

Snapshot: being open and cooperative with the JFSC - what does it involve and why does it matter?

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Registered firms will be aware that one of the Principles to which they are subjected under the JFSC's Codes of Practice requires them to "deal with the JFSC in an open and co-operative manner" (sometimes referred to as the "duty of candour"). The significance that the JFSC places on compliance with the duty of candour is clear from various disciplinary outcomes over time, and it is therefore important that firms have a good understanding of what this duty requires of them.

What does the duty of candour require?

The duty of candour is an overarching obligation that is broadly framed, requiring firms to deal with the JFSC openly and cooperatively. That broad duty is then underpinned by:

- a requirement that the firm notify the JFSC in writing "as soon as it becomes aware" of any matter that might reasonably be expected to affect its registration or be in the interests of its customers to disclose (a general notification obligation); and
- a series of more specific notification obligations (the terms of which vary across the individual Codes of Practice)

For these purposes, "as soon as it becomes aware" means from the point at which the registered person knows, or has reasonable grounds for believing, that any of the matters referred to have occurred or may be about to occur, even where it is outside the control of the registered person.

In effect, the duty of candour requires firms to self-report all matters of potential interest to the JFSC without delay.

Why does the duty of candour matter?

The JFSC needs a broad range of information in order to discharge its functions, much of which necessarily comes from the firms that it supervises. The JFSC is therefore reliant on the firms it supervises providing the information it requests from them in a complete and timely manner, and voluntarily self-reporting matters of potential relevance to the discharge of its functions.

What does this mean in practice?

Ultimately firms must ensure that they deal (and can show that they have dealt) with the JFSC in an open and cooperative manner at all times. In practice, steps that a registered person should consider include:

- responding promptly, comprehensively and accurately to JFSC requests for information
- completing their regulatory returns on time
- keeping under constant review whether there are matters that ought to be notified to the JFSC and, if there are, ensuring the JFSC is notified of them at the earliest opportunity (potentially by telephone with a written update to follow)
- keeping a clear record of all correspondence with the JFSC
- ensuring that the board is appropriately briefed on correspondence with the JFSC and
- fostering a culture of openness and transparency within the organisation, with systems and controls that ensure that information that may need to be disclosed to the JFSC is escalated promptly

Firms should note that the duty of candour extends to the provision of information and the notification of events concerning non-regulated activities and other members of the corporate group, to the extent that such information or events might reasonably be expected to have a material impact on the registered person in Jersey.

What happens in the event of non-compliance?

If a firm fails to comply with the duty of candour, it will have breached one of the key regulatory obligations imposed on it under the Codes of Practice. Depending on the circumstances, it will potentially be at risk of regulatory sanction such as:

- a public statement that censures it
- a direction to take or not take certain actions
- a civil financial penalty; and/or
- revocation of its licence

Further, a failure to be open and cooperative with the JFSC may be viewed as an aggravating factor when the JFSC is considering other regulatory failings by the firm.

If the breach of the duty of candour is attributable to one or more members of the firm's senior management, the JFSC may ask itself whether this calls into question their fitness and propriety to perform their roles and/or means they should also be subject to civil penalty.

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