

Regulation in Guernsey - what can happen when it goes wrong

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Late last year we had another decision from the Royal Court which shows how far-reaching the penalties and sanctions can be when an individual working in a regulated industry fails to put the right procedures in place or is unaware of a rule or requirement.

The implications can include heavy financial penalties, a public statement and, at worse, a loss of livelihood.

The Court decision was anonymised in part to allow for a potential appeal but the basic facts are as follows:

Mr Y was an executive director of the Licensee company X. Under the terms of his employment with X, Y was not permitted to accept any other work except with the permission of X. Y also had an accountancy practice which was registered with the GFSC but Y did not have the relevant regulatory permission from the GFSC to incorporate companies for clients.

Licensee X then commenced disciplinary proceedings against Y for using X's registration with the GFSC to carry out 12 company formations for persons who were not clients of X and without the X's permission. Y subsequently resigned from X and explained what had happened to the GFSC.

The GFSC commenced an investigation and issued a final "minded to" notice on 24 January 2018. The main allegation against Y was that he incorporated 12 Guernsey companies for his own clients through his accountancy practice (and not through company X which was licensed) and that he did not have an appropriate regulatory licence to carry out that type of work.

The GFSC sought to prohibit Y from acting as a director under any of the regulatory laws for a period of 4 years; as well as applying a financial penalty of £13,000; and publishing a statement on the GFSC website.

The matter came to the Royal Court, which largely upheld the GFSC's decisions in a judgment issued in November last year. The judgment however raised a number of interesting issues, the main take away points were that:

- The GFSC can no longer issue fixed term prohibition orders, as in the UK they can prohibit individuals indefinitely but invite them to reapply after a certain number of years;
- Public statements must be more focused on explaining exactly what happened and why and should not provide any extraneous material or arguments put forward in defence; they can in some circumstances be beneficial to an individual as they can explain exactly what has happened and in so doing reduce speculation;
- Even if investors' money is not a risk, nor anti money laundering rules breached, an individual can still be prohibited from working as a director etc;
- The crucial failing by the individual here was his lack of openness and probity

and the fact that he did not seem to realise how serious his mistakes were. The GFSC had argued that he only contacted them when he became aware that it was likely that his failure to obtain a licence to incorporate companies for his accountancy business was about to be discovered.

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