



Jersey Financial Services Commission

POLICY ON THE COMMISSION'S USE OF PUBLIC STATEMENTS

1 Introduction

- 1.1 Under each of the Regulatory Laws¹ and the Supervisory Bodies Law², the Commission has powers in certain circumstances to issue a public statement. The purpose of this document is to describe the principles that the Commission will apply to three particular aspects of issuing public statements.
- 1.2 There is a wide range of circumstances in which it will be appropriate to issue a public statement, however, the main applications may be described as follows:
 - 1.2.1 as a regulatory sanction, or part of a sanction, by promulgating the findings of the Commission and any action it has taken in relation to a failure of a business or person to comply with a requirement of any relevant law or Codes of Practice (for convenience and clarity, this is referred to in this document as a "Type 1" statement);
 - 1.2.2 to give warning of unauthorised business, or similar circumstances, where the best interests of the public could be adversely affected (referred to in this document as a "Type 2" statement); and
 - 1.2.3 to publicise a direction, or particular aspects of a direction, given by the Commission; which may be as a Type 1 or a Type 2 or a combination of both.
- 1.3 The particular aspects addressed by this policy statement are:
 - 1.3.1 a decision to issue a public statement as a sanction, or part of a sanction;
 - 1.3.2 a decision to reduce the period between serving notice to anyone named in a public statement and the issue of the public statement; and
 - 1.3.3 a decision to issue a public statement with respect to a direction.
- 1.4 This policy statement should be read in conjunction with the general guidance notes issued by the Commission on the Use of Enforcement Powers, and on the Commission's Decision-Making Process.

¹ Financial Services (Jersey) Law 1998 (Articles 25 - 25C);
Banking Business (Jersey) Law 1991 (Articles 48 - 48C);
Insurance Business (Jersey) Law 1996 (Articles 43 - 43C); and
Collective Investment Funds (Jersey) Law 1988 (Articles 17 - 17C).

² Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

2 Public Statement as a Regulatory Sanction

- 2.1 In the exercise of its statutory functions³ it is important that the Commission is able to highlight the requirements and standards of conduct expected of businesses and individuals that operate within the regulated financial services industry in Jersey, and can demonstrate that these standards are being effectively upheld.
- 2.2 To ensure that the issue of a Type 1 statement is reasonable and proportionate, the Commission will have regard to factors such as:
- 2.2.1 whether the non-compliance was committed intentionally or recklessly, rather than inadvertently;
 - 2.2.2 whether the Commission has previously issued a specific warning in relation to the type of non-compliance that has occurred;
 - 2.2.3 whether there is a pattern of poor compliance with requirements set by or under the regulatory laws or the Supervisory Bodies Law;
 - 2.2.4 whether there has been any attempt to conceal the non-compliance from the Commission or to mislead the Commission about it;
 - 2.2.5 whether the person concerned has been cooperative in admitting the non-compliance and in taking remedial action; and
 - 2.2.6 whether it is appropriate to advise the industry of poor practice and provide education on the standards of conduct expected.
- 2.3 It must be stressed that the decision to issue a Type 1 statement will be arrived at after taking into account all the circumstances of the case, including the Commission's statutory functions and guiding principles⁴; the interests of the public; the interests of any person concerned; and the interests of others likely to be affected by the activities of any person named.
- 2.4 It is unlikely that the Commission will issue a Type 1 statement without having entered into dialogue with the person concerned. In addition, the Commission has a statutory obligation to provide formal written notice of a decision to issue a public statement, giving its reasons and enclosing a copy of what it proposes to issue. Without prejudice to the rights for anyone aggrieved to appeal to the Royal Court, the Commission will give due consideration to any further comments it receives prior to the date of issue which, normally, may not be less than one month after the notice has been served.

3 Reduction of the Period of Notice

- 3.1 As indicated above, each of the relevant laws requires that, if reasonably practicable, the Commission must send a formal written notice to any person to be named in a public statement and may not issue the public statement until one month after the notice (or later if an appeal is made to the Royal Court). However, the laws also provide for the Commission to be able to decide when the statutory criteria are met that allow the notice

³ See Article 5 of the Financial Services Commission (Jersey) Law 1998.

⁴ See Article 7 of the Financial Services Commission (Jersey) Law 1998.

period to be reduced, even to the extent that the public statement may be issued on the same day as the notice.

3.2 The Commission is very mindful of the additional consequences for anyone named in the statement if the notice period is reduced⁵. It therefore does not expect to exercise this power unless it is satisfied that its use is both necessary and proportionate. Each case will be considered on its own merits and the factors that the Commission will take into account include, but are not limited to:

3.2.1 the need for urgency in warning members of the public of unauthorised business;

3.2.2 whether or not a delay could result in members of the public incurring financial losses;

3.2.3 whether or not a delay might result in significant risk of damage to the reputation of a regulated business or any other person named.

3.2.4 whether or not a delay could cause unnecessary damage to the reputation, integrity or economic interests of the Island in commercial and financial matters; and

3.2.5 whether or not reducing the notice period would counter, or assist in countering, financial crime in Jersey or elsewhere.

3.3 It is envisaged that the power to reduce the notice period is most likely to be relevant in relation to a Type 2 public statement, or a public statement with respect to a direction of the type described in paragraph 4.2 below. Whilst the Commission does not expect that it will be necessary to apply the provision to other types of public statement, it will do so if it considers that this is merited by the circumstances.

4 Public Statement with respect to a direction

4.1 To the extent that they may be relevant, the factors described in Section 2 above will be taken into account in deciding whether or not a direction, or any particular aspect of a direction, given by the Commission should be the subject of a public statement. However, a decision whether or not to publish such a public statement is more likely to be based on the need to –

4.1.1 protect the interests of –

4.1.1.1 any existing or potential clients or customers of the person to whom the direction was given;

4.1.1.2 the general public; or

4.1.1.3 other regulated businesses in the Island;

⁵ If the notice period is reduced, although an appeal to the Court may still be made, the issue of the public statement is neither deferred nor suspended pending that appeal being heard, unless the Court so orders after considering a separate application: as a result, it may not be possible for the appeal to be heard before the public statement has been issued.

- 4.1.2 protect the reputation of Jersey in commercial and financial matters; or
 - 4.1.3 counter financial crime in Jersey or elsewhere.
- 4.2 For the reasons given in the previous paragraph, the presumption will be that a public statement will usually be issued with respect to any of the following kinds of direction -
- 4.2.1 A restriction on an individual being employed by, carrying on any function for or holding any position with, a regulated financial services business in Jersey;
 - 4.2.2 A requirement that a regulated financial services business in Jersey, or one that was formerly regulated, must cease operations or wind up its business; and
 - 4.2.3 A restriction or prohibition in relation to a financial services advertisement that has been issued.