



Civil Financial Penalties on Registered Persons: Methodology for determining the amount

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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 on a registered person¹. 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 person where, it is satisfied that the registered person has, to a significant and material extent, contravened the Money Laundering (Jersey) Order 2008 or a JFSC 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.	<u>The lower of 4% of the average annual turnover and £100,000.</u>
2	A contravention 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.	<u>The lower of 6% of the average annual turnover and £4,000,000.</u>
2A	A contravention committed negligently.	<u>The lower of 7% of the average annual turnover and £4,000,000.</u>
3	A contravention committed either intentionally or recklessly.	8% of average annual turnover.

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, where applicable, have regard to the following matters:

- 3.1.1 the seriousness of the contravention;
- 3.1.2 whether or not the person knew, or ought to have known, of the contravention;
- 3.1.3 whether or not the person voluntarily reported the contravention;
- 3.1.4 whether or not the 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 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 person and to third parties (including customers and creditors of the person) of imposing the penalty.
- 3.2 Registered persons are reminded that Article 21F of the Commission Law provides that a 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, if more than one, 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 elsewhere².
- 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 being 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	Level 1 – Low risk of loss ³ . ↓
	Level 3 – <u>Substantive</u> significant risk of loss or <u>significant</u> occurrence of loss. ↓

carrying on financial services.	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 significant reputational damage domestically . ↓
	Level 5 – Significant significant reputational damage internationally .
The need to counter financial crime ⁴ in Jersey or elsewhere.	Level 1 – Low risk of financial crime occurring. ↓
	Level 3 – Substantive significant risk of financial crime occurring or significant <u>has financial crime</u> occurred. ↓
	Level 5 – Very significant risk of financial crime occurring or <u>has very significant financial crime</u> occurred ⁵ .

- 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).
- 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 level⁶ 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 %

	Band 1 penalty	Band 2 penalty	Band 2A penalty	Band 3 penalty
Maximum Penalty	<u>The lower of 4% of the registered person's average annual turnover and £100,000</u>	<u>The lower of 6% of the registered person's average annual turnover and £4,000,000</u>	<u>The lower of 7% of the registered person's average annual turnover and £4,000,000</u>	8% of the registered person's average annual turnover

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	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 25 50% of the Step 1 figure or a (net) deduction of up to 25 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] <u>A quality control check will be carried out to ensure the JFSC is being consistent in its application of the methodology.</u>
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 policy statement on Regulatory Settlements .	[% 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.]

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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.

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

Step	Narrative description	Considerations	Contribution towards penalty amount ⁷
1	<p>Judge the seriousness of the contravention.</p> <p><u>(Can be a singular contravention and does not have to reflect a large sample size of customer or client activity)</u></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 Principles⁸.</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 loss⁹. ↓ Level 3 – Substantivesignificant risk of loss or significantoccurrence of loss. ↓ Level 5 – Verysignificant risk of loss or very significantoccurrence 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 crime¹⁰ in Jersey or elsewhere.</p> <p>Sliding scale: Level 1 – Low risk of financial crime occurring. ↓ Level 3 – Substantivesignificant risk of financial crime occurring or hassignificant financial crime occurred. ↓</p>	<p>The Step 1 figure calculated by reference to the table in paragraph 4.8 of this paper.</p>

Step	Narrative description	Considerations	Contribution towards penalty amount ⁷
		Level 5 – Very significant risk of financial crime occurring or has very significant financial crime occurred. ¹¹	

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<p>2</p>	<p>Did the registered person know, or ought to have known, of the contravention?</p>	<p><u>In assessing whether the registered person knew, or ought to have known, of the contravention, the JFSC may consider (non-exhaustively):</u></p> <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 (including of the compliance function) a contributory factor to the registered person not detecting the contravention? › Was the contravention concealed from the registered person (and, if so, to what extent was that concealment reasonably foreseeable or detectable through appropriate controls) by a deliberate and sophisticated act of an employee? › Was there a deliberate failure to follow internal procedures? › Did the registered person too easily disregard or fail to act on conduct or activities that led to the contravention (for example, risk indicators, warnings or “red flags” that were available to it)? › Did the registered person fail to pay appropriate attention to relevant guidance issued by the JFSC, (including public statements and feedback papers on subjects relevant to the business (regardless of sector issuance))? › Was there a failure to implement internal recommendations (including from compliance, audit or risk) to ensure compliance with a relevant enactment or Code? › Had the registered person previously identified or reported any underlying causes for the contravention to the JFSC? <p>(N.B. This is not an exhaustive list.)</p>	<p>Knew or ought to have known = an additional amount of up to: 50% of the Step 1 figure</p>
<p>3</p>	<p>Did the registered person voluntarily report the contravention?</p>	<p><u>Registered persons are expected to deal with the JFSC in an open and co-operative manner. Voluntary reporting will ordinarily be treated as a neutral factor; however, where a voluntary disclosure is particularly prompt, transparent and comprehensive, it may be regarded as a mitigating factor and justify a deduction of up to 25% of the Step 1 figure.</u></p> <p><u>Where the contravention has been voluntarily reported, the JFSC may consider the following non-exhaustive factors when assessing how promptness,</u></p>	<p><u>A timely, transparent and comprehensive voluntary report = a deduction of up to 25% of the Step 1 figure</u></p> <p>(N.B. A failure to voluntarily report would be considered under aggravating factors - see Step 5.)</p>

		<p><u>transparency and comprehensive</u>ness was the report of the disclosure:?</p> <ul style="list-style-type: none"> › <u>Was the matter reported before any external discovery (e.g., before detection by the JFSC, auditors, counterparties, or the media)?</u> › <u>Was it brought clearly to the JFSC’s attention with a specific notification on discovery (rather than being contained solely within a general or periodic report)?</u> › <u>Did the report comprehensively identify the contravention, how it was detected, the timeframe, affected business areas, materiality, and the relevant legal or Code requirements?</u> › <u>Did it include an initial root cause hypothesis, and a quantified assessment of actual or potential impact on customers, clients or the market (e.g., numbers, values, volumes)?</u> › <u>Did it include information on prompt risk-reduction measures to be implemented?</u> › <u>Was a clear plan or commitment for further investigation and remediation provided, with owners, milestones and timelines, and a commitment to provide updates?</u> <p><u>A deduction is more likely to be applied where the overall quality of disclosure demonstrates a high standard of openness, responsibility, and proactive management. Mitigation will ordinarily not apply where the disclosure followed an imminent likelihood of external discovery, was fragmented or incomplete, or is otherwise inconsistent with a genuine voluntary report.</u></p> <p><u>In assessing the disclosure under this step, the JFSC focuses on the quality and timeliness of the information provided; remediation actions are considered separately under Step 4.</u></p>	
4	<p>Has the registered person taken steps to rectify the contravention and to prevent its recurrence?</p> <p><u>This step will include assessment of the approach to risk reduction and management adopted by the registered person on becoming aware of the contravention.</u></p> <p><u>Providing expected remediation to comply with statutory or regulatory requirements</u></p>	<p><u>The JFSC expects a registered person to remediate contraventions and to take steps to prevent recurrence.</u></p> <p><u>Remediation or action undertaken that is required to meet statutory or regulatory obligations will ordinarily be regarded as neutral and will not affect the penalty quantum. This includes, without limitation, filing a Suspicious Activity Report, updating or enhancing controls, increasing monitoring, and reasonable updates to policies, processes or compliance monitoring plans.</u></p> <p>› <u>If steps were taken to rectify, how prompt, t and comprehensive and effective were they?</u></p>	<p><u>Comprehensive S</u>steps taken to rectify = a deduction of up to 25% of the Step 1 figure.</p> <p>(N.B. A failure to take steps to rectify would be considered under aggravating factors - see Step 5.)</p>

	<p><u>will ordinarily be regarded as a neutral factor.</u></p>	<ul style="list-style-type: none"> › <u>Did it require pressure from the JFSC before the registered person took such steps?</u> › <u>If such steps were taken, were they of a quality likely to prevent a recurrence of the contravention?</u> <p><u>However, remediation and risk management that is proactive, timely, comprehensive and demonstrably effective (or of a quality likely to prevent a recurrence) may be regarded as a mitigating factor and justify a deduction of up to 25% of the Step 1 figure.</u></p> <p><u>When considering the quality and effectiveness of remediation and prevention measures, the JFSC may consider the following non-exhaustive factors:</u></p> <ul style="list-style-type: none"> › <u>How quickly were remedial and risk-mitigation actions initiated? Did these actions occur without prompting or instruction from the JFSC?</u> › <u>Are remedial measures well-designed, implemented and embedded such that they are likely to prevent recurrence?</u> › <u>Is the response commensurate with the risks, addresses the root causes, and extends across all relevant business areas (not merely the immediate point of failure/contravention)?</u> › <u>Was there clear, active oversight by the board or senior management, with evidence of challenge and accountability?</u> › <u>Is there expert (and potentially independent) assurance over the design and operating effectiveness of remedial actions, with clear reporting to board or other governance committees?</u> › <u>Has any actual or potential harm been identified, quantified and remediated (including redress where appropriate), beyond minimum expected levels?</u> › <u>Were risk-based interim controls or temporary restrictions applied (e.g., pausing higher-risk business, applying account controls) pending full remediation to reduce ongoing risk?</u> › <u>Did the response consider exiting or restricting higher-risk relationships where warranted or applicable?</u> › <u>Is there objective evidence of sustained effectiveness, including post-implementation effectiveness testing (potentially independent) and documented outcomes?</u> <p><u>No mitigation will ordinarily be given for remediation that is routine or overdue, implemented only after instruction by the JFSC, or required by law or prior</u></p>	
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		<p><u>directions or remediation programmes.</u></p> <p><u>(N.B. This is not an exhaustive list.)</u></p>	
5	What (other) aggravating / mitigating factors were there?	<p>See Appendix 2 for a non-exhaustive list of aggravating / mitigating factors.</p> <p>(Step 5 will not take into account <u>aggravating or mitigating</u> factors considered in other steps of the methodology)</p>	A (net) additional amount of up to <u>2550%</u> of the Step 1 figure or a (net) deduction of up to <u>2550%</u> of the Step 1 figure.
6	Application of the principle of ensuring that registered persons cannot expect to profit from contraventions.	<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? › The JFSC might use a gross amount, such as fees charged for example, as a proxy for profit unless the registered person provides the JFSC with persuasive evidence to support the use of a different amount. <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.	<p><u>In having regard to the penalties in other cases, the JFSC has regard to the seriousness of the factual circumstances (not quantum).</u></p> <p>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).</p>	<p>A quality control check will be carried out to ensure the JFSC is being consistent <u>in its application of the methodology.</u></p> <p><u>The use of this methodology should ensure consistency.</u></p>
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	<p><u>Will only it will be expected that the registered person will be considered following the submission of clear financial statements and any other relevant supporting documents (which may include recent audited accounts, management</u></p>	[-£xxx, if appropriate.]

<p>creditors of the registered person) of imposing the penalty.</p>	<p><u>accounts, cashflow forecasts, evidence of contingent liabilities, and, where appropriate, an independent review or assurance), to enable the JFSC’s consideration of relevant factors under this step, which include:</u></p> <ul style="list-style-type: none"> › To what extent would the amount of the penalty endanger materially impair the capacity of the registered person to provide restitution to investors <u>or customers</u>? › 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 materially impair the registered person’s capacity to provide services to its customers, or pay its creditors, <u>or otherwise give rise to material and reasonably foreseeable adverse consequences for third parties (including, for example, through wider financial exclusion in the Island or disruption to the provision of a public function or other essential service on which customers or Islanders materially rely)?</u> › <u>To what extent would the amount of the penalty endanger materially impair the capacity of the registered person to continue in business (excluding the payments of distributions, dividends, bonuses and other discretionary payments)?</u> <p><u>(N.B. This is not an exhaustive list)</u></p> <p><u>Whilst assessing the potential financial consequences of a penalty under this step the JFSC will have regard to each of its Guiding Principles, certain considerations under this step may be particularly relevant to the Guiding Principle of having regard to the best economic interests of Jersey.</u></p> <p><u>In particular, when considering financial consequences to third parties, the JFSC may have regard to whether any such impacts may be relevant to the best economic interests of Jersey, including whether, at a particular penalty level, there would be material and reasonably foreseeable disruption to service continuity, wider financial exclusion, or impairment of the provision of a public function, and whether any such risk is evidenced and causally linked to the penalty (rather than speculative).</u></p> <p><u>In doing so, the JFSC will have regard to these consequences in a manner that is consistent with providing for penalties that are effective, proportionate and dissuasive; such consequences will not override those objectives and will be balanced holistically with the Guiding Principles and other relevant statutory factors.</u> <u>(N.B. This is not an exhaustive list)</u></p>	
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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)	<p><u>Where a civil financial penalty is imposed under a settlement agreement, a discount will be applied to the Step 12 figure to reflect how early the settlement agreement is signed/executed in the JFSC’s published Decision-Making Process to reflect the JFSC’s policy statement on Regulatory Settlements states that the following discounts will apply:</u></p> <ul style="list-style-type: none"> › Settlement before the conclusion of Stage 1 (Investigation) of the Decision-Making Process – up to 50%. › Settlement before the conclusion of Stage 2 (Review of the case by the Executive) – up to 25%. › Settlement before the conclusion of Stage 3 (Consideration of the case by the Board DMP Committee) – up to 5%. <p><u>The discount within the applicable maximum is not automatic and will be determined on a case-by-case basis, taking into account all relevant circumstances.</u></p> <p><u>In assessing the appropriate Stage 1 discount, the JFSC will have regard to the timing, quality and practical impact of the registered person’s engagement (including cooperation and disclosure) in the context of the matter. In doing so, the JFSC may will have regard to factors including:</u></p> <ul style="list-style-type: none"> a) <u>the extent to which the registered person identified, preserved and provided relevant information and records promptly (including material that is unhelpful to its position)</u> b) <u>whether it made early and meaningful concessions that enabled key issues to be clarified or agreed (for example, acceptance of key facts and/or the nature of the regulatory concern (including any potential contravention), where appropriate)</u> c) <u>the extent to which its cooperation and disclosure avoided or reduced investigative steps (for example, statutory information requests, compulsory interviews, forensic review or protracted analysis)</u> d) <u>whether it maintained that level of cooperation throughout the matter,</u> 	[% discount expressed in monetary terms.]

		<p><u>including during settlement discussions</u></p> <p><u>NB: Step 3 addresses the quality and timeliness of any report/disclosure as mitigation. Step 13 applies only where the matter is resolved under a settlement agreement and reflects the separate efficiencies achieved through early resolution.</u></p>	
14	DISCOUNTED penalty to be imposed under settlement agreement.		[The Step 12 figure as adjusted for the discount in Step 13.]

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Appendix 2 - Aggravating and mitigating factors

Factors that the JFSC will regard as aggravating a contravention include (i.e. this is a non-exhaustive list):

- › A failure by the person to take action appropriate to their position on becoming aware of the contravention (determination of the level of aggravation under this factor will take into account, amongst other things, the extent to which the person has executive management responsibility for the part of the registered person's business affected by the contravention and/or for the particular matter that was the subject of the contravention)
- › A failure to promptly and completely bring the contravention to the attention of the JFSC
- › A failure to take steps to rectify the contravention and to prevent its recurrence
- › The person supporting (whether implicitly or explicitly) a business model that encourages a disregard for requirements of a relevant enactment or the Codes of Practice
- › The person having a poor compliance record (this will include a failure to follow any direction(s)¹² issued) and the person's past actions or inactions being a contributory factor to that record
- ~~› A failure by the person to pay appropriate attention to relevant guidance issued by the JFSC~~
- ~~› A failure by the person to follow relevant internal procedures~~
- ~~› An absence of relevant internal procedures to prevent the contravention~~
- ~~› A failure to implement internal recommendations to ensure compliance with a relevant enactment or Code of Practice where it was the person's responsibility to implement such recommendations.~~
- › Clients, customers or funds experiencing a material 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 include (i.e. this is a non-exhaustive list):

- ~~› The contravention being brought promptly and completely to the attention of the JFSC~~
- › The person taking action appropriate to their position on becoming aware of the contravention
- › The person co-operating fully with any investigation
- › An evidenced previously strong compliance record
- ~~› Procedures were promptly amended to address the contravention~~
- › Swift resolution of any client, customer or fund losses arising as a result of the contravention, or swift payment of compensation to make good a profit that would otherwise have accrued absent the contravention

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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 average annual turnover 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	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 the average annual turnover (£300,000 in this case).	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 the conclusion of Stage 1 of the Decision-Making Process.	50% discount	-£118,500
14	DISCOUNTED penalty to be imposed under settlement agreement.			£118,500

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Worked example #2 – for illustrative purposes only

- Calculating the amount of a Band 2A penalty.
- This example assumes that the registered person's average annual turnover 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	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 the 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 overshot 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 the average annual turnover (£2,100,000 in this case).	N/A	-£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 policy statement on Regulatory Settlements .	The registered person did not agree to settle.		N/A
14	DISCOUNTED penalty to be imposed under settlement agreement.			N/A

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Worked example #3 – for illustrative purposes only

- Calculating the amount of a Band 3 penalty.
- This example assumes that the registered person's average annual turnover is £75 million.
- The maximum penalty permitted is therefore £6,000,000.

Step	Description	Considerations	Contribution towards penalty amount	Amount
1	Judge the seriousness of the contravention	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 the 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 under Article 23 of the Financial Services Law was issued requiring it 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).	N/A	-£0
10	MAXIMUM ADJUSTED penalty amount (the Step 10 figure)			£4,008,000

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)			£4,008,000
13	Discount for early settlement. See the JFSC's policy statement on Regulatory Settlements .	The registered person did not agree to settle.		N/A
14	DISCOUNTED penalty to be imposed under settlement agreement.			N/A

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Endnotes

¹ “registered person” is defined in Article 1 of the Commission Law (and includes any person who should have been a registered person e.g. the conducting of unauthorised business).

² 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 (10) for more information. For the purposes of Step 1, the JFSC does not score the Guiding Principle of “the best economic interests of Jersey”. That Guiding Principle is instead reflected, where applicable, through the JFSC’s consideration of proportionality and the potential financial consequences to the registered person and third parties at Step 11 (on the basis of impacts that are material and reasonably foreseeable, and not speculative) and through the exercise of discretion in the circumstances of the case.

³ “Loss” in this context includes profits foregone or returns not realised.

⁴ “financial crime” in this context includes financial crime by a registered person or its customers/clients.

⁵ 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.

⁶ Where the averaging calculation results in a fraction, the nearest whole number will be used.

⁷ 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.

⁸ The Guiding Principle of “having regard to the best economic interests of Jersey” is not scored as part of Step 1 seriousness. That Guiding Principle is instead reflected, where applicable, through the JFSC’s consideration of proportionality and the potential financial consequences to the registered person and third parties at Step 11 (on the basis of impacts that are material and reasonably foreseeable, and not speculative) and through the exercise of discretion in the circumstances of the case. 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.”

⁹ “Loss” in this context includes profits foregone or returns not realised.

¹⁰ “financial crime” in this context includes financial crime by a registered person or its customers/clients.

¹¹ 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.

¹² A direction issued under Article 23 of the Financial Services (Jersey) Law 1998 or under the equivalent provision in one of the other regulatory laws the JFSC administers.

12 May 2022 update

The 12 May 2022 update made consequential amendments required as a result of the enactment of the Financial Services Commission (Amendment No. 8) (Jersey) Law 2022 and the Financial Services Commission (Financial Penalties) (Amendment No. 2) (Jersey) Order 2022, which widened the scope of the civil financial penalties regime and made certain changes to the penalties provisions.

3 February 2025 update

The 3 February 2025 update inserted two clarifications into Appendix 1. The first insertion is added to Step 6 of the Methodology, clarifying that the JFSC might use a gross amount as proxy for profit unless the registered person provides the JFSC with persuasive evidence which supports the use of a different amount. The second insertion is added to Step 11 of the Methodology, clarifying that the JFSC will consider to what extent the amount of the penalty would endanger the registered person's capacity to provide services to its customers or pay its creditors.