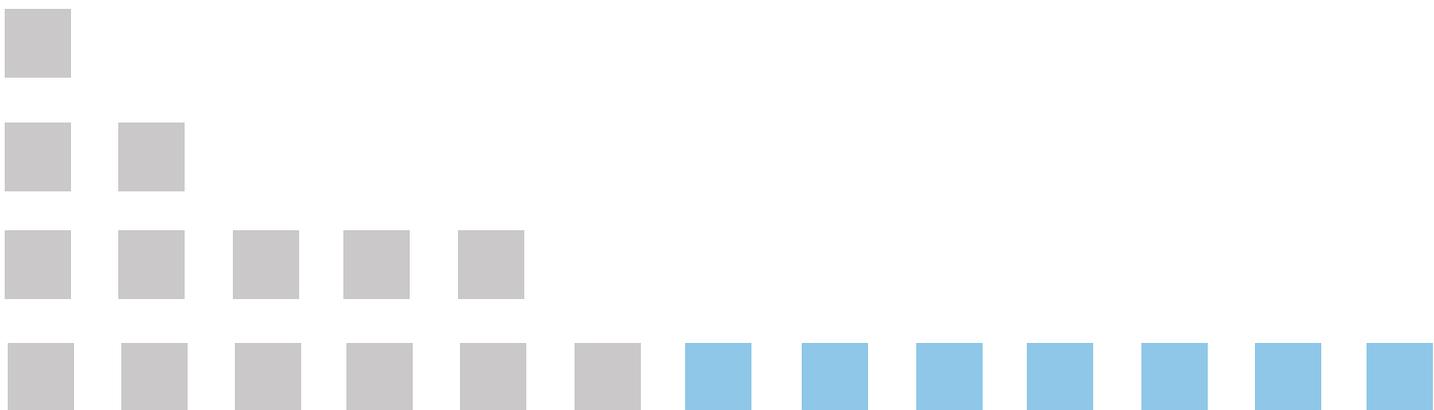

Approach to Sanctioning Action

Sanctioning Guide



Sanctioning Guide

Introduction

This Sanctioning Guide sets out:

- The GFSC's cross-sectoral sanctioning powers; and
- When and how the GFSC will consider exercising its sanctioning powers, including:
 - (a) Aggravating and mitigating factors that it will take into account; and
 - (b) The methodology for calculating Administrative Penalties.

The GFSC must have regard to this Guide before exercising its sanctioning powers, in accordance with Section 158 of the Financial Services Act 2019 (the "Act").

Sanctions are tools that the GFSC may use to assist in achieving its regulatory objectives. The outcomes we seek to achieve when we impose sanctions are to:

- dissuade firms/individuals and/ or wider industry stakeholders from non-compliance with regulatory requirements;
- hold firms/ individuals accountable for any such non-compliance;
- change the behaviour and raise the standards of the firms/ individuals involved, as well as of wider industry stakeholders;
- restrict and, where necessary, remove firms/ individuals that pose an unacceptable risk to our regulatory objectives;
- prevent or remedy any financial gain and/ or benefit derived from non-compliance;
- swiftly and effectively safeguard consumer interests through protective measures;
- provide restitution for affected consumers;
- raise awareness of regulatory obligations and standards; and
- promote the GFSC's regulatory and/ or strategic priorities.

Sanctioning powers

Part 11 of the Act sets out the GFSC's cross-sectoral sanctioning powers. These consist of:

1. an administrative penalty;
2. a public statement;
3. a cease and desist order;
4. a temporary suspension of permission order; and
5. a prohibition order.

A few sector-specific Parts of the Act and some of the sector-specific regulations (such as those transposing EU Directives MiFID 2, IDD and CRD IV) made under the Act set out additional sanctioning powers applicable to particular sectors.

More than one sanctioning power may be exercised against a firm/ individual in respect of the same contravention.

When and how the GFSC will consider exercising its sanctioning powers

We may take sanctioning action against a firm, an individual or both.

Where firms/ individuals demonstrate that they are unwilling or unable to comply with regulatory requirements, or where a serious breach of any such requirement has occurred, we will consider exercising our sanctioning powers.

Firm or individual

We will consider taking sanctioning action against a firm where it has been found to have breached regulatory requirements under any applicable legislation.

We will apply the general principle that it is the responsibility of the senior management of a firm to properly run its business and to operate in accordance with regulatory requirements. Where an individual is found to be personally culpable, we may also decide to take sanctioning action against that individual, including in relation to their fitness and propriety.

Under the Act, we may exercise a sanctioning power against a regulated individual in respect of a contravention of a regulatory requirement by an authorised person (a “firm”) if the individual contravened the regulatory requirement or was knowingly concerned in that contravention, and at the time of the contravention, the individual was a regulated individual at that firm. In addition, where required by an EU Directive (at the time of the transposition), the relevant sector-specific regulations extend the application of the sanctioning powers to other individuals in a firm if the individual in question contravened a regulatory requirement or was knowingly concerned in the contravention. The sanctioning powers can also be exercised against individuals in authorised collective investment schemes and pension schemes.

Under the Supervisory Bodies (Powers etc.) Regulations 2017, the GFSC may take sanctioning action against a legal person (a “firm”) where:

- (a) a controlling person defaults or breaches the Proceeds of Crime Act 2015, or other applicable law or guidance for the benefit of that firm; or
- (b) a lack of supervision or control by a controlling person has made it possible for a person under their authority to default or breach that Act or other applicable law or guidance for the benefit of that firm.

A controlling person means a person who:

- (a) has a leading position within the firm, based on
 - (i) their power to represent the firm;
 - (ii) their authority to take decisions on behalf of the firm; or
 - (iii) their authority to exercise control within the firm; and
- (b) acts alone or as part of an organ of the firm.

We will also have regard to the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

Criteria for sanctioning actions

We will ensure that the type and level of any sanctioning action is reasonable, proportionate, effective and dissuasive, taking account of all relevant circumstances, including, where appropriate:

- (a) the gravity and duration of the contravention;
- (b) the degree of responsibility of the firm/ individual against whom the sanctioning power is being exercised;
- (c) the financial strength of the firm/ individual, for example as indicated by turnover or annual income;
- (d) in so far as they can be determined:
 - (i) the importance of the profit/ benefit gained or losses avoided by virtue of the contravention;
 - (ii) the losses sustained by others as a result of the contravention; and
 - (iii) where applicable, the damage to the functioning of markets or the wider economy;
- (e) the firm's/ individual's level of cooperation with the GFSC;
- (f) previous contraventions by the firm/ individual;
- (g) measures taken after the contravention by the firm/ individual to prevent its repetition;
- (h) whether the firm/ individual has complied with guidance relevant to the subject matter of the contravention;
- (i) whether the breach reveals serious or systemic weaknesses within the firm's management systems or internal controls relating to all or part of its business;
- (j) any action taken by the GFSC in previous, similar cases;
- (k) the nature and extent of any financial crime facilitated or occasioned by, or otherwise attributable to, the breach;
- (l) whether there are a number of smaller issues, which individually may not justify action, but which do so when taken collectively; and
- (m) whether or not the firm/ individual knew or ought to have known of the contravention.

Factors which are likely to lead to sanctioning action against a regulated individual include:

- dishonesty;
- intentional, reckless or seriously incompetent behaviour;
- repeated or significant involvement in the firm's failure to comply with regulatory obligations;
- abuse of a position of trust;
- criminal convictions;
- findings of other regulators; and
- failure to comply with individual regulatory requirements (e.g. threshold conditions).

The factors set out above are not exhaustive. Not all of the factors may be relevant in a particular case and there may be other factors, not listed, that are relevant.

Aggravating and mitigating factors

Factors that the GFSC will regard as aggravating a contravention by a firm/ individual when considering the type and level of any sanctioning action include:

- a contravention that was deliberate or reckless;
- a poor compliance record (this will include a failure to follow any direction(s) issued);
- a poor disciplinary record;
- a failure to pay appropriate attention to relevant guidance issued by the GFSC;
- a failure to follow the firm's procedures;
- an absence of relevant procedures;
- a failure to implement recommendations made by the firm's compliance officer or money laundering compliance officer in order to ensure compliance with regulatory requirements;

- clients of the firm experiencing a significant loss as a result of the contravention or not making a profit that would otherwise have accrued absent the contravention;
- action taken against the firm/ individual by other domestic or international regulatory authorities that is relevant to the breach in question;
- false or inaccurate information given by the firm/ individual and whether the information appears to have been given in an attempt to knowingly mislead the GFSC;
- a failure to bring the contravention promptly and completely to the attention of the GFSC;
- a business model that encourages a disregard for regulatory requirements; and
- arranging resources to avoid disgorgement and/or payment of a financial penalty.

Factors that the GFSC will regard as mitigating a contravention by a firm/ individual when considering the type and level of any sanctioning action include:

- the contravention being brought voluntarily, promptly and completely to the attention of the GFSC;
- co-operating fully with any investigation;
- an evidenced, previously strong, compliance record;
- the firm swiftly and thoroughly amending its procedures to address the contravention; and
- swift resolution of any client losses arising as a result of the contravention or swift payment of compensation to make good a profit that the client would otherwise have accrued absent the contravention.

The factors stated set out above are not exhaustive. Not all of the factors may be relevant in a particular case and there may be other factors, not listed, that are relevant.

Where a criminal offence may have occurred the GFSC will liaise with the relevant law enforcement agency to consider referral to that agency and/or a referral to the Director of Public Prosecutions.

Sanctioning factors

The relevant factors listed in this section will be taken into account at different stages – firstly, when considering whether to impose a sanction; secondly, when considering what type of sanction to impose; and thirdly, when calculating the amount of any administrative penalty.

Administrative Penalties – methodology for calculation

This section describes and gives guidance around the GFSC’s approach and methodology when calculating the amount of an administrative penalty. The circumstances of each case will be different and the GFSC will apply each step in the methodology with the degree of flexibility and discretion that the particular case merits. Beyond the exercise of discretion applied to each step, the GFSC will also have the ability to impose an administrative penalty of an amount lower than the one produced by the application of the methodology set out below.

The methodology applies once it has been decided that it is appropriate to impose a financial penalty, after taking into account the relevant considerations referred to under the Section “When and how the GFSC will consider exercising its sanctioning powers” above.

Maximum Statutory Administrative Penalties

The maximum statutory penalty that the GFSC may impose against a firm/ individual for contraventions varies depending on the sector and regulated activity. The penalty limits are mostly set out in the sector-

specific regulations made under the Act. For some sectors or areas the limits are set out in different sector-specific Parts of the Act. This is the case for:

- Collective investment schemes (Part 18)
- Personal pension schemes (Part 27)
- Occupational pension schemes (Part 26)
- Auditors (Part 24)
- Insolvency practitioners (Part 25)
- Contraventions relating to Market Abuse (Part 21)
- Issuers of listed securities and prospectuses (Part 19)

There are also fining limits set out in the Supervisory Bodies (Powers Etc.) Regulations, which are made under the Proceeds of Crimes Act, in respect of contraventions of that legislation.

Methodology for calculating Administrative Penalties

Table 1 contains a summary of all the steps to be followed under the methodology in order to determine the appropriate penalty (i.e. Steps 1 – 14).

Steps 1, 11 and 14 of the methodology are then explained in more detail because they are more complex.

The full detailed methodology is set out in Table 4.

For illustrative purposes only, Tables 5-7 contain three worked examples of how a financial penalty could be determined using this methodology.

Summary of methodology Steps 1- 14

Steps 1, 11 and 14 of the methodology are then explained in more detail because they are more complex.

Table 1		
Step	Description	Calculation of amount for each step
1	Assessment of the seriousness of the contravention(s) by assessing the impact on the GFSC's relevant regulatory objectives.	The amount calculated by reference to Tables 2 and 3. (Step 1 figure)
2	Assessment of whether the firm/ individual knew, or ought to have known, of the contravention.	An additional amount of up to 50% of the Step 1 figure.
3	Assess the extent to which the firm/ individual voluntarily reported the contravention.	Voluntarily reported = a potential deduction of up to 25% of the Step 1 figure.
4	Assess the extent to which the firm/ individual has taken steps to rectify the contravention and to prevent its recurrence.	Steps taken to rectify = a potential deduction of up to 25% of the Step 1 figure.
5	Assess any aggravating / mitigating factors (see Section "When and how the GFSC will consider exercising its sanctioning powers"). (Step 5 will not take into account aggravating or mitigating factors considered in other steps of the methodology).	A possible (net) additional amount of up to 50% of the Step 1 figure or a (net) reduction of up to 50% of the Step 1 figure.
6	Assess whether the firm/ individual benefited from the contravention(s).	Determine the appropriate amount to remove the benefit (where quantum can be determined).

7	Have regard to the penalties imposed by the GFSC in other cases.	To achieve fairness and consistency, adjust penalty as appropriate.
8	GROSS CALCULATION of penalty to be imposed, before the application of the statutory maximum.	[This will be the product of Steps 1 to 7]
9	Assess the Step 8 figure against the statutory maximum penalty.	Reduce penalty amount to ensure it is below the statutory maximum (if it exceeds it).
10	MAXIMUM-ADJUSTED penalty amount.	£xxx
11	Consider the financial position of the firm/ individual and the impact on any third parties (including creditors of the principal person).	Reduce penalty amount as appropriate.
12	ACTUAL penalty to be imposed (unless Steps 13 and 14 are relevant).	[The Step 10 figure as adjusted by Step 11]

13	Discount for early settlement (where applicable).	[% discount expressed in monetary terms]
14	DISCOUNTED penalty to be imposed under settlement agreement.	[The Step 12 figure as adjusted for the discount in Step 13]

Step 1 – Assessment of the seriousness of the contravention (or the contraventions, in aggregate)

Assessment of the impact of the contravention (or the contraventions, in aggregate) on the GFSC’s relevant regulatory objectives

The seriousness of the contravention(s) will be judged by its (or their) impact on the GFSC’s relevant regulatory objectives, which we must have regard to when carrying out any of our functions, which are:

- (a) the protection of the good reputation of Gibraltar;
- (b) the protection of consumers; and
- (c) the reduction of financial crime.

Under the methodology the GFSC will judge the impact of the contravention (or the contraventions, in aggregate) on these relevant regulatory objectives, with Level 1 being the lowest impact and Level 5 the highest. The impact on the reduction of financial crime objective will only be assessed and judged where it is relevant to the case.

The table below summarises the factors that would influence the assessment of the impact on the three relevant regulatory objectives:

Table 2	
Regulatory Objective	Determining the level (sliding scale)
The protection of the good reputation of Gibraltar.	Level 1 – No significant reputational damage. ↓ Level 3 – Significant reputational damage domestically . ↓ Level 5 – Significant reputational damage internationally .

The protection of consumers.	Level 1 – Low risk of loss. ↓ Level 3 – Significant risk of loss or significant occurrence of loss. ↓ Level 5 – Very significant risk of loss or very significant occurrence of loss.
The reduction of financial crime (the impact on this objective will only be assessed and judged where it is relevant to the case).	Level 1 – Low risk of financial crime occurring. ↓ Level 3 – Significant risk of financial crime occurring or significant financial crime occurred. ↓ Level 5 – Very significant risk of financial crime occurring or very significant financial crime occurred ¹ .

For consistency, when evaluating the impact of the contravention against the objective of the protection of the good reputation of Gibraltar, the methodology works on the assumption that the contravention will, if it hasn't done so already, become public knowledge (which in most cases will occur through a public statement by the GFSC when the financial penalty is imposed under a settlement agreement or otherwise).

Under the methodology, once the impact of the contravention (or the contraventions, in aggregate) on each of the relevant regulatory objectives has been judged using Table 2, the resultant average level (rounded up or down as appropriate) would be that which determines the "seriousness" of the contravention and how much in financial terms the "seriousness" factor will contribute towards the final amount of the penalty, as set out in Table 3 below. Under the methodology, this is figure is known as the **Step 1 figure** and is the Highest Applicable Penalty. As referred to above, the impact on the reduction of financial crime objective will only be assessed and judged where it is relevant to the case. If it is not relevant, the step 1 figure would be based on the average level of impact on the other two regulatory objectives.

Table 3	
"Seriousness"	Step 1 figure – Expressed as a percentage of the maximum statutory penalty (see Section "Administrative Penalties – methodology for calculation") that could be imposed on the firm/ individual
Level 1	15%
Level 2	30%
Level 3	45%
Level 4	60%
Level 5	75%

¹ Financial crime in this context includes financial crime by a person or its customers/ clients

Step 11 – Serious financial hardship

The GFSC's approach to determining penalties is intended to ensure that financial penalties are proportionate to the contravention. The GFSC is required to consider the financial strength of the firm/ individual, for example as indicated by turnover or annual income, when deciding on the level of penalty to impose.

Where a firm/ individual claims that payment of the penalty proposed will cause them serious financial hardship, the GFSC will consider whether to reduce the proposed penalty only if:

1. the firm/ individual provides verifiable evidence that payment of the penalty will cause them serious financial hardship; and
2. the firm/ individual provides full, frank and timely disclosure of the verifiable evidence, and cooperates fully in answering any questions asked by the GFSC about their financial position.

The onus is on the firm/ individual to satisfy the GFSC that payment of the penalty will cause them serious financial hardship.

Individuals

The GFSC will consider all relevant circumstances in assessing whether a penalty would cause an individual serious financial hardship. We will consider the individual's ability to pay the penalty over a reasonable period (normally no greater than three years).

The GFSC will consider agreeing to payment of the penalty by instalments where the individual requires time to realise their assets, for example by waiting for payment of a salary or by selling property.

For the purposes of considering whether an individual will suffer serious financial hardship, the GFSC will consider as capital anything that could provide the individual with a source of income, including savings, property (including personal possessions), investments and land. The GFSC will normally consider as capital the equity that an individual has in the home in which he lives, but will consider any representations by the individual about this (e.g. as to the exceptionally severe impact a sale of the property might have upon other occupants of the property or the impracticability of re-mortgaging or selling the property within a reasonable period).

The GFSC may also consider the extent to which the individual has access to other means of financial support in determining whether he is able to pay the penalty without being caused serious financial hardship.

There may be cases where, even though the individual has satisfied the GFSC that payment of the financial penalty would cause him serious financial hardship, the GFSC considers the breach to be so serious that it is not appropriate to reduce the penalty. The GFSC will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:

- (a) the individual directly derived a financial benefit from the contravention and, if so, the extent of that financial benefit;
- (b) the individual acted fraudulently or dishonestly with a view to personal gain;
- (c) previous GFSC action in respect of similar contraventions has failed to improve industry standards; or
- (d) the individual has spent money or dissipated assets in anticipation of the GFSC's action or other enforcement action by other authorities with a view to frustrating or limiting its impact.

Firms

The GFSC will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. In deciding whether it is appropriate to reduce the penalty, the GFSC will take into consideration the firm's financial circumstances, including whether the penalty would render the firm insolvent or threaten the firm's solvency. The GFSC will also take into account its statutory objectives. For example, in situations where consumers would be harmed or market confidence would suffer, the GFSC may consider it appropriate to reduce a penalty in order to allow a firm to continue in business and/or pay redress.

There may be cases where, even though the firm has satisfied the GFSC that payment of the financial penalty would cause it serious financial hardship, the GFSC considers the contravention to be so serious that it is not appropriate to reduce the penalty.

The GFSC will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:

- (a) the firm directly derived a financial benefit from the contravention and, if so, the extent of that financial benefit;
- (b) the firm acted fraudulently or dishonestly in order to benefit financially;
- (c) previous GFSC action in respect of similar contraventions has failed to improve industry standards; or
- (d) the firm has spent money or dissipated assets in anticipation of the GFSC's action or other enforcement action by other authorities with a view to frustrating or limiting its impact.

Transfers of assets

Where the GFSC considers that, following commencement of a GFSC investigation, a firm/ individual has reduced their solvency in order to reduce the amount of any disgorgement or financial penalty payable, (e.g. by transferring assets to third parties), the GFSC will normally take account of those assets when determining whether the firm/ individual would suffer serious financial hardship as a result of the disgorgement and financial penalty.

Prohibition orders and withdrawal of approval

In cases against individuals, the GFSC may make a prohibition order or withdraw an individual's approval, as well as impose a financial penalty. Such action by the GFSC will reflect the GFSC's assessment of the individual's fitness to perform regulated activity or suitability for a particular role, and will not affect the GFSC's assessment of the appropriate financial penalty in relation to a contravention. However, the fact that the GFSC has made a prohibition order against an individual or withdrawn their approval, as a result of which the individual may have less earning potential, may be relevant in assessing whether the penalty will cause the individual serious financial hardship.

Withdrawal of permission

The GFSC may withdraw a firm's permission, as well as impose a financial penalty. Such action by the GFSC will not affect the GFSC's assessment of the appropriate financial penalty in relation to a contravention. However, the fact that the GFSC has withdrawn a firm's authorisation, as a result of which the firm may have less earning potential, may be relevant in assessing whether the penalty will cause the firm serious financial hardship.

Step 14 – Discount for early settlement

Early acknowledgement of breaches of regulatory requirements by the firm/ individual that effectively saves time and investigative resources will be considered favourably by the GFSC.

In cases where the firm/ individual acknowledges a contravention of relevant legislation and is potentially liable to the imposition of an administrative penalty, the amount of the financial penalty to be imposed by the GFSC will incorporate a discount reflecting:

- (a) how early in the Decision-Making Process the settlement agreement is signed; and
- (b) whether the contravention is remediated to the satisfaction of the GFSC before the settlement agreement is signed.

The discount will be applied against the amount of the financial penalty that the GFSC would otherwise have expected to impose had the case been taken through to its conclusion without a settlement.

The following discounts will apply:

- Settlement within 60 days of the commencement of regulatory settlement agreement discussions - a maximum discount of 30%;
- Settlement before a Warning Notice is issued under Stage 2 of the Decision-Making Process - a maximum discount of 20%; and
- Settlement before a Final Decision Notice is issued under Stage 2.3 of the Decision-Making Process - a maximum discount of 10%.

If a firm/ individual chooses not to accept the opportunity to commence settlement discussions when first it is offered by the GFSC, the GFSC may decline to enter into settlement discussions at a later stage. If the GFSC does agree to negotiate the terms of a settlement agreement later, the terms offered may be adjusted to reflect the delay.

Full detailed methodology for calculating Administrative Penalties

Table 4			
Step	Narrative description	Considerations	Calculation of amount for each step
1	Assessment of the seriousness of the contravention(s) by assessing the impact on the GFSC's relevant regulatory objectives.	As per Table 2	The amount calculated by reference to Tables 2 and 3 (Step 1 figure).
2	Did the firm/ individual know, or ought the firm/ individual have known of the contravention?	<ul style="list-style-type: none"> • If the firm/ individual had followed its own procedures, would the contravention have been detected promptly? • Was the absence of appropriate procedures a contributory factor to the firm/ individual not detecting the contravention? • Was inadequate resourcing of the compliance function a contributory factor to the firm/ individual not detecting the 	Knew or ought to have known = an additional amount of up to 50% of the Step 1 figure.

		<p>contravention?</p> <ul style="list-style-type: none"> • Was the contravention concealed from the firm/ individual by a deliberate and sophisticated act of an employee? <p>(N.B. This is not an exhaustive list.)</p>	
3	Did the firm/ individual voluntarily report the contravention?	If the contravention was voluntarily reported, how prompt and comprehensive was the report?	<p>Voluntarily reported = a deduction of up to 25% of the Step 1 figure.</p> <p>(N.B. A failure to voluntarily report would be considered under aggravating factors - see Step 5.)</p>
4	Has the firm/ individual taken steps to rectify the contravention and to prevent its recurrence?	<ul style="list-style-type: none"> • If steps were taken to rectify, how prompt and comprehensive were they? • Did it require pressure from the GFSC before the firm/ individual took such steps? • If such steps were taken, were they of a quality likely to prevent a recurrence of the contravention? <p>(N.B. This is not an exhaustive list.)</p>	<p>Steps taken to rectify = a deduction of up to 25% of the Step 1 figure.</p> <p>(N.B. A failure to take steps to rectify would be considered under aggravating factors - see Step 5.)</p>
5	What (other) aggravating / mitigating factors were there?	<p>See Section “When and how the GFSC will consider exercising its sanctioning powers” for a non-exhaustive list of aggravating / mitigating factors.</p> <p>(Step 5 will not take into account aggravating or mitigating factors considered in other steps of the methodology.)</p>	A (net) additional amount of up to 50% of the Step 1 figure or a (net) deduction of up to 50% of the Step 1 figure.
6	Application of the principle of ensuring that firms/ individuals cannot expect to benefit from contraventions.	<ul style="list-style-type: none"> • Did the firm/ individual make an identifiable quantum of profit/ avoid a loss/ not incur expense as a result of the contravention? • Were the firm’s/ individual’s profits inflated as a result of an inadequate spend (of an identifiable quantum) on its compliance function, which contributed to the occurrence of the contravention? 	Where, as a result of the contravention, the firm/ individual made a profit/ avoided a loss/ avoided incurring expense, the penalty amount will be increased by that quantum.

		(N.B. This is not an exhaustive list.)	
7	Have regard to the penalties in other cases.	Where necessary and appropriate, the GFSC will look at penalties imposed in other cases in order to consider how a similar contravention has been treated (in terms of the scale of seriousness but not the quantum of financial penalty imposed).	A quality control check will be carried out to ensure the GFSC is being consistent. The use of this methodology should ensure consistency.
8	GROSS CALCULATION of penalty to be imposed, before the application of the statutory maximum.		[This will be the product of Steps 1 to 7.]
9	Reduction, if necessary, to the Step 8 figure so that the statutory maximum penalty permitted is not exceeded.		[- £xxx, as appropriate.]
10	MAXIMUM-ADJUSTED penalty amount		[The product of Step 8 as adjusted by Step 9.]
11	Have regard to the potential financial consequences to the firm/ individual and to third parties (including customers and creditors of the firm) of imposing the penalty	<ul style="list-style-type: none"> • To what extent would the amount of the penalty endanger the capacity of the firm/ individual to provide restitution to investors? • To what extent would the amount of the penalty cause the firm/ individual to contravene any applicable financial resource requirements? • To what extent would the amount of the penalty endanger the firm/ individual's capacity to pay its creditors? • To what extent would the amount of the penalty endanger the capacity of the firm/ individual to continue in business? (N.B. This is not an exhaustive list)	[-£xxx, if appropriate.]
12	ACTUAL penalty to be imposed		[The Step 10 figure as adjusted by Step 11]
13	Discount for early settlement (where applicable)	<p>The following discounts will apply:</p> <ul style="list-style-type: none"> • Settlement before Stage 1 of the Decision-Making Process commences (Comments by firm/ individual on the Draft Case to be relied on by the GFSC's Regulatory Investigations Team) - a maximum 	[% discount expressed in monetary terms.]

		<p>discount of 30%</p> <ul style="list-style-type: none"> • Settlement before a Warning Notice is issued under Stage 2 of the Decision-Making Process - a maximum discount of 20% • Settlement before a Final Decision Notice is issued under Stage 2.3 of the Decision-Making Process - a maximum discount of 10% 	
14	DISCOUNTED penalty to be imposed under settlement agreement.		[The Step 12 figure as adjusted for the discount in Step 13]

Worked example #1 – for illustrative purposes only

- Calculating the amount of a Level 3 penalty for an Insurer.
- This example is calculated on the basis that the firm’s total turnover is €5,000,000.
- The Statutory maximum penalty for Insurers is the higher of 10% total turnover or €5,000,000, or double the benefit derived from a contravention, so in this case it is €5,000,000.

Table 5				
Step	Narrative description	Considerations	Contribution towards penalty amount	Amounts
1	Assessment of the seriousness of the contravention(s) by assessing the impact on the GFSC’s relevant regulatory objectives.	Reputational damage = Level 3. Risk to consumers = Level 3. Risk of financial crime = Level 3. Average = Level 3.	45% of the maximum statutory penalty.	€2,250,000 (Step 1 figure)
2	Did the firm/ individual know, or ought the firm/ individual have known of the contravention?	The firm would have discovered the contravention itself if it had followed its own compliance procedures.	+25% of the Step 1 figure.	+ €562,500
3	Did the firm/ individual voluntarily report the contravention?	No – the contravention was originally discovered by the GFSC during 2018 on-site examination.	N/A	€0
4	Has the firm taken steps to rectify the contravention and to prevent its recurrence?	After the launch of a GFSC investigation in 2019, the Firm invested heavily and promptly in a comprehensive and effective remediation programme.	-20% of the Step 1 figure.	-€450,000
5	What (other) aggravating / mitigating factors were there?	<u>Aggravating</u> : +20% The GFSC had been assured in 2018 that the contravention had been remediated. A GFSC on-site examination in late 2018 revealed that this was not the case. <u>Mitigating</u> : -5% The firm co-operated fully with the GFSC’s investigation.	A net +15% of the Step 1 figure.	+€337,500

6	Application of the principle of ensuring that firms/ individuals cannot expect to benefit from contraventions.	The firm admitted that it had consciously underfunded its compliance function by €75,000 over the past 3 years in order to keep profits up.	Increase penalty by the amount.	+€75,000
7	Have regard to the penalties in other cases.	Consistency check done.	N/A	€0
8	GROSS CALCULATION of penalty to be imposed, before the application of the statutory maximum.			€2,775,000
9	Reduction, if necessary, to the Step 8 figure so that the maximum statutory penalty permitted is not exceeded.	No reduction necessary. The statutory maximum penalty is €5,000,000 because double the benefit derived from the contravention is less.	N/A	€0
10	MAXIMUM-ADJUSTED penalty amount.			€2,775,000
11	Have regard to the potential financial consequences to the firm/ individual and to third parties (including customers and creditors of the firm) of imposing the penalty.	The Step 10 figure can be borne by the firm without materially adverse impact on third parties.	N/A	€0
12	ACTUAL penalty to be imposed.			€2,775,000
13	Discount for early settlement (where applicable).	Settled before Stage 1 of the Decision-Making Process.	30% discount.	-€832,500
14	DISCOUNTED penalty to be imposed under settlement agreement.		[The Step 12 figure as adjusted for the discount in Step 13].	€1,942,500

Worked example #2 – for illustrative purposes only

- Calculating the amount of a Level 2 penalty for a sector other than Insurance; Insurance Distribution; Investment services; UCITS; Banks; DLT & AIFMs such as a Bureau de Change.
- This example is calculated on the basis that the firm’s total turnover is £2,000,000.
- The Statutory maximum penalty for Other Sectors is the higher of 5% total turnover or £250,000, or double the benefit derived from a contravention, so in this case it is £250,000.

Table 6				
Step	Narrative description	Considerations	Contribution towards penalty amount	Amounts
1	Assessment of the seriousness of the contravention(s) by assessing the impact on the GFSC’s relevant regulatory objectives.	Reputational damage = Level 1. Risk to consumers = Level 1. Risk of financial crime = Level 3. Average = Level 2.	30% of the maximum statutory penalty.	£75,000 (Step 1 figure)
2	Did the firm/ individual know, or ought the firm/ individual have known of the contravention?	The firm had inadequate resourcing of the compliance function which contributed to the firm not detecting the contravention.	+20% of the Step 1 figure.	+£15,000
3	Did the firm/ individual voluntarily report the contravention?	No - the contravention was discovered by the GFSC during an on-site examination.	N/A	£0
4	Has the firm/ individual taken steps to rectify the contravention and to prevent its recurrence?	The firm took steps to rectify and prevent a recurrence. However, the agreed target date for remediation was overshoot by 1 month due to the firm applying inadequate resources.	-10% of the Step 1 figure.	-£7,500
5	What (other) aggravating / mitigating factors were there?	Aggravating: +35% The firm failed to pay appropriate attention to relevant guidance issued by the GFSC and to follow its own procedures. The contravention was discovered by the GFSC during an on-site examination.	A net +25% of the Step 1 figure.	+£18,750

		<u>Mitigating</u> : -10% The firm co-operated fully with the GFSC's investigation.		
6	Application of the principle of ensuring that firms/ individuals cannot expect to benefit from contraventions.	No identifiable profit accrued or loss avoided by the firm as a result of the contravention.	N/A	£0
7	Have regard to the penalties in other cases.	Consistency check done.	N/A	£0
8	GROSS CALCULATION of penalty to be imposed, before the application of the statutory maximum.			£101,250
9	Reduction, if necessary, to the Step 8 figure so that the maximum statutory penalty permitted is not exceeded.	No reduction necessary. The statutory maximum penalty is £250,000.	N/A	£0
10	MAXIMUM-ADJUSTED penalty amount.			£101,250
11	Have regard to the potential financial consequences to the firm/ individual and to third parties (including customers and creditors of the firm) of imposing the penalty.	The Step 10 figure can be borne by the firm/ individual without materially adverse impact on third parties.		N/A
12	ACTUAL penalty to be imposed.			£101,250

13	Discount for early settlement (where applicable).	The firm did not agree to settle.		N/A
14	DISCOUNTED penalty to be imposed under settlement agreement.			N/A

Worked example #3 – for illustrative purposes only

- Calculating the amount of a Level 4 penalty for a Regulated Individual in an Insurance company.
- The Statutory maximum penalty for Regulated Individuals in Insurance is the higher of £250,000 or double the benefit derived from the contravention, so in this case it is £250,000.

Table 7				
Step	Narrative description	Considerations	Contribution towards penalty amount	Amounts
1	Assessment of the seriousness of the contravention(s) by assessing the impact on the GFSC's relevant regulatory objectives.	Risk to the public = Level 4. Reputational damaged = Level 4. Risk of financial crime = Level 4. Average = Level 4.	60% of the Maximum Statutory Penalty.	£150,000 (Step 1 figure)
2	Did the firm/ individual know, or ought the firm/ individual have known, of the contravention?	The individual disregarded the firm's own internal procedures. Had it not done so the contravention would not have occurred.	+40% of the Step 1 figure.	+£60,000
3	Did the firm/ individual voluntarily report the contravention?	No, the contravention was discovered by GFSC during an on-site examination.	N/A	£0
4	Has the firm/ individual taken steps to rectify the contravention and to prevent its recurrence?	Not voluntarily (see aggravating factors in Step 5 below).	N/A	£0
5	What (other) aggravating / mitigating factors were there?	<u>Aggravating:</u> The individual was dishonest, abused a position of trust, did not voluntarily rectify, and the contravention was discovered by the GFSC during an on-site examination. <u>Mitigating:</u> The individual's previous compliance record had generally been good.	A net +50% of the Step 1 figure.	+£75,000
6	Application of the principle of ensuring that firms/ individuals cannot	It was identified that the individual had profited by £50,000 as a result of the	Increase penalty by the amount.	+£50,000

	expect to benefit from contraventions.	contravention.		
7	Have regard to the penalties in other cases.	Consistency check done.	N/A	£0
8	GROSS CALCULATION of penalty to be imposed, before the application of the statutory maximum.			£335,000
9	Reduction, if necessary, to the Step 8 figure so that the maximum statutory penalty permitted is not exceeded.	Reduced to statutory maximum of £250,000.		-£85,000
10	MAXIMUM-ADJUSTED penalty amount.			£250,000
11	Have regard to the potential financial consequences to the firm/ individual and to third parties (including customers and creditors of the registered person) of imposing the penalty.	The Step 10 figure can be borne by the individual without materially adverse impact on the Individual or third parties.		N/A
12	ACTUAL penalty to be imposed.			£250,000

13	Discount for early settlement (where applicable).	The individual did not agree to settle.		N/A
14	DISCOUNTED penalty to be imposed under settlement agreement.			N/A

Published by:

Gibraltar Financial Services Commission
PO Box 940
Suite 3, Ground Floor
Atlantic Suites
Europort Avenue
Gibraltar

www.gfsc.gi

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