



ISLE OF MAN



## Prohibition Policy

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# Version Control

Version	Date Published	Comments
1	June 2024	Initial version
2		
3		
4		

# 1. Introduction

- 1.1. The GSC has power in legislation (e.g. section 26 of the AML/CFT Act<sup>1</sup>) to prohibit individuals who the GSC has determined are not a fit and proper person, to perform one or more functions in relation to regulated gambling activity carried on or proposed to be carried on by an operator<sup>2</sup>.
- 1.2. The GSC will contemplate exercising this power when it considers that the individual in question poses a material risk to the GSC being able to uphold its regulatory objectives (as set out in section 5 of the Gambling Supervision Act 2010).
- 1.3. This power can be exercised by the GSC against any individual performing functions in relation to regulated gambling activity and is not limited to those individuals holding or performing functions such as director, AML/CFT Compliance Officer, Money Laundering Reporting Officer, Senior Management etc.
- 1.4. The Isle of Man is a well-regarded jurisdiction. The GSC, through its regulatory activities and enforcement action(s), will continually have regard to the need to maintain the good reputation of the Island.
- 1.5. The table below details other documents issued by the Isle of Man Gambling Supervision Commission that are associated with this policy and can be found on our website.

Document name	Content(s)
Enforcement Strategy	<ul style="list-style-type: none"> <li>• An overview of the GSC’s strategy of its enforcement activities</li> </ul>
Decision-Making Process – Enforcement and Sanctions (“DMP”)	<ul style="list-style-type: none"> <li>• The enforcement powers subject to the DMP</li> <li>• The administrative decision-making process to be followed by the GSC when considering the imposition of an enforcement power</li> </ul>
Discretionary Civil Penalties – Guidance	<ul style="list-style-type: none"> <li>• Criteria to be assessed by the GSC when considering the imposition of a penalty.</li> <li>• The level(s) of penalty that can be imposed</li> <li>• Availability of discounts</li> </ul>
Settlement Policy	<ul style="list-style-type: none"> <li>• When and in what circumstances the GSC will consider entering into settlement discussions with a subject</li> </ul>
Publication Policy	<ul style="list-style-type: none"> <li>• When the GSC publishes enforcement outcomes</li> <li>• Notice and timing of any publication</li> </ul>
Use of Appropriate Experts Policy	<ul style="list-style-type: none"> <li>• When the GSC issues a direction to an operator, requiring the appointment of an appropriate professional to remedy AML/CTF deficiencies</li> </ul>
Referral to the GSC Enforcement Division	<ul style="list-style-type: none"> <li>• Factors relevant to a referral to the GSC Enforcement Investigation for further investigation</li> </ul>

<sup>1</sup> The Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018.

<sup>2</sup> Defined to mean the holder or former holder of a licence issued under any of the gambling acts (as set out in section 3 of the AML/CFT Act).

Making a Referral to the Police and/or the Attorney General	<ul style="list-style-type: none"> <li>• In what circumstances the GSC will consider referring actual, suspected or prima facie criminal offences (including contraventions of the AML/CFT Code<sup>3</sup>).</li> </ul>
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## 2. The GSC’s general approach to imposing a prohibition

- 2.1 The GSC is a risk-based regulator whose objectives are set out in the Gambling Supervision Act 2010 (the “**Act**”), namely:
- 2.1.1 ensuring that gambling is conducted in a fair and open way;
  - 2.1.2 protecting children and other vulnerable persons from being harmed or exploited by gambling;
  - 2.1.3 preventing gambling from being (i) a source of crime or disorder, (ii) associated with crime or disorder, or (iii) used to support crime; and
  - 2.1.4 preventing the misuse of cannabinal, cannabinal derivatives, cannabis or cannabis resin.
- 2.2 The AML/CFT Act sets out that the GSC must regulate gambling with a view to securing compliance with AML/CFT legislation and this Act, and in doing so may conduct such investigations into alleged breaches as it considers necessary.
- 2.3 The GSC is a competent authority in terms of overseeing compliance with the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Code 2019 (the “**Code**”). It also oversees compliance with various associated regulations and guidance.
- 2.4 Any decision to impose a prohibition on any individual is subject to the GSC’s ‘Decision-Making Process – Enforcement and Sanctions’. This process ensures that the rights of any individual are met and aligns with the principles of natural justice.
- 2.5 The GSC recognises that imposing a prohibition on an individual can have very serious consequences on a person’s livelihood, reputation etc. and, in deciding whether or not to do so, has full regard to the following non-exhaustive factors:
- 2.5.1 all of the relevant circumstances and strength of evidence;
  - 2.5.2 the range of, and responsibilities associated with, the functions/roles currently being undertaken by that person;
  - 2.5.3 the nature, breadth, materiality and volume of the identified wrongdoing, including for example, whether the wrongdoing indicates a lack of integrity, a lack of competence (in one or more areas/functions) or both;
  - 2.5.4 the nature and severity of the perceived risk(s) identified by the GSC with regard to that person undertaking, or continuing to undertake, any particular activity/activities associated with regulated gambling activity;
  - 2.5.5 that person’s prior regulatory history;
  - 2.5.6 the time period over which any wrongdoing occurred;
  - 2.5.7 whether the issues were self-reported by that individual;
  - 2.5.8 whether that individual instigated or ensured prompt and effective remediation of any identified compliance issues;

<sup>3</sup> Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Code 2019

- 2.5.9 whether the issues were already known to that person or, based on the responsibilities associated with their role(s), should reasonably have been known;
  - 2.5.10 whether any issues of self-interest, or inappropriately managed conflict(s) of interest, did or could be perceived to be, impacting on decision-making and good regulatory conduct;
  - 2.5.11 whether the actions or inactions of the individual, in isolation or as part of a wider corporate failing, present a risk to the good reputation of the Isle of Man as a well regulated jurisdiction;
  - 2.5.12 where the actions or inactions associated with any individual were deliberate and/or reckless;
  - 2.5.13 whether the individual consented to any actions or inactions relevant to the identified non-compliance;
  - 2.5.14 whether the actions or inactions identified brought about, in full or in part, actual money laundering and/or terrorist financing; and
  - 2.5.15 whether the actions or inactions identified brought about, in full or in part, a material increase in the risk of money laundering or terrorist financing occurring in the regulated gambling sector;
  - 2.5.16 that person's professional standing;
    - 2.5.16.1 qualifications
    - 2.5.16.2 memberships
    - 2.5.16.3 continuing professional development activities
  - 2.5.17 whether any alternative regulatory power or tool is more appropriate in all of the circumstances; and
  - 2.5.18 that person's relevant disciplinary history including
    - 2.5.18.1 other regulatory bodies
    - 2.5.18.2 employers
    - 2.5.18.3 professional bodies.
- 2.6 Imposing a prohibition on an individual does not exclude the ability of the GSC to take further ancillary or complimentary disciplinary action against that individual.

### **3. Prohibition**

- 3.1 Any prohibition that the GSC considers imposing will be progressed and concluded in accordance with the GSC's 'Decision-Making Process – Enforcement and Sanctions'.
- 3.2 The 'Decision-Making Process – Enforcement and Sanctions' will facilitate the GSC adhering to the statutory process for imposing a prohibition, in particular:
  - 3.2.1 a preliminary notice will be served on the subject (see e.g. s.27 of the AML/CFT Act);
  - 3.2.2 the subject will be afforded the opportunity to make representations to the Decision Maker as to why the proposed prohibition (in the terms set out in the preliminary notice) should not be imposed; and
  - 3.2.3 the subject will be informed of associated rights of appeal.
- 3.3 For any prohibition imposed by the GSC at the conclusion of its 'Decision-Making Process – Enforcement and Sanctions' the GSC will serve on that person (either personally or by registered post to the individual's last known address) a Prohibition Notice.

## 4. List of prohibitions

- 4.1 Statute requires the GSC to maintain and publish a list of prohibitions.
- 4.2 This list must specify:
  - 4.2.1 the individual(s) prohibited; and
  - 4.2.2 the functions or descriptions of functions to which the prohibition applies.
- 4.3 The GSC's list of prohibited persons will be published on its website.

## 5. Public statement

- 5.1 Notwithstanding the publication of the List of Prohibitions, the GSC will also consider the benefits of issuing a public statement regarding any particular prohibition in accordance with the GSC's Publication Policy.
- 5.2 Whilst there is discretion to publish information relating to a prohibition, there is a presumption that the GSC will publish it.

## 6. Time Period(s)

- 6.1 A prohibition remains in effect until it is varied or revoked. Potentially indefinitely.
- 6.2 In certain circumstances, particularly via settlement when facts and circumstances are agreed and accepted at an early opportunity, the GSC may indicate within the Prohibition Notice that it would be minded to vary or revoke it on the application of the individual at a future date in the absence of new evidence that the individual is not fit and proper.
- 6.3 If the GSC gives such an indication, it will specify the time period after which it will be minded to vary or revoke the prohibition on application.
- 6.4 Despite giving such an indication the GSC is not obliged to vary or revoke a prohibition after the indicated time period. Any application will be considered on its merits. Typically, an indicated time period will afford the individual an appropriate period to e.g. rehabilitate, or re-train.
- 6.5 Furthermore, if an individual's prohibition is revoked, he or she would still have to (where necessary) satisfy the GSC as to his or her fitness and propriety for any relevant role. The effect of revocation of a prohibition is not a determination that a person is fit and proper.

## 7. Appeals

- 7.1 A person aggrieved by a decision of the GSC to (a) impose a prohibition upon them, or (b) refuse in full or in part to an application to vary or revoke a prohibition, is able to appeal such decision(s) to the Gambling Appeals Tribunal.
- 7.2 As noted above, where a prohibition is imposed via Settlement, the individual being prohibited agrees to waive their appeal rights.

## 8. Variation or revocation

- 8.1 A prohibited person may, at any time after being issued with a Prohibition Notice, apply to the GSC to have such prohibition varied or revoked.
- 8.2 In considering any such application, the GSC is required to give a statement of reasons for the decision it makes regarding that application.
- 8.3 As noted at 7.1 above, an aggrieved person can appeal the decision made by the GSC upon such application.
- 8.4 When considering whether to grant or refuse an application to vary or revoke a prohibition, the GSC will consider all of the relevant circumstances of a case. These may include, but are not limited to:
- 8.4.1 the facts, circumstances, weight of evidence and reasons decided upon by the GSC in imposing the original prohibition (see 2.5 above);
  - 8.4.2 the seriousness of the unfitness that resulted in the prohibition and the elapse of time since then;
  - 8.4.3 any steps taken subsequently by the individual to remedy the misconduct or other unfitness;
  - 8.4.4 any evidence which, had it been known to the GSC at the time, would have had relevance to the GSC's decision-making;
  - 8.4.5 all available information regarding the individual's honesty, integrity or competence since the prohibition was imposed, including the repetition of the matters which resulted in the prohibition being imposed;
  - 8.4.6 where the original concerns related to competence rather than dishonesty or lack of integrity, evidence that this unfitness has been remedied;
  - 8.4.7 whether the individual continues to, or is perceived to, pose an unacceptable risk to the GSC's regulatory objectives and/or the reputation of the Isle of Man;
  - 8.4.8 available professional and character references;
  - 8.4.9 the degree of acceptance and acknowledgment of the original wrongdoing and, in particular, if the prohibition was imposed via settlement; and
  - 8.4.10 the time period, if any, indicated in the Prohibition Notice (see 6 above).

## 9. Offence

- 9.1 A prohibited person commits an offence if he or she performs, or agrees to perform, a function which he or she is prohibited from performing.

## 10. Licensed Operator's

- 10.1 A published list of prohibitions allows operator's to be aware of all persons prohibited by the GSC. The GSC considers that a search of the GSC's website to be an essential element of staff or officer recruitment, good governance and risk management.

*This document is correct at the date of publication but is subject to change from time to time.*