



Guidance on the Jersey Financial Services Commission's use of Enforcement Powers

This guidance note explains the Jersey Financial Services Commission's (JFSC) use of the enforcement powers contained in the regulatory lawsⁱ.

The JFSC has to be satisfied issues that pose a risk to the public and the Island's reputation are given due attention and rectified as quickly as possible to reduce such risks.

The need for the use of enforcement powers may arise where a person has contravened the regulatory laws or regulations, orders, code of practice, directions or conditions made under these laws, or has committed other instances of misconduct (including breaches of the anti-money laundering legislation).

The JFSC is committed to a fair and proportionate use of its enforcement powers. Where appropriate, the JFSC will try to ensure that contraventions or instances of misconduct are rectified in conjunction with the person concerned through the normal supervisory processes, and try to agree the implementation of a remedial action programme to restore the person to compliance as soon as possible. This may involve agreed changes in corporate governance, management and internal controls, or agreement to discontinue some or all of the person's operations or areas of activity.

Where such action is not considered to be sufficient or where co-operation is lacking, there may be a need for more formal enforcement action by the JFSC involving the use of statutory powers contained within the regulatory laws.

The JFSC has a range of powers that it can use as part of its enforcement processⁱⁱ. The principal powers available to the JFSC are as followsⁱⁱⁱ:

Warnings and Statements

1. The issuing of a private written warning to the board of directors and/or senior management of a firm or to individual principal person(s) setting out the JFSC's concerns as to the conduct of the firm and/or individuals and the consequences of repetition^{iv};
2. The issuing of a public statement detailing the misconduct as described in the document "Guidance on the Commission's use of public statements";

Directions and Conditions

3. The issuing of a direction or licence condition to require a person to take (or not to take) certain action. Failure to comply with the direction or licence condition could result in a criminal prosecution^v;

Applications to the Court^{vi}

4. Application to the Court for an injunction to restrain a person from committing or repeating a contravention, or an order to remedy a contravention;
5. Application to the Court for a registered person's business to be subject to supervision, restraint or conditions, and for the registered person to make good losses suffered by third parties as a result of specified contraventions of the regulatory laws;
6. Application to the Court for the appointment of a Manager to take charge of a person's affairs relating to financial services business;

Objections and Revocation

7. Objection to a principal person or changes in shareholdings;
8. Revocation of a registered person's licence; and

Application of a Civil Penalty

9. The JFSC may in certain circumstances impose a civil penalty for breaches of a Code of Practice including breaches of the AML handbook. The circumstances when a civil penalty may be imposed together with the process to be adopted is set out in the Regulatory Sanctions: Decision-Making Process^{vii}.

The particular enforcement measures, or combination of measures adopted, will depend on factors such as the seriousness of the contravention or instance of misconduct, the degree of cooperation and openness displayed by the person concerned and whether it is considered necessary or desirable for the matter to be brought into the public domain through the use of a public statement. Taking account of these factors, the JFSC will consider each case carefully on its merits.

Criminal Prosecution

A referral of a contravention of the regulatory laws to the States of Jersey Police and or the Attorney General for a decision to conduct a criminal investigation/criminal prosecution is not considered as an enforcement action on the part of the JFSC. (The factors that the JFSC would take into account in making such a referral are set out in the document "Guidance Note on making a referral to the Police and/or Attorney General". Although this specifically relates to policy on referral of apparent cases of breaches of the Money Laundering (Jersey) Order 1999, the policy has more general application to other breaches of the regulatory laws including other financial crimes.)

i The relevant laws are the Banking Business (Jersey) Law 1991, the Collective Investment Funds (Jersey) Law 1988, the Insurance Business (Jersey) Law 1996 and the Financial Services (Jersey) Law 1998.

ii There are differences in the range of powers available within each of the regulatory laws.

iii Please note that this summary is no substitute for reading each of the laws detailed in note 1

iv There is no explicit power to issue such a warning in the regulatory laws, but the JFSC considers that the ability to do so is an intrinsic part of its supervisory function.

v Directions and conditions may be in force for reasons other than for enforcement action. Directions may be made public in certain circumstances.

vi Based principally on the Financial Services (Jersey) Law 1998, as amended.

vii To be read in conjunction with the Financial Services Commission (Amendment no 6) (Jersey) Law 2015 and the Financial Services Commission (Financial Penalties) (Jersey) Order 2015.