



**Jersey Financial
Services Commission**

Civil Financial Penalties: Methodology for determining the amount

Issued: 10 September 2018

1 Introduction

- 1.1 The methodology set out in this paper describes the Jersey Financial Services Commission’s (**JFSC**) **guideline** approach to the determination of the amount of a civil financial penalty. The circumstances of each case will be different and the JFSC will apply each step in the methodology with the necessary degree of flexibility and discretion that the particular case will merit.

2 Background

- 2.1 Pursuant to provisions in the [Financial Services Commission \(Jersey\) Law 1998 \(the Commission Law\)](#) the JFSC may impose a civil financial penalty on a registered person¹ where, it is satisfied that the registered person has, to a significant and material extent, contravened a Code of Practice (**Code**).
- 2.2 The maximum penalty that the JFSC may impose for a particular type of contravention is set out in the [Financial Services Commission \(Financial Penalties\) \(Jersey\) Order 2015 \(the Order\)](#). There are four penalty bands, which are summarised below:

Penalty Band	Nature of the contravention (summary)	Maximum penalty
1	A failure to notify the JFSC of certain matters specified in a Code of Practice.	4% of relevant income, subject to a cap of £10,000.
2	A contravention of a Code of Practice not falling into Band 2A or Band 3 below and not rectified to the satisfaction of the JFSC within the timeframe determined by the JFSC.	6% of relevant income, subject to a cap of £4,000,000.
2A	A contravention of a Code of Practice committed negligently.	7% of relevant income, subject to a cap of £4,000,000.
3	A contravention of a Code of Practice committed either intentionally or recklessly.	8% of relevant income, subject to a cap of £4,000,000.

- 2.3 The Order defines “**relevant income**” in some detail. But in broad terms, it means annual fee income² related to the registered person’s activities covered by the relevant Code. So, for example, for a trust company business it will be annual fee income in relation to the business it carries on that falls within the scope of the Code of Practice for Trust Company Business.

¹ “registered person” is defined in Article 1 of the Commission Law.

² For banking business, “relevant income” includes other sources of income as well.

3 Determining the amount – what the law says

- 3.1 Article 21B of the Commission Law states that when considering whether to impose a financial penalty and the amount thereof the JFSC must have particular regard to the following factors:
- 3.1.1 the seriousness of the contravention;
 - 3.1.2 whether or not the registered person knew, or ought to have known, of the contravention;
 - 3.1.3 whether or not the registered person voluntarily reported the contravention;
 - 3.1.4 whether or not the registered person has taken steps to rectify the contravention and to prevent its recurrence;
 - 3.1.5 (other) aggravating or mitigating factors (see Appendix 2);
 - 3.1.6 the principle of ensuring that registered persons cannot expect to profit from contraventions;
 - 3.1.7 penalties imposed in other cases; and
 - 3.1.8 the potential financial consequences to the registered person and to third parties (including customers and creditors of the registered person) of imposing the penalty.
- 3.2 This list is replicated in the Appendix to the JFSC's [Decision-Making Process](#) document as, *“the principles that the JFSC will apply in determining the imposition and amount of a financial penalty.”*
- 3.3 Registered persons are reminded that Article 21F of the Commission Law provides that a registered person may appeal to the Royal Court against the imposition of a financial penalty or the amount of a financial penalty on the ground that the decision of the JFSC was unreasonable having regard to all the circumstances of the case.

4 The methodology

- 4.1 The methodology for determining the amount of a financial penalty responds to Article 21B of the Commission Law by requiring a series of steps to be followed that reflect the statutory obligations imposed on the JFSC by that Article.
- 4.2 The detail of the methodology is set out in Appendix 1 and is self-explanatory in the main. However, Step 1 of the methodology is described in detail below because it is somewhat more complex than the other steps in the methodology.
- 4.3 Step 1 requires the JFSC to judge how serious it regards the contravention (or the contraventions, in aggregate) on a scale of 1 to 5.
- 4.4 The seriousness of the contravention will be judged by its impact on the Guiding Principles that Article 7 of the Commission Law requires the JFSC to have regard to when carrying out any of its functions, namely:
- 4.4.1 the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
 - 4.4.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;

- 4.4.3 the need to counter financial crime both in Jersey and elsewhere.³
- 4.5 Under the methodology the JFSC will judge the impact of the contravention (or the contraventions, in aggregate) on each of the three Guiding Principles, with Level 1 being the lowest impact and Level 5 the highest.
- 4.6 The table below summarises the factors that would influence the assessment of impact on each Guiding Principle:

Guiding Principle	Determining the level (sliding scale)
The reduction of the risk to the public of financial loss due to dishonesty, incompetence, malpractice, or financial unsoundness of persons carrying on financial services.	Level 1 – Low risk of loss ⁴ . ↓ Level 3 – Significant risk of loss or significant occurrence of loss. ↓ Level 5 – Very significant risk of loss or very significant occurrence of loss.
The protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters.	Level 1 – No significant reputational damage. ↓ Level 3 – Significant reputational damage domestically . ↓ Level 5 – Significant reputational damage internationally .
The need to counter financial crime ⁵ in Jersey or elsewhere.	Level 1 – Low risk of financial crime occurring. ↓ Level 3 – Significant risk of financial crime occurring or significant financial crime occurred. ↓ Level 5 – Very significant risk of financial crime occurring or very significant financial crime occurred. ⁶

- 4.7 For consistency, when evaluating the impact of the contravention against the second of the Guiding Principles (reputation) the methodology works on the assumption that the contravention will, if not already, become public knowledge (which, save in exceptional cases, will always be the case in any event through the issuance of a public statement by the JFSC when the financial penalty is imposed – whether under a settlement agreement or otherwise).

³ It is considered that the other Guiding Principle that the JFSC must have regard to – “the best economic interests of Jersey” – is not relevant in the context of assessing the seriousness of a contravention. See endnote (ii) for more information.

⁴ “Loss” in this context includes profits foregone or returns not realised.

⁵ “financial crime” in this context includes financial crime by a registered person or its customers/clients.

⁶ Notwithstanding this methodology, where financial crime has occurred this would not preclude a referral to Her Majesty’s Attorney General (Jersey’s criminal prosecuting authority) and where breaches of the relevant Code of Practice have also occurred consideration of a regulatory sanction other than, or in addition to, a civil financial penalty.

- 4.8 Under the methodology, once the impact of the contravention (or the contraventions, in aggregate) on each of the three Guiding Principles has been judged, the resultant average level⁷ would be that which determines the “seriousness” of the contravention and how much in financial terms the “seriousness” factor will contribute towards the final amount of the penalty, as set out in the table below. Under the methodology, this is known as the **Step 1 figure** – see Table 1 below.

Table 1	
“Seriousness”	Step 1 figure Expressed as a percentage of the maximum penalty that could be imposed on the registered person – see Table 2
Level 1	15 %
Level 2	30 %
Level 3	45 %
Level 4	60 %
Level 5	75 %

Table 2				
	Band 1 penalty	Band 2 penalty	Band 2A penalty	Band 3 penalty
Maximum Penalty	The lower of: 4% of the registered person’s relevant income and £10,000	The lower of: 6% of the registered person’s relevant income and £4,000,000	The lower of: 7% of the registered person’s relevant income and £4,000,000	The lower of: 8% of the registered person’s relevant income and £4,000,000

⁷ Where the averaging calculation results in a fraction, the nearest whole number will be used.

4.9 The other steps to be followed under the methodology in order to determine the final amount of the penalty are described in detail in Appendix 1 but, in summary, they are as follows:

Step	Description	Contribution towards penalty amount
1	Judge the seriousness of the contravention of the Code of Practice	The £ amount calculated by reference to the table in paragraph 4.8 of this paper. (the Step 1 figure)
2	Did the registered person know, or ought to have known, of the contravention?	An additional amount of up to 50% of the Step 1 figure.
3	Did the registered person voluntarily report the contravention?	A deduction of up to 25% of the Step 1 figure.
4	Has the registered person taken steps to rectify the contravention and to prevent its recurrence?	A deduction of up to 25% of the Step 1 figure.
5	What (other) aggravating / mitigating factors were there? (see Appendix 2)	A (net) additional amount of up to 50% of the Step 1 figure or a (net) deduction of up to 50% of the Step 1 figure.
6	Application of the principle of ensuring that registered persons cannot expect to profit from contraventions.	+ £ xxx, as appropriate (where the quantum of profit can be identified).
7	Have regard to the penalties in other cases.	[The use of the methodology should ensure consistency.]
8	GROSS CALCULATION of penalty to be imposed, before the application of the statutory maximum as set out in the Order. (the Step 8 figure).	[This will be the product of Steps 1 to 7]
9	Reduction, if necessary, to the Step 8 figure so that the maximum penalty permitted under the Order is not exceeded.	[-£xxx, as appropriate.]
10	MAXIMUM-ADJUSTED penalty amount (the Step 10 figure)	£xxx
11	Have regard to the potential financial consequences to the registered person and to third parties (including customers and creditors of the registered person) of imposing the penalty.	[-£xxx, if appropriate.]
12	ACTUAL penalty to be imposed (the Step 12 figure)	[The Step 10 figure as adjusted by Step 11.]
13	Discount for early settlement (where applicable). See the JFSC's Decision-Making Process document.	[% discount expressed in monetary terms.]
14	DISCOUNTED penalty to be imposed under settlement agreement.	[The Step 12 figure as adjusted for the discount in Step 13.]

4.10 For illustrative purposes only, Appendix 3 contains worked examples of how the amount of a financial penalty would be determined using the methodology.

APPENDIX 1 – Methodology for determining the amount of a financial penalty

Step	Narrative description (Articles references are from the Commission Law)	Considerations	Contribution towards penalty amount ¹
1	<p>Judge the seriousness of the contravention of the Code of Practice. [Article 21B(3)(a)]</p> <p>For consistency, the evaluation of the impact against this Guiding Principle will assume that the contravention(s) will, if not already, become public knowledge (which, save in exceptional cases, will always be the case through the issuance of a public statement by the JFSC when the financial penalty is imposed – whether under a settlement agreement or otherwise).</p>	<p>Judged by the impact on the JFSC’s Guiding Principlesⁱⁱ.</p> <p>Principle (a) The reduction of the risk to the public of financial loss due to dishonesty, incompetence, malpractice, or financial unsoundness of persons carrying on financial services.</p> <p>Sliding scale: Level 1 – Low risk of lossⁱⁱⁱ. ↓ Level 3 – Significant risk of loss or significant occurrence of loss. ↓ Level 5 – Very significant risk of loss or very significant occurrence of loss.</p> <p>Principle (b) The protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters.</p> <p>Sliding scale: Level 1 – No significant reputational damage. ↓ Level 3 – Significant reputational damage domestically. ↓ Level 5 – Significant reputational damage internationally.</p> <p>Principle (c) The need to counter financial crime^{iv} in Jersey or elsewhere.</p> <p>Sliding scale: Level 1 – Low risk of financial crime occurring. ↓ Level 3 – Significant risk of financial crime occurring or significant financial crime occurred. ↓ Level 5 – Very significant risk of financial crime occurring or very significant financial crime occurred.^v</p>	<p>The Step 1 figure calculated by reference to the table in paragraph 4.8 of this paper.</p>

Step	Narrative description (Articles references are from the Commission Law)	Considerations	Contribution towards penalty amount ¹
2	Did the registered person know, or ought to have known, of the contravention? [Article 21B(3)(b)]	<ul style="list-style-type: none"> › If the registered person had followed its own procedures would the contravention have been detected promptly? › Was the absence of procedures a contributory factor to the registered person not detecting the contravention? › Was inadequate resourcing of the compliance function a contributory factor to the registered person not detecting the contravention? › Was the contravention concealed from the registered person by a deliberate and sophisticated act of an employee? (N.B. This is not an exhaustive list.)	Knew or ought to have known = an additional amount of up to 50% of the Step 1 figure.
3	Did the registered person voluntarily report the contravention? [Article 21B(3)(c)]	If the contravention was voluntarily reported, how prompt and comprehensive was the report?	Voluntarily reported = a deduction of up to 25% of the Step 1 figure (N.B. A failure to voluntarily report would be considered under aggravating factors - see Step 5.)
4	Has the registered person taken steps to rectify the contravention and to prevent its recurrence? [Article 21B(3)(d)]	<ul style="list-style-type: none"> › If steps were taken to rectify, how prompt and comprehensive were they? › Did it require pressure from the JFSC before the registered person took such steps? › If such steps were taken, were they of a quality likely to prevent a recurrence of the contravention? (N.B. This is not an exhaustive list.)	Steps taken to rectify = a deduction of up to 25% of the Step 1 figure. (N.B. A failure to take steps to rectify would be considered under aggravating factors - see Step 5.)
5	What (other) aggravating / mitigating factors were there? [Article 21B(3)(h)]	See Appendix 2 for a non-exhaustive list of aggravating / mitigating factors. (Step 5 will not take into account aggravating or mitigating factors considered in other steps of the methodology.)	A (net) additional amount of up to 50% of the Step 1 figure or a (net) deduction of up to 50% of the Step 1 figure.

Step	Narrative description (Articles references are from the Commission Law)	Considerations	Contribution towards penalty amount ¹
6	Application of the principle of ensuring that registered persons cannot expect to profit from contraventions. [Article 21B(3)(f)]	<ul style="list-style-type: none"> › Did the registered person make an identifiable quantum of profit/avoid a loss/not incur expense as a result of the contravention? › Were the registered person's profits inflated as a result of an inadequate spend (of an identifiable quantum) on its compliance function, which contributed to the occurrence of the contravention? <p>(N.B. This is not an exhaustive list.)</p>	Where, as a result of the contravention, the registered person made a profit/avoided a loss/avoided incurring expense, the penalty amount will be increased by that quantum.
7	Have regard to the penalties in other cases. [Article 21B(3)(g)]	As part of Step 7, where necessary and appropriate, the JFSC will look to other jurisdictions in order to consider how a similar contravention has been treated (in terms of the scale of seriousness but not the quantum of financial penalty imposed).	A quality control check will be carried out to ensure the JFSC is being consistent. The use of this methodology should ensure consistency.
8	GROSS CALCULATION of penalty to be imposed, before the application of the statutory maximum as set out in the Order (the Step 8 figure) .		[This will be the product of Steps 1 to 7.]
9	Reduction, if necessary, to the Step 8 figure so that the maximum penalty permitted under the Order is not exceeded.		[- £xxx, as appropriate.]
10	MAXIMUM-ADJUSTED penalty amount (the Step 10 figure)		[The product of Step 8 as adjusted by Step 9]
11	Have regard to the potential financial consequences to the registered person and to third parties (including customers and creditors of the registered person) of imposing the penalty. [Article 21B(3)(e)]	<ul style="list-style-type: none"> › To what extent would the amount of the penalty endanger the capacity of the registered person to provide restitution to investors? › To what extent would the amount of the penalty cause the registered person to contravene JFSC Code of Practice financial resource rules? › To what extent would the amount of the penalty endanger the registered person's capacity to pay its creditors? › To what extent would the amount of the penalty endanger the capacity of the registered person to continue in business? <p>(N.B. This is not an exhaustive list)</p>	[-£xxx, if appropriate.]

Step	Narrative description (Articles references are from the Commission Law)	Considerations	Contribution towards penalty amount ¹
12	ACTUAL penalty to be imposed (the Step 12 figure)		[The Step 10 figure as adjusted by Step 11.]
13	Discount for early settlement (where applicable)	The JFSC's Decision-Making Process document states that the following discounts will apply: <ul style="list-style-type: none"> › Settlement before Stage One – a maximum discount of 50%. › Settlement before Stage Two – a maximum discount of 25%. › Settlement before Stage Three – a maximum discount of 5%. 	[% discount expressed in monetary terms.]
14	DISCOUNTED penalty to be imposed under settlement agreement.		[The Step 12 figure as adjusted for the discount in Step 13.]

APPENDIX 2 - Aggravating and mitigating factors⁸

Factors that the JFSC will regard as aggravating a contravention of a Code of Practice by a registered person include (i.e. this is a non-exhaustive list):

- › a failure to bring promptly and completely the contravention to the attention of the JFSC;
- › a business model that encourages a disregard for requirements of the Codes of Practice;
- › a poor compliance record (this will include a failure to follow any direction(s)⁹ issued);
- › a failure to pay appropriate attention to relevant guidance issued by the JFSC;
- › a failure to follow its own procedures;
- › an absence of relevant procedures;
- › a failure to implement recommendations made by the registered person's compliance officer or money laundering compliance officer in order to ensure compliance with the relevant Code of Practice requirement;
- › clients of the registered person experiencing a significant loss as a result of the contravention or not making a profit that would otherwise have accrued absent the contravention.

Factors that the JFSC will regard as mitigating a contravention of a Code of Practice by a registered person include (i.e. this is a non-exhaustive list):

- › the contravention being brought promptly and completely to the attention of the JFSC;
- › co-operating fully with any investigation;
- › an evidenced previously strong compliance record;
- › the registered person's procedures were amended to address the contravention;
- › swift resolution of any client losses arising as a result of the contravention or swift payment of compensation to make good a profit that the client would otherwise have accrued absent the contravention.

⁸ In addition to those set out in Article 21B(3) of the Commission Law.

⁹ A direction issued under Article 23 of the Financial Services (Jersey) Law 1998 or its equivalent in the other regulatory laws.

APPENDIX 3

Worked example #1 – for illustrative purposes only

- › Calculating the amount of a Band 2 penalty.
- › This example assumes that the registered person's relevant income is £5 million.
- › The maximum penalty permitted is therefore £300,000.

Step	Description	Considerations	Contribution towards penalty amount	Amount
1	Judge the seriousness of the contravention of the Code of Practice	Risk to the public = Level 3 Reputational damaged = Level 3 Risk of financial crime = Level 3 Average = Level 3	45% of the maximum penalty permitted.	£135,000 (the Step 1 figure)
2	Did the registered person know, or ought to have known, of the contravention?	Registered person would have known of the contravention if it had followed its own compliance procedures.	+25% of the Step 1 figure.	+ £33,750
3	Did the registered person voluntarily report the contravention?	Contravention was originally discovered by JFSC during 2016 on-site examination.	N/A	£0
4	Has the registered person taken steps to rectify the contravention and to prevent its recurrence?	After the launch of the 2018 JFSC investigation, the registered person invested heavily in a comprehensive and effective remediation programme.	-20% of the Step 1 figure.	-£27,000
5	What (other) aggravating / mitigating factors were there?	<u>Aggravating:</u> JFSC had been assured in 2017 that the contravention had been remediated, A JFSC on-site examination in early 2018 discovered that was not the case. <u>Mitigating:</u> Co-operated fully with JFSC investigation.	A net +15% of the Step 1 figure.	+£20,250
6	Application of the principle of ensuring that registered persons cannot expect to profit from contraventions.	Registered person admitted that it had consciously underfunded its compliance function by £75,000 over the past 3 years in order to keep profits up.		+£75,000
7	Have regard to the penalties in other cases.	Consistency check done.	N/A	£0
8	GROSS CALCULATION of penalty to be imposed, before the application of the statutory maximum as set out in the Order (the Step 8 figure) .			£237,000
9	Reduction, if necessary, to the Step 8 figure so that the maximum penalty permitted under the Order is not exceeded.	A Band 2 penalty may not exceed 6% of relevant income (£300,000 in this case), up to a maximum of £4 million.	N/A	£0
10	MAXIMUM-ADJUSTED penalty amount (the Step 10 figure)			£237,000

11	Have regard to the potential financial consequences to the registered person and to third parties (including customers and creditors of the registered person) of imposing the penalty.	The Step 10 figure can be borne by the registered person and without materially adverse impact on third parties.	N/A	£0
12	ACTUAL penalty to be imposed (the Step 12 figure)			£237,000

13	Discount for early settlement. See the JFSC's Decision-Making Process document.	Settled before Stage One of the Decision-Making Process.	50% discount	-£118,500
14	DISCOUNTED penalty to be imposed under settlement agreement.			£118,500

Worked example #2 – for illustrative purposes only

- › Calculating the amount of a Band 2A penalty.
- › This example assumes that the registered person's relevant income is £30 million.
- › The maximum penalty permitted is therefore £2,100,000.

Step	Description	Considerations	Contribution towards penalty amount	Amount
1	Judge the seriousness of the contravention of the Code of Practice	Risk to the public = Level 4 Reputational damaged = Level 4 Risk of financial crime = Level 4 Average = Level 4	60% of the maximum penalty permitted.	£1,260,000 (the Step 1 figure)
2	Did the registered person know, or ought to have known, of the contravention?	The registered person made a conscious decision not to report the contravention to the JFSC.	+50% of the Step 1 figure.	+ £630,000
3	Did the registered person voluntarily report the contravention?	No. the contravention was discovered by JFSC during an on-site examination.	N/A	£0
4	Has the registered person taken steps to rectify the contravention and to prevent its recurrence?	The registered person took steps to rectify and prevent a recurrence. However, the agreed target date for remediation was overshoot by 1 month due to the registered person applying inadequate resources.	-5% of the Step 1 figure.	- £63,000
5	What (other) aggravating / mitigating factors were there?	<u>Aggravating:</u> The contravention particularly exposed vulnerable investors to risk of loss. <u>Mitigating:</u> Co-operated fully with JFSC investigation.	A net +15% of the Step 1 figure.	+ £189,000
6	Application of the principle of ensuring that registered persons cannot expect to profit from contraventions.	No identifiable profit accrued as a result of the contravention.	N/A	£0
7	Have regard to the penalties in other cases.	Consistency check done.	N/A	£0
8	GROSS CALCULATION of penalty to be imposed, before the application of the statutory maximum as set out in the Order (the Step 8 figure) .			£2,016,000
9	Reduction, if necessary, to the Step 8 figure so that the maximum penalty permitted under the Order is not exceeded.	A Band 2A penalty may not exceed 7% of relevant income (£2,100,000 in this case), up to a maximum of £4 million.		£0
10	MAXIMUM-ADJUSTED penalty amount (the Step 10 figure)			£2,016,000

11	Have regard to the potential financial consequences to the registered person and to third parties (including customers and creditors of the registered person) of imposing the penalty.	The Step 10 figure can be borne by the registered person and without materially adverse impact on third parties.		N/A
12	ACTUAL penalty to be imposed (the Step 12 figure)			£2,016,000

13	Discount for early settlement. See the JFSC's Decision-Making Process document.	The registered person did not agree to settle.		N/A
14	DISCOUNTED penalty to be imposed under settlement agreement.			N/A

Worked example #3 – for illustrative purposes only

- › Calculating the amount of a Band 3 penalty.
- › This example assumes that the registered person's relevant income is £75 million.
- › The maximum penalty permitted is therefore £4,000,000.

Step	Description	Considerations	Contribution towards penalty amount	Amount
1	Judge the seriousness of the contravention of the Code of Practice	Risk to the public = Level 5 Reputational damaged = Level 4 Risk of financial crime = Level 4 Average = Level 4	60% of the maximum penalty permitted.	£2,400,000 (the Step 1 figure)
2	Did the registered person know, or ought to have known, of the contravention?	The registered person disregarded its own internal procedures: had it not done so the contravention would not have occurred.	+45% of the Step 1 figure.	+ £1,080,000
3	Did the registered person voluntarily report the contravention?	No. The contravention was discovered by JFSC during an on-site examination.	N/A	£0
4	Has the registered person taken steps to rectify the contravention and to prevent its recurrence?	Not voluntarily (see aggravating factors in Step 5 below).	N/A	£0
5	What (other) aggravating / mitigating factors were there?	<u>Aggravating:</u> The registered person resisted taking steps to rectify and prevent a recurrence: it only took such action when a direction issued under Article 23 of the Financial Services Law was issued requiring it to do so. <u>Mitigating:</u> Previous compliance record of the registered person had generally been good.	A net +22% of the Step 1 figure	+£528,000
6	Application of the principle of ensuring that registered persons cannot expect to profit from contraventions.	No identifiable profit accrued as a result of the contravention.	N/A	£0
7	Have regard to the penalties in other cases.	Consistency check done.	N/A	£0
8	GROSS CALCULATION of penalty to be imposed, before the application of the statutory maximum as set out in the Order (the Step 8 figure) .			£4,008,000
9	Reduction, if necessary, to the Step 8 figure so that the maximum penalty permitted under the Order is not exceeded.	A Band 3 penalty may not exceed 8% of relevant income (£6,000,000 in this case), up to a maximum of £4 million.		- £8,000
10	MAXIMUM-ADJUSTED penalty amount (the Step 10 figure)			£4,000,000

11	Have regard to the potential financial consequences to the registered person and to third parties (including customers and creditors of the registered person) of imposing the penalty.	The Step 10 figure can be borne by the registered person without materially adverse impact on third parties.		N/A
12	ACTUAL penalty to be imposed (the Step 12 figure)			£4,000,000

13	Discount for early settlement. See the JFSC's Decision-Making Process document.	The registered person did not agree to settle.		N/A
14	DISCOUNTED penalty to be imposed under settlement agreement.			N/A

Endnotes

- ⁱ Where a step in the methodology indicates an increase or decrease would be made to the Step 1 figure the maximum percentages shown are not immutable: where the JFSC considers that the specifics of a case means that a larger or smaller percentage adjustment would be appropriate, it reserves to itself the discretion to make whatever adjustment it considers reasonable.
- ⁱⁱ The Guiding Principle of “having regard to the best economic interests of Jersey” is excluded, on the basis that it is not appropriate in this context. In this regard, the Memorandum of Understanding that the JFSC has signed with the Chief Minister sets out the shared interpretation of that guiding principle:-
- “3.4 The Chief Minister accepts the JFSC’s interpretation of the Guiding Principle to have regard to “the best economic interests of Jersey”, namely that:
- 3.4.1 the JFSC should not compromise regulatory standards in order to allow a line of business which a section of the Industry might find attractive;
 - 3.4.2 the JFSC should have regard to the Strategic Plan for Jersey approved by the States of Jersey from time to time, and in particular its objectives in relation to jobs and economic growth;
 - 3.4.3 the JFSC should take full account of the costs and other burden of regulation recognising the international nature of the Island’s finance industry and the need to be competitive from the perspective of persons carrying on the business of financial services and users of such services;
 - 3.4.4 subject to the need to maintain regulatory standards, the JFSC should assist in the development of business by resourcing and organising itself to provide timely responses to proposals from persons that are, or are seeking to, carry on the business of financial services and by adopting a regulatory approach that is proportionate to the risks posed by the business concerned;
 - 3.4.5 the JFSC should facilitate innovation by persons carrying on the business of financial services.”
- ⁱⁱⁱ “Loss” in this context includes profits foregone or returns not realised.
- ^{iv} “financial crime” in this context includes financial crime by a registered person or its customers/clients.
- ^v Notwithstanding this methodology, where financial crime has occurred this would not preclude a referral to Her Majesty’s Attorney General (Jersey’s criminal prosecuting authority) and where breaches of the relevant Code of Practice have also occurred consideration of a regulatory sanction other than, or in addition to, a civil financial penalty.