

UPDATE

# Jersey Financial Services Commission issues first civil penalty

Update prepared by Mathew Cook (Counsel, Jersey)

---

Following much anticipation, we now have a chance to review the public statement and identify key learning points for industry.

---

The Jersey Financial Services Commission (the **JFSC**) has had the power to issue civil penalties since March 2015 and this week issued the first penalty. With the expansion of the civil penalty regime in October 2018 to principal persons and the JFSC issuing recent updates to the Codes of Practice as well as its decision making process and methodologies for determining the amount of any penalty, the regime is clearly now fully operational. It is anticipated that this is therefore the first of a number of penalties expected over the coming months and years.

All regulated businesses should ensure they are equipped to deal with regulatory issues and possible penalty scenarios. Our one-page guide to dealing with enforcement scenarios (**P.R.O.T.E.C.T.**) should assist in that regard.

The penalty in this first case arose, according to the accompanying public statement, as a result of a failure to implement a remediation plan to the satisfaction of the JFSC. Issues had been identified from reviews in October 2014 and September 2015, and those issues were fed into a remediation plan presented to the JFSC in October 2015. After a series of updates to the JFSC, the JFSC was advised in March 2017 that the remediation plan and associated actions had been completed. It was subsequently agreed with the JFSC that an internal audit report should be conducted on the effectiveness of the remediation plan. That report, together with the JFSC's own report from its investigation, concluded that a number of issues remained in need of remediation.

Some of the key points to take away from this case:

- (a) **Remediation:** This penalty highlights the importance of remediation. Indeed it appears that the penalty was imposed, not for the original failings, but for inadequacies in the remediation process once the failings had been identified. The civil penalty regime specifically includes the ability to issue a penalty where a breach of a Code of Practice is not rectified to the satisfaction of the JFSC within the timeframe determined by the JFSC. It appears that in this case a remediation plan was in place, but was not fully implemented to the satisfaction of the JFSC. Clearly ensuring that a remediation plan is achievable and that compliance with it is clearly tracked and evidenced is vital;
- (b) **Resourcing:** The public statement also makes it clear that there was an issue with resourcing. It is a requirement of the various Codes that senior management is responsible for ensuring robust arrangements for compliance with the regulatory framework, including a permanent and effective compliance function. It appears that in this case there was an acknowledgement that the compliance function was under-resourced.
- (c) **Governance:** In addition to the compliance function, ensuring that the overall governance structure of a business is appropriate and effective is key. The public statement refers to the need for a governance structure resulting in clear accountability and providing transparency in areas of the business requiring investment;

- (d) **Interpretation:** A number of the key learning points identified by the JFSC in the public statement are open to interpretation (for example what is the 'requisite standard', what constitutes 'adequate funding and resources', what constitutes 'relevant training', what is 'adequate' or 'appropriate' in the context of systems and controls etc.). The public statement is understandably limited in explaining these areas, but there is guidance available elsewhere on certain of these aspects. However, assessing whether any particular provision of any of the Codes has been breached is very much open to interpretation and there are some steps that a business can take to justify its position and protect itself against enforcement action;
- (e) **Discount:** Finally, it is clear from the public statement that the JFSC gave credit for a prompt and open approach to the matter, including, it appears, a discount in the level of penalty. Whilst it is unclear from the public statement which band the fine was placed into, it appears likely that it was in Band 2. Band 2 allows for fines up to £4 million, and so the fine of £381,010 suggests that there was substantial mitigation and/or the breaches were considered relatively low level. Dealing with the JFSC in an open and co-operative manner is another key feature of the Codes and so a pro-active approach is to be encouraged, albeit also ensuring that the message to be delivered to the JFSC in all remediation communications is clear and achievable.

The specialist regulatory team at Mourant has extensive experience in dealing with potential regulatory failings and possible enforcement scenarios, and so please do not hesitate to contact a member of the team with any concerns.

## Contacts

---



**Simon Gould**  
Partner, Mourant Ozannes  
Jersey  
+44 1534 676 367  
simon.gould@mourant.com



**Mathew Cook**  
Counsel  
Jersey  
+44 1534 676 371  
mathew.cook@mourant.com



**Sarah Huelin**  
Counsel  
Jersey  
+44 1534 676 540  
sarah.huelin@mourant.com

---

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. © 2019 MOURANT OZANNES ALL RIGHTS RESERVED