



Snapshot: overview of the GFSC's enforcement powers

Insights - 01/06/2023

While regulated firms are committed to ensuring that they comply with their legal and regulatory obligations, there is inevitably a risk that issues of potential concern to the Guernsey Financial Services Commission (GFSC) will arise.

The GFSC has a broad set of tools that it can use to address such risks and any misconduct. This briefing provides a high-level overview of those powers and steps firms might take to mitigate becoming the subject of them.

How does the GFSC approach using its powers?

The GFSC has stated in its guidance on the use of its enforcement powers^[1] that it is "committed to a fair, proportionate, and consistent application of its enforcement powers"; the broad range of tools it has helps it do that. The guidance goes on to state that:

"Where appropriate, the [GFSC] will address contraventions or misconduct by agreement with the licensee, or individuals concerned, through ordinary supervisory processes and will endeavour to agree the implementation of a remedial action plan to restore compliance as soon as possible."

However, the guidance makes clear that, where such action is not considered to be sufficient or where co-operation is lacking, there may be a need for more formal enforcement action by the GFSC involving the use of statutory powers contained within the Regulatory Laws^[2].

What powers does the GFSC have?

Issuing warnings and statements

Under the Regulatory Laws, the GFSC has the power to issue public statements. The GFSC has stated that the circumstances in which it may issue such a statement are wide-ranging^[3], principally including:

- a regulatory sanction that clarifies the GFSC's findings and any action it has taken
- issuing a warning of unauthorised business, or similar circumstances, where the best interests of the public could be adversely affected
- publicising a direction, or particular aspects of a direction, given by the GFSC

While the GFSC will typically enter into a dialogue with the intended subject of a public statement, in appropriate cases it may give the subject limited prior notice.

In addition to its statutory powers to issue public statements, the GFSC states that it can issue 'private reprimands' to firms or individuals where *"appropriate to do so, having regard to the conduct of the business"*.

Objections to persons performing certain functions

Firms will be aware that the Regulatory Laws provide that regulated firms must obtain the GFSC's prior 'no objection' before individuals take up certain key roles for the firm. The GFSC will decline to give that confirmation if it appears to it that the person is not a fit and proper person to perform the proposed role.

In relation to persons already performing such functions, the GFSC's enforcement powers include being able to:

- direct that the person ceases to perform their role; and/or
- prohibit the person from performing specified (or indeed any) functions at, or being employed by, registered persons.

The GFSC has given guidance that it will take into account a person's honesty, integrity and competence [4] when considering whether they are fit and proper.

The GFSC also has the power to object to shareholdings in registered persons in certain circumstances.

Directions, conditions and revocations

The GFSC has a broad power to impose such enforcement measures as it may consider appropriate. The power is flexible, allowing the GFSC to (among other things): require anything to be done or not done; prohibit or require the amendment of financial services advertisements; and require that certain key individuals be replaced.

If the GFSC's concerns are sufficiently serious, it may require that a registered person cease carrying on regulated activities and, potentially, revoke their licence.

Discretionary Financial Penalties

Since 2008, the GFSC has had the power to impose Discretionary Financial Penalties on firms and individuals for material contraventions of Regulatory Laws and the AML/CFT legislation if it considers that it is "appropriate" to impose a financial penalty.

The discretionary financial penalties are banded depending on the seriousness of the contravention and the behaviour of the firms and individuals. In determining the amount of the penalty, each situation will be considered on its own merits taking into account a set of characteristics [5] such as:

- the number and severity of regulatory failings
- the risk of loss or actual loss to clients
- the risk to reputation of the Bailiwick
- steps taken to rectify the breach
- openness and cooperation of the Licensee
- previous regulatory breaches

The maximum level of penalty that may be imposed is £400,000 on individuals and £4,000,000 on firms.

Applications to the Royal Court of Guernsey

The GFSC can apply to the Royal Court of Guernsey for:

- injunctions to prevent and/or remedy contraventions of certain regulatory requirements
- an order that shares in a registered person be sold
- orders to remedy losses to third parties
- orders for a business to be subject to supervision, restraint or conditions
- orders to appoint a manager to manage the affairs of a registered person

Criminal investigations/prosecutions

While the GFSC does not have the power to bring criminal prosecutions, it can (and in appropriate cases will) refer matters to the States of Guernsey Police or HM Procureur (i.e. Attorney General) for criminal investigation or prosecution. The GFSC has given guidance[6] to the effect that it will

refer a matter if it considers it to be "*sufficiently serious*", with relevant factors including: the threat to consumers or Guernsey's reputation; whether the conduct was premeditated; and the person's regulatory record with the GFSC.

Can I mitigate the risk of these powers being used?

In deciding whether and which powers to exercise, the GFSC will consider (among other things) the nature/seriousness of the firm's past and ongoing conduct and the level of its cooperation with the GFSC. This means that a firm can potentially influence how the GFSC responds to issues of concern that might arise.

[1] <https://www.gfsc.gg/commission/enforcement/enforcement-powers>

[2] These include the Banking Supervision (Bailiwick of Guernsey) Law, 2020, , the Insurance Business (Bailiwick of Guernsey) Law, 2002, and the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, the Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2020. The civil penalty power is contained in the Financial Services Business (Enforcement Powers)(Bailiwick of Guernsey) Law, 2020.

[3] [Public Statements – GFSC](#) (“Public Statements” explanatory note -September 2022)

[4] <https://www.gfsc.gg/news/article/fit-and-proper-guidance>

[5] <https://www.gfsc.gg/sites/default/files/uploads/Discretionary%20Financial%20Penalties%20-%20Schedule.pdf>

[6] [Enforcement Powers – GFSC](#)

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Key Contacts



Alex Horsbrugh-Porter

Partner

Guernsey

E: alex.horsbrugh-porter@ogier.com

T: +44 1481 752272



Michael Rogers

Managing Associate

Guernsey

E: michael.rogers@ogier.com

T: +44 1481 752264

Related Services

Dispute Resolution

Regulatory