a guide to the law or licence Conditions. Copies and links to the legislation and licences can be found on the NLC website ([www.natlottcom.gov.uk](http://www.natlottcom.gov.uk)).

## 10. Contact

Any queries on the Enforcement Policy should be addressed in the first instance to:

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