

Explanatory Note

Discretionary Financial Penalties – Schedule of Bandings

Please note that:

- The below only applies in the event that it has been determined that it is appropriate to impose a discretionary financial penalty under section 39 of The Financial Services Business (Enforcement Powers)(Bailiwick of Guernsey) Law, 2020 ('the Enforcement Powers Law').
- In determining which band a firm or individual may fall under, the behaviour of the firm and individual (as relevant) will be considered. All of the characteristics falling within a particular band do not have had to occur for the proposed sanctions to fall within that band. Additionally, where some behavior falls within a lower band and some within the higher band, this does not mean that the lower band will be applied. Each situation will be looked at on a case by case basis to determine which is the appropriate band to apply.
- Where financial penalties are imposed upon both a firm and an individual (e.g. a director) for the same set of circumstances, these persons may, due to their differing obligations and in consideration of their behaviour, fall under different bands. However, each situation will be considered as appropriate in (a) arriving at a decision whether or not to impose a discretionary financial penalty and (b) the amount of any such penalty (including the matters which must be considered under section 39(6) of the Enforcement Powers Law).

Issue	Band 1	Band 2	Band 3	Band 4
Potential Sanctions – Firms				
	*Up to £50,000	Up to £200,000	Up to £500,000 (where it is proposed to impose a fine of more than £300,000, such fine shall not exceed 10% of a firm's turnover in the relevant accounting period, up to £500,000)	Up to £4 million (where it is proposed to impose a fine of more than £300,000, such fine shall not exceed 10% of a firm's turnover in the relevant accounting period, up to £4 million)
Potential Sanctions – Individuals				
	*Up to £25,000 (with consideration to the total emoluments the individual has received during his/her connection to the firm)	Up to £100,000 (with consideration to the total emoluments the individual has received during his/her connection to the firm)	Up to £250,000 (with consideration to the total emoluments the individual has received during his/her connection to the firm)	Up to £400,000 (with consideration to the total emoluments the individual has received during his/her connection to the firm)
Characteristics				
Whether the contravention or non-fulfilment was brought to the attention of the Commission by the person concerned	Brought to the attention of the Commission by the person concerned as soon as discovered	Brought to the attention of the Commission by the person concerned	Not brought to attention of the Commission by the person concerned but they acknowledged, straight away, or within a short time, breaches when brought to their attention	Not brought to attention of the Commission by the person concerned and they failed to acknowledge the breaches once identified by the Commission.
Open and Cooperative	Completely open and cooperative	Partially, but not fully open and cooperative	Partially, but not fully open and cooperative	Not open and cooperative
The seriousness of the contravention or non-fulfilment				
The number of failings, the level of seriousness of the failings, whether or not systemic	A small number of regulatory failings which are serious in nature but not systemic	Regulatory failings which are serious in nature but not systemic	Systemic regulatory failings which are serious in nature	Systemic regulatory failings, which are serious in nature
Risk of loss	No risk of loss to customers of the Licensee	Risk, but no actual loss to customers of the Licensee	Significant risk, but no actual loss to customers of the Licensee	Significant risk of loss to customers or actual loss to customers of the Licensee

Risk to reputation	No reputational risk to the Bailiwick	Reputational risk to the Bailiwick	Significant reputational risk to the Bailiwick	Significant reputational risk to the Bailiwick or actual reputational damage
Financial crime risk	Small risk of financial crime or being used to facilitate financial crime	Risk of financial crime or being used to facilitate financial crime	Significant risk of financial crime or being used to facilitate financial crime	Suspected financial crime or Licensee used to facilitate financial crime
Previous history	No adverse regulatory history	Previous unconnected regulatory breaches	Previous regulatory breaches which may or may not be connected	Previous regulatory breaches/poor regulatory history which may or may not be connected
Whether or not the contravention or non-fulfilment was inadvertent				
Deliberate actions / incompetence	All failings were inadvertent	Majority of failings were inadvertent	Majority of failings were not inadvertent	Failings were not inadvertent
What efforts, if any, have been made to rectify the contravention or non-fulfilment and to prevent a recurrence	Effective steps taken to rectify breach(es) and prevent recurrence	Little action taken to rectify breach(es) and prevent recurrence, or the steps taken were insufficient	Little or no action taken to rectify breach(es) and prevent recurrence, or the steps taken were insufficient	No steps taken to rectify breach(es) and prevent recurrence

*** Supervisory action may be more appropriate for failings identified in Band 1. As such we may not seek to enforce on the characteristics within this band, and where there are no other aggravating factors, supervisory action may be deemed to be more appropriate. This will be considered on a case by case basis.**

The schedule above is only a guide and the sanctions recommended in individual cases may differ. Each case will be assessed on its own merits taking into account Section 39 of the Enforcement Powers Law which includes the characteristics outlined in the schedule as well as any other aggravating or mitigating factors such as the financial consequences to the firm/individual (taking into consideration the total emoluments an individual has received from a firm during the time they have been connected with them) and, most importantly, the reputational risk to the Bailiwick. All factors under section 39(6) will be taken into consideration as required under the Enforcement Powers Law. Whether the proposed sanction(s) will have the appropriate deterrent effect is also a consideration. The relevant person of a licensee will be assessed against the failings of the licensee and the role that they may have played in that process. In essence, they will be assessed against the minimum criteria for licensing on whether they, as an individual, are fit and proper. In doing so, consideration will be given, amongst other things, to their probity, competence, experience, and soundness of judgement and the integrity and skill in which they carried out their duties. Dependent upon the severity of the findings made against the firm, consideration will then be given to who held the key responsibilities and should be accountable for the failings identified.