

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 11D of the FSC Law.
- In determining which band a firm or individual may fall under, the behaviour of the firm and individual (as relevant) will be considered. Accordingly, 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 11D(2)(e) of the FSC Law).

Band 1		Band 2		Band 3		Band 4	
Potential Sanctions – Firms							
*Up to £50,000		Up to £200,000		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 £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 £4 million)	
Potential Sanctions – Individuals							
*Up to £25,000		Up to £100,000		Up to £250,000		Up to £400,000	
(with consideration to the total emoluments the individual has received during their connection to the firm)		(with consideration to the total emoluments the individual has received during their connection to the firm)		(with consideration to the total emoluments the individual has received during their connection to the firm)		(with consideration to the total emoluments the individual has received during their connection to the firm)	
Characteristics							
Small number of regulatory failings, none of which are serious in nature.		Several regulatory failings, which may or may not be serious in nature.		Significant failings but not systemic, which may or may not be serious in nature.		Systemic failings, which may or may not be serious in nature.	
Licensee was open and co-operative with the Commission		Risk of loss to clients of the licensee		Risk of loss to clients of the licensee		Significant risk of loss to clients or actual loss to clients	
Small risk of financial crime or being used to facilitate financial crime		Risk to the reputation of the Bailiwick		Significant risk to the reputation of the Bailiwick		Significant risk to the reputation of the Bailiwick	
Licensee brought breaches to the Commission's attention		Licensee was open and co-operative with the Commission		Licensee was not open and co-operative with the Commission		Licensee was not open and co-operative with the Commission	
Steps taken to rectify breach(es) and prevent recurrence		Risk of financial crime or being used to facilitate financial crime		Significant risk of financial crime or being used to facilitate financial crime		Financial crime committed or licensee used to facilitate financial crime	
		Licensee acknowledged, straight away, or within a short time, breaches when brought to their attention		Licensee failed to acknowledge breaches		Licensee deliberately withheld the breaches from the Commission in order to either obtain a benefit or mitigate a loss	
		Steps taken to rectify breach(es) and prevent recurrence but insufficient		Few steps taken to rectify breach(es) and prevent recurrence and steps insufficient		No steps taken to rectify breach(es)	
		Previous unconnected regulatory breaches		Previous unconnected regulatory breaches may not be connected		Poor regulatory history which may or may not be connected	

***Supervisory action will often be more appropriate for failings identified in Band 1 and as such we will not seek to enforce on the characteristics within this band where supervisory action is deemed to be sufficient.**

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 11D of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 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. 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.