

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.	The lower of 4% of the average annual turnover and £100,000.
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.	The lower of 6% of the average annual turnover and £4,000,000.
2A	A contravention committed negligently.	The lower of 7% of the average annual turnover and £4,000,000.
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 sets out matters to which the JFSC must, where applicable, have regard when considering whether to impose a financial penalty and the amount of that penalty. Article 21B also requires the JFSC’s published statement to explain how aggravating and mitigating factors will be dealt with. Consistent with those requirements, the methodology addresses 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 by the JFSC 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 For the purposes of this methodology:
- 4.2.1 “turnover-based reference amount” means the amount calculated by applying the relevant percentage of average annual turnover for the applicable penalty band, before application of any monetary cap prescribed by the Order; and
 - 4.2.2 “statutory maximum penalty” means the maximum financial penalty that may be imposed under the Order, including the effect of any applicable monetary cap.
- 4.3 The turnover-based reference amount is used for the purposes of Steps 1 to 8. The statutory maximum penalty is applied at Step 9, so that the penalty imposed does not exceed the maximum permitted under the Order.
- 4.4 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.
- 4.5 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.
- 4.6 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:
- 4.6.1 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;
 - 4.6.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
 - 4.6.3 the need to counter financial crime both in Jersey and elsewhere².
- 4.7 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.

4.8 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 ³ . ↓ Level 3 – Significant risk of loss or occurrence of loss. ↓ Level 5 – Very significant risk of loss or 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 ⁴ in Jersey or elsewhere.	Level 1 – Low risk of financial crime occurring. ↓ Level 3 – Significant risk of financial crime occurring or has occurred. ↓ Level 5 – Very significant risk of financial crime occurring or has occurred ⁵ .

4.9 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).

4.10 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 turnover-based reference amount for the applicable penalty band – see Table 2
Level 1	15 %
Level 2	30 %
Level 3	45 %
Level 4	60 %
Level 5	75 %

Table 2				
Turnover-based reference amount for Step 1	Band 1 penalty	Band 2 penalty	Band 2A penalty	Band 3 penalty
	4% of the registered person’s average annual turnover	6% of the registered person’s average annual turnover	7% of the registered person’s average annual turnover	8% of the registered person’s average annual turnover

4.11 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 4.10 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, where justified.
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, where justified.
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.

Step	Description	Contribution towards penalty amount
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 imposed by the JFSC in other cases.	A consistency check will be carried out, having regard to penalties imposed by the JFSC in other relevant and reasonably comparable cases where applicable.
8	GROSS CALCULATION of penalty to be imposed, using the turnover-based reference amount and before application of the statutory maximum penalty under 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 penalty does not exceed the statutory maximum penalty permitted under the Order, including any applicable monetary cap.	[-£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.]

4.12 **For illustrative purposes only**, Appendix 3 contains a worked example 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	Considerations	Contribution towards penalty amount ⁷
1	<p>Judge the seriousness of the contravention.</p> <p>A contravention may be significant and material even if identified through a single event, transaction, customer file or relationship. Seriousness will be assessed on a risk-based and proportionate basis, having regard to the circumstances of the case, including the nature, cause, risk and impact of the contravention, rather than the number of instances alone.</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)</p> <p>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:</p> <p>Level 1 – Low risk of loss⁹.</p> <p>↓</p> <p>Level 3 – Significant risk of loss or occurrence of loss.</p> <p>↓</p> <p>Level 5 – Very significant risk of loss or occurrence of loss.</p> <hr/> <p>Principle (b)</p> <p>The protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters.</p> <p>Sliding scale:</p> <p>Level 1 – No significant reputational damage.</p> <p>↓</p> <p>Level 3 – Significant reputational damage domestically.</p> <p>↓</p> <p>Level 5 – Significant reputational damage internationally.</p> <hr/> <p>Principle (c)</p> <p>The need to counter financial crime¹⁰ in Jersey or elsewhere.</p> <p>Sliding scale:</p> <p>Level 1 – Low risk of financial crime occurring.</p> <p>↓</p> <p>Level 3 – Significant risk of financial crime occurring or has occurred.</p> <p>↓</p> <p>Level 5 – Very significant risk of financial crime occurring or has occurred.¹¹</p>	<p>The Step 1 figure calculated by reference to the table in paragraph 4.10 of this paper.</p>

Step	Narrative description	Considerations	Contribution towards penalty amount ⁷
2	Did the registered person know, or ought to have known, of the contravention?	<p>In assessing whether the registered person knew, or ought to have known, of the contravention, the JFSC may consider (non-exhaustively):</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 in 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)? › 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 JFSC guidance, including guidance or lessons contained in feedback papers, public statements or other publications that were reasonably relevant to its business activities, risk profile and circumstances at the relevant time? › 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>	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?	Registered persons are required, pursuant to legislation and Codes, to deal with the JFSC in an open and co-operative manner.	A deduction of up to 25% of the Step 1 figure, where justified.

Step	Narrative description	Considerations	Contribution towards penalty amount ⁷
		<p>If the contravention was reported to the JFSC, it will be considered under Step 3. Any reduction in penalty will not be automatic and will depend on the circumstances, including the timing, transparency and overall quality of the reporting.</p> <p>In determining the appropriate percentage under this step, the JFSC may have regard to a range of non-exhaustive factors, including, but not limited to:</p> <ul style="list-style-type: none"> › how promptly the matter was reported after it was identified, having regard to the circumstances › whether the matter was reported before any external discovery, for example before detection by the JFSC, auditors, counterparties, or the media. › whether the matter was brought clearly to the JFSC’s attention, for example by specific notification rather than being contained solely within a general or periodic report. › the extent to which the report clearly and comprehensively identified the contravention, how it was detected, the timeframe, affected business areas, materiality, and the relevant legal or Code requirements. › the extent to which the report included, where reasonably available, an assessment of actual or potential impact on customers, clients or the market, and any information then available on root cause or possible underlying causes. › whether known immediate risks and prompt risk-reduction measures were identified. › whether there was a clear approach or commitment for further investigation and remediation. › whether material further information, including on impact, root cause or underlying causes, and any necessary corrections or updates, was provided as soon as reasonably practicable. <p>For the purposes of Step 3, the JFSC focuses on the information and engagement provided, including where an initial report is followed by further information or updates as matters become better understood by the registered person; remediation actions are considered separately under Step 4.</p>	<p>(N.B. A failure to voluntarily report would be considered under aggravating factors - see Step 5.)</p>

Step	Narrative description	Considerations	Contribution towards penalty amount ⁷
4	<p>Has the registered person taken steps to rectify the contravention and to prevent its recurrence?</p> <p>This step includes consideration of the approach by the registered person, on becoming aware of the contravention, to manage and reduce the relevant risks and prevent recurrence.</p>	<p>A registered person is expected to rectify contraventions and take steps to prevent recurrence.</p> <p>Steps taken to rectify the contravention and prevent its recurrence will be considered under Step 4. Any reduction in penalty will not be automatic and will depend on the circumstances, including the timing, scope, quality and likely effectiveness of the steps taken.</p> <p>In determining the appropriate percentage under this step, the JFSC may have regard to a range of non-exhaustive factors, including, but not limited to:</p> <ul style="list-style-type: none"> › the timeliness of remedial and risk-mitigation actions, including whether they were initiated promptly and progressed without undue delay and without prompting or instruction from the JFSC. › the scope, design, implementation and embedding of remedial measures, including amendments to policies, procedures, systems and controls, and the extent to which those measures are comprehensive, proportionate and likely to prevent recurrence. › whether the steps address root causes and, where appropriate, extend across all relevant business areas, not merely the immediate point of failure or contravention. › the level of board or senior management oversight, challenge and accountability. › whether actual or potential harm, including client, customer or fund loss, has been identified, quantified and remediated, including redress where appropriate. › whether interim controls, temporary restrictions or other risk-mitigation measures were applied pending full remediation. › steps implemented or proposed to assess the design, implementation and effectiveness of remediation, including whether any review, challenge or assurance is, where relevant, sufficiently independent from those undertaking the remediation. <p>Delay, inadequate remediation, or remediation undertaken only after regulatory prompting may also be relevant when determining the appropriate percentage under this step.</p>	<p>A deduction of up to 25% of the Step 1 figure, where justified.</p> <p>(N.B. A failure to take steps to rectify would be considered under aggravating factors - see Step 5.)</p>

Step	Narrative description	Considerations	Contribution towards penalty amount ⁷
5	What (other) aggravating / mitigating factors were there?	See Appendix 2 for a non-exhaustive list of aggravating / mitigating factors. (Step 5 will not take into account factors already 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.
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 may use a gross amount, such as fees charged, as a proxy for profit where it considers that approach to be reasonable and proportionate in the circumstances, unless the registered person provides the JFSC with persuasive evidence to support the use of a different amount, which could include evidence of costs, margins, sectoral benchmarks, relevant accounting information and other information supporting a different measure. <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 imposed by the JFSC in other cases.	<p>In having regard to the penalties imposed by the JFSC in other cases, the JFSC will consider the penalties imposed and how the methodology was applied in other relevant and reasonably comparable cases, where applicable.</p> <p>This is not to perform a direct monetary comparison as penalty amounts will differ based on turnover, statutory maxima, monetary caps and factual specific circumstances.</p> <p>Where appropriate, the JFSC may also have regard to outcomes in other jurisdictions to inform its assessment of comparable conduct or relative seriousness. Such outcomes will not replace the JFSC's consideration of penalties imposed by the JFSC in other relevant cases and will not be used as direct monetary comparators.</p>	A consistency check will be carried out, having regard to penalties imposed by the JFSC in other relevant and reasonably comparable cases where applicable.
8	GROSS CALCULATION of penalty to be imposed, using the turnover-based reference amount and before the application of the statutory maximum penalty under the Order (the Step 8 figure).		[This will be the product of Steps 1 to 7.]

Step	Narrative description	Considerations	Contribution towards penalty amount ⁷
9	Reduction, if necessary, to the Step 8 figure so that the penalty does not exceed the statutory maximum penalty permitted under the Order, including any applicable monetary cap.		[- £xxx, as appropriate.]
10	MAXIMUM-ADJUSTED penalty amount (the Step 10 figure)		[The Step 8 figure 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.	<p>The JFSC will consider the potential financial consequences of imposing the penalty where applicable, having regard to the information available to it. Where a registered person considers that imposing the penalty would give rise to material financial consequences for the registered person or for third parties, including customers or creditors, it should provide clear and targeted financial information and any relevant supporting documents. The JFSC may request further information.</p> <p>Relevant information may include recent audited accounts, management accounts, cashflow forecasts, evidence of contingent liabilities, and, where appropriate, an independent review, assurance or other supporting analysis.</p> <p>Relevant factors under this step may include:</p> <ul style="list-style-type: none"> › To what extent would the amount of the penalty materially impair the capacity of the registered person to provide restitution to investors or customers? › To what extent would the amount of the penalty cause the registered person to contravene JFSC Code of Practice financial resource requirements? › To what extent would the amount of the penalty materially impair the registered person's capacity to provide services to its customers, pay its creditors, 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 other persons in Jersey materially rely? 	[-£xxx, if appropriate.]

Step	Narrative description	Considerations	Contribution towards penalty amount ⁷
		<ul style="list-style-type: none"> › To what extent would the amount of the penalty materially impair the capacity of the registered person to continue in business, excluding the payments of distributions, dividends, bonuses and other discretionary payments? <p>(N.B. This is not an exhaustive list)</p> <p>When considering the potential financial consequences of imposing a penalty under this step, the JFSC will have regard to its Guiding Principles, where relevant to that assessment.</p> <p>In particular, when considering potential financial consequences to third parties, the JFSC may have regard to whether those consequences are relevant to the Guiding Principle of having regard to the best economic interests of Jersey, including by reference to wider public interest and jurisdiction level impacts. This may include whether the penalty amount under consideration would give rise to material and reasonably foreseeable disruption to service continuity, wider financial exclusion, market instability, or impairment of the provision of a public function or other essential service. Any such consequence or risk should be evidenced and causally linked to the penalty, rather than speculative.</p> <p>The JFSC will have regard to any such consequences in a manner that is consistent with the need for civil financial penalties to be effective, proportionate and dissuasive. Those consequences will be balanced with the JFSC's Guiding Principles and other relevant statutory factors, and will not be considered in isolation.</p>	
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>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 executed in the JFSC's published Decision-Making Process:</p> <ul style="list-style-type: none"> › Settlement before the conclusion of Stage 1 (Investigation) – 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%. 	[% discount expressed in monetary terms.]

Step	Narrative description	Considerations	Contribution towards penalty amount ⁷
		<p>In determining the appropriate level of discount within the relevant stage, the JFSC will take into account the circumstances of the case, including any efficiencies achieved through settlement. Where significant efficiencies arise, they will typically support a discount at or close to the maximum available at the relevant stage, although the maximum available discount is not applied automatically.</p> <p>Step 13 is concerned with settlement efficiencies, rather than re-assessing matters otherwise reflected in the penalty calculation.</p> <p>The JFSC may have regard to the timing, overall quality and practical impact of engagement, including, but not limited to:</p> <ul style="list-style-type: none"> a) the timely identification, preservation and provision of relevant information and records, whether helpful or unhelpful to the registered person’s position. b) the timing and completeness of admissions by the registered person, including any early and meaningful concessions that assisted in clarifying or agreeing key issues, for example, acceptance of key facts and/or the nature of the regulatory concern, including any potential contravention, where appropriate. c) the extent to which cooperation, disclosure and engagement by the registered person supported the efficient progression and resolution of the matter, for example, by avoiding or reducing investigative or decision-making steps. <p>These factors are not exhaustive and will not all be relevant in every case. The appropriate level of discount will be determined within the relevant stage by reference to the circumstances of the case.</p>	
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 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) issued) and the person's past actions or inactions being a contributory factor to that record
- › 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 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
- › 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

Appendix 3: worked example – for illustrative purposes only

- › Calculating the amount of a Band 2A penalty.
- › This example assumes that the registered person’s average annual turnover is £100 million.
- › For a Band 2A penalty, the turnover-based reference amount is therefore £7 million, being 7% of the registered person’s average annual turnover. The statutory maximum penalty is the lower of 7% of average annual turnover and £4 million. In this example, the statutory maximum penalty is therefore £4 million.

Step	Description	Considerations	Contribution towards penalty amount	Amount
1	Judge the seriousness of the contravention	Risk to the public = Level 4 Reputational damage = Level 4 Risk of financial crime = Level 4 Average = Level 4	60% of the turnover-based reference amount.	£4,200,000 (the Step 1 figure)
2	Did the registered person know, or ought to have known, of the contravention?	The registered person ought to have known of the contravention. The contravention would likely have been identified sooner had the registered person followed its own procedures, acted on internal risk indicators and escalated recurring control weaknesses appropriately. Relevant management information and compliance monitoring findings were available, but were not acted upon with sufficient urgency.	+35% of the Step 1 figure.	+ £1,470,000
3	Did the registered person voluntarily report the contravention?	No. The contravention was identified following JFSC supervisory engagement.	N/A	£0
4	Has the registered person taken steps to rectify the contravention and to prevent its recurrence?	The registered person invested heavily and promptly implemented a comprehensive remediation programme, strengthened governance arrangements and introduced enhanced monitoring. The registered person also identified affected customers and provided prompt compensation above the minimum amount required to remedy the issue. Although the steps were not initiated until after JFSC engagement, they were progressed in a timely manner, were comprehensive and well-evidenced, and were considered of a quality likely to reduce the risk of recurrence.	-17.5% of the Step 1 figure.	-£735,000

Step	Description	Considerations	Contribution towards penalty amount	Amount
5	What (other) aggravating / mitigating factors were there?	<p><u>Aggravating:</u></p> <p>The registered person had a mixed recent supervisory compliance history, including previous findings in related control areas, although those findings had not resulted in prior enforcement action.</p> <p><u>Mitigating:</u></p> <p>The registered person co-operated fully with the JFSC investigation, including by responding constructively and in a timely manner to information requests and providing relevant documents and explanations.</p>	A net +10% of the Step 1 figure.	+£420,000
6	Application of the principle of ensuring that registered persons cannot expect to profit from contraventions.	The registered person avoided identifiable expenditure of £250,000 as a result of inadequate investment in systems and controls, which contributed to the contravention.		+£250,000
7	Have regard to the penalties imposed by the JFSC in other cases.	Consistency check carried out, having regard to relevant and reasonably comparable cases where applicable.	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).			£5,605,000
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 the lower of 7% of average annual turnover and £4 million. In this case, the statutory maximum penalty is £4 million.	N/A	- £1,605,000
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 material and reasonably foreseeable adverse consequences for the registered person or third parties.	N/A	£0
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.	<p>A settlement agreement was entered into before the conclusion of Stage 1, Investigation, which had commenced after the matter was identified by the JFSC through supervisory engagement.</p> <p>A 45% settlement discount has been applied to the Step 12 figure. This reflects the significant efficiencies achieved through early settlement, including the registered person's timely and full admissions, proactive provision of relevant</p>	-45% of the Step 12 figure	-£1,800,000

Step	Description	Considerations	Contribution towards penalty amount	Amount
		<p>information and records, and early provision of a substantive internal review report. These matters materially assisted the JFSC’s understanding of the facts and issues, reduced further investigative steps that would otherwise have been required, and enabled settlement discussions to be offered before the conclusion of Stage 1.</p> <p>The discount reflects settlement efficiencies in the circumstances of this illustrative example. It does not duplicate the general co-operation already taken into account as mitigation at Step 5, or re-assess matters otherwise reflected in the penalty calculation.</p>		
14	DISCOUNTED penalty to be imposed under settlement agreement.			£2,200,000

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 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 His 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.

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