

Snapshot: overview of JFSCs enforcement powers

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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 JFSC will arise. The JFSC 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 JFSC approach using its powers?

The JFSC has stated in its guidance on the use of its enforcement powers [1] that it is "committed to a fair and proportionate use 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 JFSC will try to ensure that contraventions or instances of misconduct are rectified in conjunction with the person concerned through the normal supervisory processes, and try to agree the implementation of a remedial action programme to restore the person to 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 JFSC involving the use of statutory powers contained within the Regulatory Laws. [2]

| What powers does the JFSC have?

Issuing warnings and statements

Under the Regulatory Laws, the JFSC has the power to issue public statements. The JFSC has stated that the circumstances in which it may issue such a statement are wide-ranging,

[3] principally including:

- as a regulatory sanction, or part of a sanction, that sets out the JFSC's findings and any action it has taken
- giving 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 JFSC

While the JFSC will typically enter into a dialogue with the intended subject of a public statement, in appropriate cases it may give the subject only a short (or no) period of prior notice.

In addition to its statutory powers to issue public statements, the JFSC states that it can issue "private warnings" to firms or individuals setting out its "concerns as to the conduct of the firm and/or individuals and the consequences of repetition". The JFSC considers that the ability to issue private warnings is an intrinsic part of its supervisory function, but recognises that there is no explicit power in the Regulatory Laws to issue such a warning – from which it follows that there are no formal mechanisms to challenge or appeal findings the JFSC makes in private warnings.

Objections to persons performing certain functions

Firms will be aware that the Regulatory Laws provide that regulated firms must obtain the JFSC's prior "no objection" before individuals take up certain key roles for the firm. The JFSC 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 JFSC'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 JFSC 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 JFSC also has the power to object to shareholdings in registered persons in certain circumstances.

Directions, conditions and revocations

The JFSC has a broad power to impose "such directions as it may consider appropriate in the circumstances". The power is flexible, allowing the JFSC 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 JFSC's concerns are sufficiently serious, it may require that a registered person cease carrying on regulated activities and, potentially, revoke their licence.

Civil penalties

Since 2015, the JFSC has had the power to impose civil financial penalties against registered entities for significant and material contraventions of the Codes of Practice and the AML/CFT Handbook.

In 2018, the JFSC was given the power to impose similar civil penalties on a registered person's senior management, and in 2022 the pool of individuals who can be fined was widened.

For more information on the JFSC's powers to impose these penalties, read Ogier's briefings [Civil liability for breaches of the Codes: Registered Entities](#) and [Jersey civil penalties regime – principal persons](#) (save that the maximum penalties the JFSC can impose have increased as of 29 April 2022).

Applications to the Royal Court of Jersey

The JFSC can apply to the Royal Court of Jersey 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; and
- orders to appoint a manager to manage the affairs of a registered person

Criminal investigations/prosecutions

While the JFSC does not have the power to bring criminal prosecutions, it can (and in appropriate cases will) refer matters to the States of Jersey Police or HM Attorney General for criminal investigation or prosecution. The JFSC has given guidance [\[5\]](#) 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 Jersey's reputation; whether the conduct was premeditated; and the person's regulatory record with the JFSC.

Can I mitigate the risk of these powers being used?

In deciding whether and which powers to exercise, the JFSC will consider (among other things) the nature/seriousness of the firm's past and ongoing conduct and the level of its cooperation with the JFSC. This means that a firm can potentially influence how the JFSC responds to issues of concern that might arise. Ogier's briefing [How to avoid being referred to JFSC Enforcement – and what to do if you are](#) provides some practical tips that firms may wish to consider.

[1] <https://www.jerseyfsc.org/industry/guidance-and-policy/jfsc-use-of-enforcement-powers/>

[2] These include the Banking Business (Jersey) Law 1991, the Collective Investment Funds (Jersey) Law 1988, the Insurance Business (Jersey) Law 1996 and the Financial Services (Jersey) Law 1998. The civil penalty power is contained in the Financial Services Commission (Jersey) Law 1998.

[3] <https://www.jerseyfsc.org/industry/guidance-and-policy/our-use-of-public-statements/>

[4] <https://www.jerseyfsc.org/industry/guidance-and-policy/integrity-and-competence/>

[5] <https://www.jerseyfsc.org/industry/guidance-and-policy/making-a-referral-to-the-police-and-or-the-attorney-general/>

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