



Settlement Policy

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Version Control

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

Important note: *This policy sets out the Isle of Man Gambling Supervision Commission’s (the “GSC”) approach to settlement of matters subject to (a) inspection and /or investigation, or (b) its ‘Decision-Making Process – Enforcement and Sanctions’ (“DMP”).*

The GSC may from time to time amend its Settlement Policy. Whenever it is changed the GSC will place the amended policy its website.

1. Introduction

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"> • An overview of the GSC’s strategy to its enforcement activities
Decision-Making Process – Enforcement and Sanctions (“DMP”)	<ul style="list-style-type: none"> • The enforcement powers subject to the DMP • The administrative decision-making process to be followed by the GSC when considering the imposition of an enforcement power
Discretionary Civil Penalties – Guidance	<ul style="list-style-type: none"> • Criteria to be assessed by the GSC when considering the imposition of a penalty. • The level(s) of penalty that can be imposed • Availability of discounts
Publication Policy	<ul style="list-style-type: none"> • When the GSC publishes enforcement outcomes • Notice and timing of any publication
Prohibition Policy	<ul style="list-style-type: none"> • When the GSC issues a prohibition
Use of Appropriate Experts Policy	<ul style="list-style-type: none"> • When the GSC issues a direction to an operator, requiring the appointment of an appropriate professional to remedy AML/CTF deficiencies
Referral to the GSC Enforcement Division	<ul style="list-style-type: none"> • Factors relevant to a referral to the GSC Enforcement Investigation for further investigation
Making a Referral to the Police and/or the Attorney General	<ul style="list-style-type: none"> • In what circumstances the GSC will consider referring actual, suspected or prima facie criminal offences (including contraventions of the AML/CFT Code¹).

2. The nature of settlement

2.1 A Regulatory Settlement Agreement (“RSA”) is an agreed regulatory outcome in the public interest (as determined by the GSC), the terms of which are accepted by the operator or individual concerned. Settlement takes place in the context of the GSC’s regulatory objectives.

¹ *Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Code 2019*

- 2.2 The GSC may decide to settle a case by way of an RSA where that would assist the GSC in achieving a regulatory outcome that is proportionate, effective and in the public interest. For example, settlement may achieve a swifter outcome for the protection of consumers, enable the GSC to send timely messages to industry and limit the time and resources of the GSC in investigating and taking contested enforcement action.
- 2.3 Although an RSA is usually an efficient outcome, the GSC will also satisfy itself that it is an effective outcome. The GSC uses enforcement action as a regulatory tool to deliver a credible deterrent, to change behaviours and deliver compliance minded outcomes at an individual and wider levels.
- 2.4 There will be occasions where the GSC deems that settlement is not appropriate and the GSC considers it necessary to pursue enforcement action through the Decision-Making Process – Enforcement and Sanctions.

3. When and how the GSC considers settlement

- 3.1 The GSC considers its regulatory objectives when deciding:
 - 3.1.1 whether a case is suitable for settlement discussions; and
 - 3.1.2 what the terms of that settlement should be.
- 3.2 In doing so, the GSC takes into account a wide range of factors, including:
 - 3.2.1 the nature, seriousness and impact of the wrongdoing;
 - 3.2.2 whether the operator or individual has derived any benefit;
 - 3.2.3 whether there has been any consumer detriment;
 - 3.2.4 the response of the operator or individual and whether it is accepted that wrongdoing has taken place;
 - 3.2.5 the regulatory history of the operator or individual;
 - 3.2.6 the level of cooperation of the operator in the course of any GSC investigation of the matter and during settlement discussions;
 - 3.2.7 whether the person or operator is likely to comply with the terms of a settlement agreement;
 - 3.2.8 whether settlement will achieve a satisfactory outcome for those affected by the alleged or actual non-compliance; and
 - 3.2.9 what the effect of settlement would be, including whether it would achieve a credible deterrent and raise awareness of standards and consequences of non-compliance.

The factors noted above are not exhaustive; not all factors will be relevant to any particular case, and there may be other relevant factors taken into account in determining whether a case is suitable for settlement and is an appropriate outcome given all the relevant circumstances.

4. Settlement discussions

- 4.1 In cases where the GSC is reasonably satisfied that it is both consistent with its regulatory objectives and functions and, given all of the known facts and circumstances, it is appropriate to do so, the GSC may enter into settlement discussions (the "**Settlement Discussions**") with the Subject, with a view to entering into a written agreement (the "**Settlement Agreement**"), concerning the nature of non-compliance by the Subject and the action to be taken by the GSC. For the avoidance of any doubt,

the commencement of settlement discussions is entirely at the option of the GSC. The Subject has no right to settlement discussions.

- 4.2 It is important to note that in such cases where the GSC may be willing to consider settlement, notwithstanding the commencement of any enforcement investigation, early acknowledgement by a Subject of contraventions or breaches of regulatory requirements, which effectively saves the GSC time and investigative resources, will be considered favourably by the GSC.
- 4.3 The GSC will not generally agree to settlement discussions or agreement until the GSC has sufficient understanding of the nature and gravity of the matter to enable it to make a reasonable assessment of the appropriate outcome.
- 4.4 Where the GSC determines that a case is suitable for settlement, the GSC will usually invite the operator or individual to enter into settlement discussions at the earliest opportunity. If an operator or individual declines, the case will proceed in accordance with the Decision-Making Process – Enforcement and Sanctions. An individual or operator may invite the GSC to enter into settlement discussions.
- 4.5 If an operator or individual later in the process wishes to enter into settlement discussions, the GSC will consider whether it is appropriate. If discussions are not instigated by the operator or individual until later in the process, the terms of the settlement may reflect the stage that the case has reached in the Decision-Making Process – Enforcement and Sanctions.
- 4.6 Settlement discussions will be conducted on a without prejudice basis. If an agreed outcome cannot be reached, the case will proceed in accordance with Decision-Making Process – Enforcement and Sanctions. Without prejudice correspondence and material created in the context of settlement discussions will not be used or referred to at any stage thereafter.
- 4.7 Settlement discussions are expected to be genuine and proactive. Settlement may not be used to unnecessarily delay the formal decision making process. The GSC may impose a time limit for the conclusion of settlement discussions or abandon these where it thinks that they are not proceeding expeditiously or the delay they are causing is prejudicial to the GSC’s regulatory objectives.
- 4.8 Early admissions of failings and meaningful cooperation will also be viewed by the GSC as mitigating factors when calculating any penalty payable. A significant advantage of co-operating with the GSC during an enforcement investigation is the potential for a discount in any discretionary civil penalty to be imposed. The GSC’s civil penalties guidance aligns to this DMP and clarifies that any potential discount available will reduce as each stage of this DMP is reached.
- 4.9 Any settlement reached between the GSC and a Subject will be recorded in a Settlement Agreement executed by the GSC and the Subject. Any settlement will be on the basis of the facts known by, and disclosed to the GSC at the time the Settlement Agreement is entered into. If the Subject fails to disclose failings, or the full extent of failings, to the GSC during settlement discussions, it will be open to the GSC to take further action in respect of those failings notwithstanding any Settlement Agreement. It is therefore important for a Subject to be full and frank with the GSC during settlement discussions.

5. Form and effect of a settlement agreement

- 5.1 A RSA will be in writing and agreed by the parties. The agreement will:
 - 5.1.1 set out the relevant facts;
 - 5.1.2 identify the non-compliance admitted by the operator or individual;

- 5.1.3 identify the nature and duration of any agreed sanction and/or action the operator or individual has accepted;
 - 5.1.4 contain a copy of any agreed public statement to be issued by the GSC in respect of the matters subject to the RSA;
 - 5.1.5 set out a waiver by the operator or individual of the right to appeal and contest any of the above;
 - 5.1.6 set out a restriction by which the subject of the RSA agrees not to make any public statement;
 - 5.1.7 set out that the GSC may rescind the agreement and proceed in accordance with the DMP in relation to the original non-compliance that was the subject of the DMP that led to the agreement if:
 - (i) the agreement is breached or not complied with or;
 - (ii) if evidence of a different form or forms of material non-compliance is identified or;
 - (iii) the GSC has been misled in any way.
- 5.2 A RSA (or in the GSC's discretion details of it) may be published, unless the GSC considers that it is not in the public interest to do so or that the public interest is not advanced by publication.
- 5.3 Failure to comply with the terms of a RSA will itself be regarded by the GSC as a regulatory matter. In such circumstances, the GSC will consider enforcement action in respect of the failure to comply with its terms (as well as the original non-compliance that led to the settlement agreement).
- 5.4 As an agreed regulatory outcome, a RSA will exist on the regulatory record of the operator or individual. The subject matter of an agreement will be taken into account in the GSC's consideration of any subsequent interactions with that operator or individual.

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