



Guernsey Financial
Services Commission

Guidance Note

The Commission's general approach to Enforcement

April 2016

Background

On the 26th January 2016, the States of Deliberation approved proposals to revise “The Financial Services Commission (Bailiwick of Guernsey) Law, 1987” as follows: -

1. to increase the maximum level of financial penalties available to the Guernsey Financial Services Commission for licensees and former licensees (other than personal fiduciary licensees) from the current level of £200,000 to £4,000,000, with any fine over £300,000 being limited to a maximum of 10% of the turnover of the licensee/former licensee in question;
2. to increase the maximum level of financial penalty available for relevant officers and personal fiduciary licensees from £200,000 to £400,000 together with the inclusion of an additional criterion for consideration by the Guernsey Financial Services Commission, namely emoluments arising in respect of the relevant officer's or personal fiduciary licensee's position;
3. to empower the Policy Council to make regulations which it considers to be appropriate in relation to discretionary financial penalties, and by way of example, these should include the meanings of “turnover” and “emoluments”; and the bandings of financial penalties within the new maximum levels taking into account the factors specified in section 11D(2) of the Law;
4. to require the Guernsey Financial Services Commission to issue and publish guidance as to its general approach to enforcement; and
5. to include an enabling provision permitting the States to revise the provisions on financial penalties powers in the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, by Ordinance.

The legislation (Projet de Loi) to give effect to the above proposals was approved by the States of Deliberation at their meeting on 2nd March 2016 although the Law has not yet been enacted.

In this paper, the Guernsey Financial Services Commission (“the Commission”) sets out its response to the decision of the States to require it to issue and publish guidance as to its general approach to enforcement (see 4 above).

The Enforcement Process

The Commission has a risk based approach to the supervision of its licensees. Where appropriate, the Commission will address contraventions or misconduct by agreement with the licensee or individual(s) concerned through ordinary supervisory processes and will endeavour to agree the implementation of a remedial action plan to restore that licensee or individual to compliance as soon as possible. This may involve agreement to changes in corporate governance, management and internal controls, or agreement to discontinue some or all of the person's operations or areas of activity, or agreement to amended or additional licence conditions framed to encourage or ensure compliance.

However, that approach is not always possible.

The Commission recognises that it is important to strike the right balance between ensuring that, on the one hand the Bailiwick's regulatory regime is underpinned by an effective and proportionate approach to enforcement, and on the other hand that good quality candidates are not deterred from seeking positions in firms as directors and officers.

The Commission maintains a panel of Senior Decision Makers comprising experienced QCs from the United Kingdom. Senior Decision Makers are required to sit and hear those cases involving serious findings against a licensee and/or individual directors (and other officers) where those findings are contested by the licensee or individual. Where a case is proven, the Senior Decision Maker will determine what penalties should be imposed upon the licensee and or directors including the level of financial penalty to be paid, any period of prohibition from practising in the industry and the contents of any public statement that is to be issued by the Commission. This approach delivers an independent assessment of enforcement cases.

The ability of the Commission to impose financial penalties is pertinent in relation to contraventions in a material particular of a provision of statutory or regulatory requirements or failing to fulfil any of the requirements of the statutory minimum criteria for licensing.

In assessing the level of financial penalties the Commission takes into account the public interest and the reputation of the Bailiwick as a financial centre. In addition, section 11D(2) of "The Financial Services Commission (Bailiwick of Guernsey) Law, 1987" sets out factors which the Commission must also take into account in deciding whether or not to impose a financial penalty and the amount of such penalty including: -

- (a) whether the contravention or non-fulfilment was brought to the attention of the Commission by the person concerned;
- (b) the seriousness of the contravention or non-fulfilment;
- (c) whether or not the contravention or non-fulfilment was inadvertent;
- (d) what efforts, if any, have been made to rectify the contravention or non-fulfilment and to prevent a recurrence;
- (e) the potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of imposing a penalty; and
- (f) the penalties imposed by the Commission in other cases.

General or specific prohibitions alongside public statements can also be used by the Commission separately from, or in addition to, financial penalties.

Statutory rights of appeal exist where the Commission does not act reasonably, proportionately and within its powers.

The Commission's general approach to enforcement

In delivering its statutory objectives the Commission is committed to a fair, proportionate and consistent application of its enforcement powers to achieve effective outcomes. Furthermore, by publication of enforcement outcomes, the Commission can raise awareness of regulatory

standards, and demonstrate its commitment to regulation in accordance with agreed international standards, thereby helping the Bailiwick's firms to access third country markets which require adherence to international standards¹.

The Commission's use of its enforcement powers is an important component in the delivery of its regulatory objectives which are: -

- To provide effective supervision of the financial services sector.
- To make recommendations to the States on schemes for the statutory regulation of finance business.
- To counter financial crime and the financing of terrorism.
- To maintain confidence in the Bailiwick's financial services sector.
- To ensure the safety, soundness and integrity of the Bailiwick's financial services sector.

In addition to the above, the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 provides that the exercise of the general functions of the Commission includes the protection of the public and the protection and enhancement of the reputation of the Bailiwick as a financial services centre.

The Commission will generally seek to use its enforcement powers in relation to more serious or repeated breaches of the law although it would be improper for the Commission to, a priori, rule out enforcement proceedings in relation to any breach.

The Commission publishes a range of documents and guidance on its website relating to its general approach to enforcement and its enforcement powers. Those documents and guidance, which also set out the statutory rights of appeal to the courts for persons aggrieved by a decision taken by the Commission, include: -

- Appointment of Administrator and Administration Manager
- Directions to a Licensee
- Directions to Advertisers
- Disapplication of the Directorship Exemption
- Disqualification of Actuaries
- Disqualification of Auditors
- Disqualification Orders
- Imposition of Licence Conditions
- Licence Cancellation, Revocation or Suspension
- Licence Revocation
- Private Reprimands
- Prohibition Orders
- Winding Up of a Business

¹ Basel Committee on Banking Supervision - Core Principles for Effective Banking Supervision and Basel III Capital Standards
IAIS - Insurance Core Principles, Standards, Guidance and Assessment Methodology
IOSCO - Objectives and Principles of Securities Regulation
FATF - International Standards on Combating Money Laundering and the Financing of Terrorism
GIFCS - Standard on Trust and Company Provider Supervision

Information relating to the Commission's general approach to enforcement including the relevant legislation, powers, and measures referred to above can be found at:
<http://www.gfsc.gg/Enforcement/Pages/Enforcement-Powers.aspx>

See also <http://www.gfsc.gg/Enforcement/Pages/Explanatory-Notes.aspx>

The Commission also publishes guidance on its website setting out the Decision Making Process relating to its enforcement role (<http://www.gfsc.gg/Enforcement/Pages/Decision-Making-Process.aspx>)