

# GFSC Fining Policy under the Proceeds of Crime Act 2015 and Supervisory Bodies (Powers Etc) Regulations 2017

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# GFSC Fining Policy under the Proceeds of Crime Act 2015

The Proceeds of Crime Act 2015 (the Act) and the supporting regulations the Supervisory Bodies (Powers Etc) Regulations 2017 (together the legislation) provide that we can impose financial penalties and other disciplinary measures. This Policy sets out how we will approach the imposition of penalties and other measures.

This Policy should be read alongside our Enforcement Strategy, including our Enforcement Process, Publication and Settlement Policies.

## Financial Penalties

For a relevant person or financial business, the appropriate maximum penalty is the higher of:

- (a) twice the amount of benefit derived from the default or breach (where that benefit can be determined); or
- (b) €1 million.

In cases where the relevant financial business is a credit institution or a financial institution the maximum penalty:

in the case of a legal person is the higher of:

- (a) €5 million; or
- (b) 10% of the total annual turnover according to the latest available accounts (including where relevant the consolidated accounts for an entity) approved by the management body;

in the case of a natural person carrying on business as a credit institution or a financial institution €5 million.

## Assessment

In assessing the appropriate penalty for any given case we will consider the following five principles. We expand on the application of the principles below. The principles will be applied together with the relevant criteria set out in the legislation.

- (i) Benefit by the firm: Any penalty should seek to remove any benefit made (or loss avoided) as a result of the wrongdoing including the benefit of any interest.
- (ii) Penal element: there should be a penal element for any wrongdoing.

(iii) Deterrence element: a penalty should deter the person from further wrongdoing and represent a deterrent to others.

(iv) Aggravating or mitigating factors – the penalty needs to be increased if there are aggravating features and reduced for any mitigating features

(v) Early Settlement: consideration needs to be given to allowing a reduction to reflect any early stage settlement.

We will then assess the overall position to ensure the penalty arrived at is proportionate to the circumstances taking into account the financial circumstances of the relevant person. In the case of a legal person the financial circumstances are its annual turnover and for a natural person their annual income.

We will have regard to the seriousness of the wrongdoing. A critical factor will be the degree of responsibility of the person including whether the conduct was careless, reckless or deliberate. If we consider a penalty is warranted, we will generally look at imposing penalties that align with the following bands. The bands are for general guidance and are not binding. The bands consider the different factors that may apply in any given case.

The bands apply once it has been decided that it is appropriate to impose a financial penalty. The percentages used in the bands are the relevant size of penalty to be considered, that is they are percentages of the maximum applicable.

An individual and a firm may fall under separate bands even where the circumstances of the wrongdoing are the same. We have applied percentages to the bands as an indicator of the likely penalty amount because the penalty maxima vary according to the nature of the relevant person, whether it is a legal person or natural person, whether the person is a credit institution or financial institution and whether we are able to calculate benefit or turnover.

## **Bands**

*Band 1 - 0-10% of the maximum applicable penalty available:*

1. The benefit or loss involved or value affected is low
2. The contravention is considered to be less serious and of short duration
3. The conduct was self-reported
4. The party has been co-operative and helpful
5. There is no risk to Gibraltar's reputation
6. There is little or no risk to consumers

7. There is no risk of financial crime
8. The party has a good history of compliance

*Band 2 - 0-20% of the maximum applicable penalty available:*

1. The benefit or loss involved or value affected is moderate
2. There are multiple moderate level contraventions and of moderate duration
3. The party reported some or all of the contraventions
4. The party was moderately co-operative and helpful
5. There is a minimal risk to Gibraltar's reputation
6. There is some material or moderate risk to consumers
7. There is some material or moderate risk of financial crime
8. The party has a good record of compliance

*Band 3 - 0-50% of the maximum applicable penalty available:*

1. The benefit or loss involved or value affected is material
2. There are multiple serious breaches over a material period of time
3. The issues were not self-reported
4. The party has demonstrated uncooperative and unhelpful, or obstructive behaviour
5. There is a material risk to Gibraltar's reputation
6. There is material risk to consumers
7. There is a material risk of financial crime
8. There is a record of prior non-compliance with financial services regulations

*Band 4 - 0-100% of the maximum applicable penalty available:*

1. The party has received significant benefit or caused significant loss or the value involved is significant
2. The case involves multiple serious breaches over a long period
3. The contraventions were discovered by the GFSC
4. The party was wilfully uncooperative and unhelpful or obstructive
5. There was the risk of serious harm to Gibraltar's reputation

6. There was a real risk of significant harm to consumers
7. There was a real risk of serious financial crime
8. The party has a long record of non-compliance with financial services regulations

## **Other Disciplinary Measures**

The GFSC can also consider imposing other disciplinary measures. Such measures include;

### *Suspension or Withdrawal of a Licence or Authorisation*

Where we consider appropriate, we may suspend, withdraw or revoke a licence or authorisation.

### *Temporary Ban from Managerial Positions*

Where we consider appropriate, we may also temporarily ban a relevant person from exercising managerial functions in a financial business if that person is considered responsible.

### *Directions*

We may also issue appropriate directions when we believe or suspect there are reasonable grounds to do so.

In all cases we will aim to reach a proportionate outcome that effectively addresses the nature of the wrongdoing.