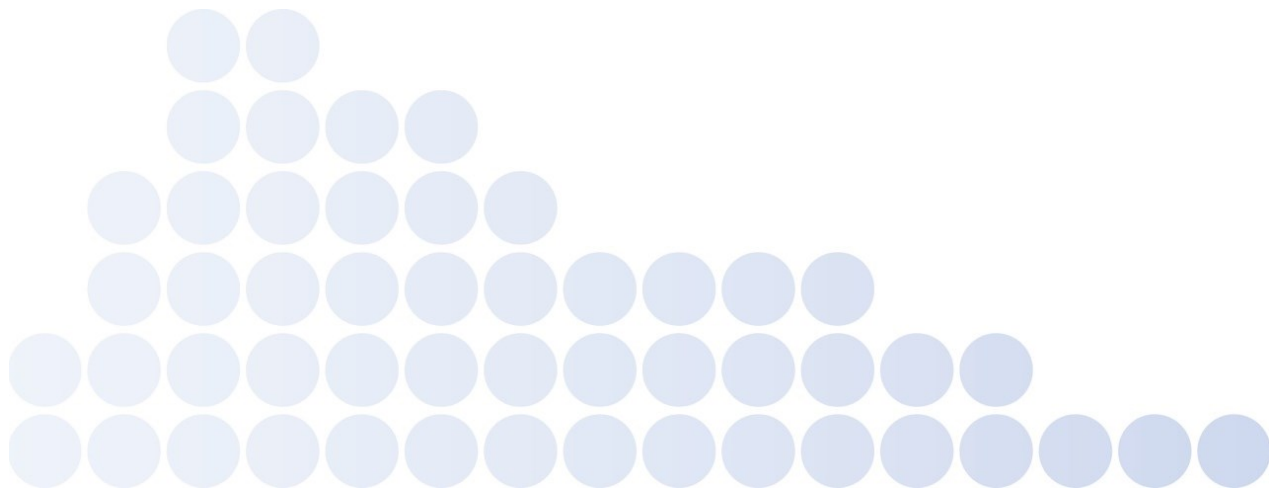




The Gibraltar Financial Services Commission

Settlement Policy

Published: April 2016



1. This policy statement sets out the GFSC's approach to settlement of disciplinary and regulatory cases subject to the enforcement process.
2. We may from time to time change our settlement policy. When we do, we will place the amended policy statement on our website.

The nature of settlement

3. A Regulatory Settlement Agreement is an agreed regulatory outcome in the public interest, the terms of which are accepted by the firm or individual. Settlement takes place in the context of our regulatory objectives and is therefore not driven by the same considerations that inform commercial settlement.
4. We may decide to settle a case by way of a Regulatory Settlement Agreement where that would assist us in achieving a regulatory outcome that is proportionate and effective in the public interest. For example, settlement may achieve a swifter outcome for the protection of consumers, enable us to send timely messages to the market and limit the time and resources of the GFSC in investigating and taking contested enforcement action.
5. Although a Regulatory Settlement Agreement is usually an efficient outcome, we will also satisfy ourselves that it is an effective outcome. We use enforcement as a regulatory tool to deliver a credible deterrent and to change behaviours, both at an individual and a wider level. There will be circumstances where we will consider it necessary to pursue enforcement action through the statutory decision making process. You can access our enforcement strategy [here](#).

When and how we consider settlement

6. We consider our regulatory objectives when deciding:
 - i. whether a case is suitable for settlement discussions; and
 - ii. what the terms of settlement should be.
7. In doing so, we take into account a range of factors, including:
 - the nature, seriousness and impact of the wrongdoing;
 - whether the firm or individual has derived any benefit;
 - whether there has been any consumer detriment;
 - the response of the firm or individual and whether it is accepted that wrongdoing has taken place;
 - the regulatory history of the firm or individual;
 - the level of cooperation of the firm or individual in the course of our investigation of the matter and during settlement discussions;

- whether the firm or individual is likely to comply with the terms of a settlement agreement;
- whether settlement will achieve a satisfactory outcome for those affected by the alleged or actual breach;
- what the effect of settlement would be, including whether it would achieve a credible deterrent and raise awareness of standards and consequences of non-compliance.

These factors are not exhaustive; not all factors will be relevant to a particular case, and there may be other relevant factors which we will take into account.

8. Early acknowledgement by a firm or individual of a breach of regulatory requirements will be taken into account in determining whether a case is suitable for settlement and is the appropriate outcome.
9. Cases which involve alleged dishonesty or lack of integrity, or where the firm or individual does not accept non-compliance, are generally not suitable for settlement.

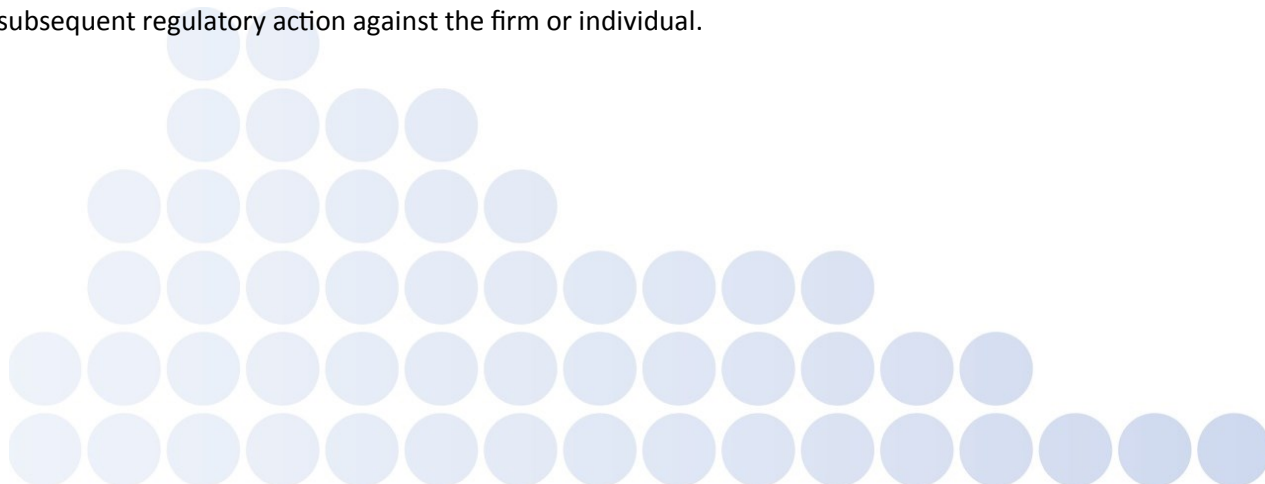
Settlement discussions

10. Where both parties agree, settlement discussions may take place at any point in the enforcement process prior to the issue of a Decision Notice. There is no obligation on either side to enter into settlement discussions or to enter an agreement.
11. We will not generally agree to settlement discussions or agreement until we have sufficient understanding of the nature and gravity of the matter to enable us to make a reasonable assessment of the appropriate outcome.
12. Where we determine a case is suitable for settlement we will usually invite the firm or individual to enter into settlement discussions at the earliest opportunity. If a firm or individual declines, the case will proceed in accordance with the enforcement process. An individual or firm may invite the GFSC to enter into settlement discussions.
13. If a firm or individual later in the process wishes to enter into settlement discussions, we will consider whether it is appropriate. If discussions are not instigated by the firm or individual until later in the process, the terms of settlement may reflect the stage that the case has reached in the enforcement process.
14. Settlement discussions will be conducted on a *without prejudice* basis. If an agreed outcome cannot be reached, the case will proceed in accordance with the enforcement process. *Without prejudice* correspondence and material created in the context of settlement discussions will not be used or referred to at any stage in the enforcement process.

15. Settlement discussions are expected to be genuine and proactive. Settlement may not be used to unnecessarily delay the formal decision making process. We may impose a time limit for the conclusion of settlement discussions or abandon these where we think that they are not proceeding expeditiously or the delay they are causing is prejudicial to our statutory objectives.

Form and effect of a settlement agreement

16. A Regulatory Settlement Agreement will be in writing and agreed by the parties. The agreement will:
- set out the relevant facts;
 - identify the non-compliance admitted by the firm or individual;
 - identify the nature and duration of any agreed sanction and/or the action the firm or individual has agreed to accept or take (as the case may be);
 - set out a waiver by the firm or individual of the right to appeal and contest any of the above;
 - set out that we may proceed in accordance with the enforcement process in relation to the original non-compliance that was the subject of the enforcement process and that led to the agreement if (i) the agreement is breached or not complied with or (ii) evidence of a different and more serious kind of wrongful involvement or wrongdoing emerges in relation to the same matter or (iii) the GFSC has been misled;
 - provide that it may be rescinded at any time if the firm or individual has misled the GFSC.
17. A Regulatory Settlement Agreement (or in our discretion details of it) will be published, unless we consider that it is not in the public interest to do so or that the public interest is not advanced by publication. You can find our policy on publication [here](#).
18. Failure to comply with the terms of a Regulatory Settlement Agreement will itself be regarded by the GFSC as a regulatory matter. In such circumstances, we will consider enforcement action in respect of the failure to comply with its terms (as well as the original non-compliance that led to the agreement).
19. As an agreed regulatory outcome, a Regulatory Settlement Agreement will exist on the regulatory record of the firm or individual. The subject matter of an agreement will be taken into account in the consideration of any subsequent regulatory action against the firm or individual.



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