



**Jersey Financial  
Services Commission**

# **Guidance note:**

## **Our approach to enforcement**

**Issued: 16 April 2024**

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## Introduction

1. This guidance note explains our approach to the enforcement of regulatory requirements that firms and individuals are subject to.

## Guiding principles

2. In carrying out our enforcement activities we have regard to the guiding principles set out for the JFSC in the Financial Services Commission (Jersey) Law 1998, in particular:
  - › reducing the risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, financial service providers
  - › protecting and enhancing the reputation and integrity of Jersey in commercial and financial matters
  - › countering financial crime both in Jersey and elsewhere

## Enforcement objectives

3. We use enforcement action to meet a number of objectives:
  - › to deter misconduct by way of meaningful consequences
  - › to control, or where necessary remove from the industry, those firms or individuals that pose an unacceptable level of risk to our guiding principles
  - › to raise awareness of regulatory standards and reset behaviours
  - › to prevent financial gain or benefit from non-compliance with regulatory requirements

## Referrals to the Enforcement division

4. Where we identify suspected breaches of regulatory requirements our primary focus is to ensure that remedial action is taken to rectify them.
5. In many cases, breaches of regulatory requirements can be dealt with satisfactorily by the firm implementing a remediation plan agreed with its JFSC supervisor.
6. However, where it appears that there may have been serious misconduct, a firm or individual should expect to be held to account by us and that may involve a referral of the matter from our Supervision division to our Enforcement division.
7. Where suspected serious misconduct is brought to the attention of our Enforcement division (whether by means of a referral from our Supervision division or otherwise), in deciding whether to open an investigation we take into account the impact that the matter in question may have on our guiding principles.
8. We are a risk-based regulator so the greater the impact appears to be on our guiding principles the more likely we are to open an investigation.

## Enforcement investigations

9. If our Enforcement division opens an investigation it does not mean that we have determined that misconduct has occurred. The purpose of an investigation is to get a full understanding of the facts so that we can decide whether action may be necessary and, if so, what kind.
10. We take a strategic approach to our investigations: we aim to quickly identify the heart of a case so that we can focus on the key evidence and decide whether to continue with or close the investigation.
11. If it appears that the actions of individuals may have been a significant factor in the suspected serious misconduct of a firm, we will usually investigate the individuals at the same time as the firm. This allows relevant facts and matters to be considered together, in the round.
12. When we open an investigation we provide the firm or individual with a formal note of the scope so that they are clear as to the matter(s) being examined.<sup>1</sup>
13. We aim to investigate efficiently and fairly. We recognise that an enforcement investigation can be stressful for the individuals involved and disruptive for firms. With that in mind, we keep a firm or individual under investigation for no longer than is necessary. Where it becomes clear that there is no need to continue an investigation we end it promptly.

## Powers of investigation

14. We have a number of statutory powers that we use to carry out investigations.
15. The powers enable us, among other things, to:
  - › compel a firm or individual to produce specific documents or otherwise provide such information as we require for our investigation
  - › compel an individual to attend before our investigating officers at a specified time and place to answer questions
  - › require a firm to appoint a professional (such as an accountant, lawyer or regulatory consultant) to produce – at the firm's cost – a report on such matters as we consider necessary to advance the investigation
  - › direct a firm or individual to take (or not take) specified actions, such as preserving particular records or documents
16. We use these powers frequently during investigations.

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<sup>1</sup> Occasionally, where it might prejudice an investigation, we may not disclose the scope at the time of opening the investigation.

## Decision-making process

17. If we are considering action that could result in the imposition of a regulatory sanction we progress the matter through the stages in our published [decision-making process](#) (except where the firm or individual has entered into settlement discussions - see 'Regulatory settlement agreements' below).
18. Our decision-making process is designed to ensure that if we decide to impose a regulatory sanction the decision to do so:
  - › is one that we are lawfully empowered to make
  - › is one that is made in accordance with our statutory obligations
  - › has been arrived at in accordance with principles of natural justice
  - › is proportionate and reasonable based on all relevant information before us at the time
19. If we impose a regulatory sanction at the conclusion of our decision-making process, the firm or individual has a statutory right of appeal to the Royal Court of Jersey if they consider that our decision was unreasonable having regard to all the circumstances.

## Regulatory settlement agreements

20. A regulatory settlement is a voluntary process to resolve an investigation. It is entered into by a firm or individual under investigation and concludes with the firm or individual accepting the imposition by us of a specified regulatory sanction.
21. We only enter into settlement discussions where the firm or individual involved is prepared to acknowledge their misconduct and a regulatory settlement would be consistent with our guiding principles and meeting our enforcement objectives.
22. You can learn more from our published [policy on regulatory settlements](#).

## Regulatory sanctions available to us

23. Where serious misconduct is found we may use our statutory powers to impose a regulatory sanction. These include:
  - › issuing a public statement censuring a firm or an individual
  - › imposing a civil financial penalty on a firm or an individual
  - › restricting or preventing an individual from working in a sector we supervise
  - › revoking a firm's licence

24. We are committed to using our statutory powers fairly and proportionately. In deciding what regulatory sanction is appropriate in a particular case, we take account of such factors as the seriousness of the misconduct, how long it persisted, the regulatory track record of the firm or individual concerned, and other aggravating and mitigating factors (such as how co-operative and candid the firm or individual was with us).
25. When a civil financial penalty is to be imposed, we use our [published methodology](#) to determine the appropriate amount.
26. In line with our enforcement objectives, when we impose a civil financial penalty, restrict an individual or revoke a licence, we also issue a public statement setting out the reasons for imposing the sanction. This ensures that our actions are transparent and enables other firms and individuals to use that information to evaluate their own conduct.
27. Where we impose a civil financial penalty on a firm, the accompanying public statement will provide a concise explanation of how the final penalty was reached. This supports greater transparency and understanding of how we apply our civil financial penalties methodology.
28. Steps 1–8 of our methodology take account of the firm's average annual turnover, the seriousness of the contraventions and other relevant matters. The resulting intermediate figure is checked against the maximum permitted by law at Step 9. Any applicable adjustment under the later steps of the methodology and the effect of settlement are then considered before the final penalty is determined.
29. The public statement will disclose the Steps 1–8 intermediate figure and explain whether it was reduced at Step 9. Where relevant, it will also explain how any later adjustment or settlement affected the final amount. It will then state the final civil financial penalty imposed. The level of detail provided will depend on the circumstances of the case.

## Referrals to the criminal authorities

30. In the course of carrying out our functions we may identify suspected criminal offences that warrant investigation by Jersey's criminal authorities.
31. For further information, please refer to our guidance note on [making a referral to the police and/or Attorney General](#).

## Supporting enforcement action by other agencies and regulators

32. We are committed to using our statutory powers to assist other agencies and regulators to investigate suspected misconduct in Jersey or elsewhere.
33. We provide such assistance to the fullest extent permitted by law, where to do so is consistent with our guiding principles.
34. We often use our statutory powers to compulsorily obtain relevant information from third parties and onward disclose that information to the relevant agency or regulator to assist their investigation into suspected cross-border misconduct.

## Deferred Prosecution Agreements

35. Where a firm engages with the Attorney General with a view to secure a deferred prosecution agreement, the firm also needs to consider their obligations under the relevant Codes to deal with the JFSC in an open and co-operative manner.
36. We will only consider taking enforcement action against a firm, or any individuals, following our own investigation, in accordance with the criteria outlined above. This means that we will not consider any enforcement action just on the basis of a judgement, a statement of facts or a deferred prosecution agreement, without having undertaken our own investigation. Whether we will start an investigation or not, depends on the merits of each case and the impact that the matter in question may have on our guiding principles.