



Guideline 12A – Sector Specific Financial Penalties

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What this guideline is about

This guideline is one in a series of publications designed to inform businesses and consumers about how we, the Channel Islands Competition and Regulatory Authorities (CICRA), apply the laws we have the responsibility for administering and enforcing in the Channel Islands. Details of how to obtain copies are at the back of this guideline.

The purpose of this guideline is to explain to consumers, business and their advisers the criteria and principles that will inform how we decide whether to issue a financial penalty and the amount of that penalty to a licensed business found to have infringed its licence conditions and/or related laws. The key regulatory laws are:

- Telecommunications (Bailiwick of Guernsey) Law 2001
- Telecommunications (Jersey) Law 2002
- Post Office (Bailiwick of Guernsey) Law 2001
- Electricity (Guernsey) Law 2001
- Air and Sea Ports (Incorporation) (Jersey) Law 2015

This guideline should not be relied on as a substitute for the laws themselves. If you have any doubts about your position under the laws, you should seek legal advice.

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1. Introduction

What is CICRA?

The Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA) co-ordinate their activities with respect to regulated sectors in the Channel Islands. For the purpose of this document, the JCRA and GCRA together are referred to as CICRA, and all references to CICRA should therefore be read as references to each of the JCRA and the GCRA, unless the context otherwise requires.

By working together, sharing resources and expertise between the islands, CICRA's aim is to ensure that consumers receive the best value, choice and access to high quality services, in addition to promoting competition and consumers' interests.

What powers does CICRA have?

Through the JCRA and GCRA, CICRA has a wide range of powers to investigate regulated sectors for suspected breaches of the law or licence conditions. It can order that offending conduct be stopped and, in certain circumstances, levy financial penalties on businesses for the breach.

What sector specific laws does CICRA have responsibility for?

- **Sector-Specific Legislation**

In Jersey, CICRA is responsible for administering and enforcing the Postal Services (Jersey) Law 2004, the Air and Sea Ports (Incorporation) (Jersey) Law 2015 and the Telecommunications (Jersey) Law 2002 and associated Directions issued by the States of Jersey.

In Guernsey, CICRA is responsible for administering and enforcing the Post Office (Bailiwick of Guernsey) Law, 2001, the Telecommunications (Bailiwick of Guernsey) Law, 2001 and the

Electricity (Guernsey) Law, 2001 and associated secondary legislation, including Directions issued by the States of Deliberation in Guernsey.

In this guideline, this legislation is jointly referred to as 'Sector-Specific Legislation'.

[Note: the regulation of electricity and post by the GCRA in Guernsey are currently under review with the expectation that the responsibility for regulation will be transferred to the States Trading Supervisory Board. This guideline excludes further reference to those sectors.]

2.Powers to impose financial penalties: Telecoms Sector

CICRA's powers to impose financial penalties are set out in law.

- **Jersey**

Under the Telecommunications (Jersey) Law 2002, the JCRA may impose a financial penalty on a licensee that breaches a licence condition (Article 19A(2)). We may impose a further penalty if the breach is not remedied (Article 19A(3)). A financial penalty imposed on a licensee (or the total of those penalties) must not exceed 10% of the turnover of the licensee during the period that the licensee was in contravention of the condition contained in the licence, to a maximum period of 3 years (Article 19A(4)).

We shall not give a Direction under Article 19 where the contravention is trivial or the licensee has taken reasonable steps to comply with the condition and to remedy the effects of the contravention (Article 19(2G)). It is a reasonable defence to prove that the person took all reasonable steps and exercised all due diligence to ensure compliance with any Direction given (Article 19(7)).

- **Guernsey**

Under the Telecommunications (Bailiwick of Guernsey) Law 2001, the GCRA has the power to impose a financial penalty (s.27(5)(a)) if a direction to comply with a licence condition is ignored. We must serve on the licensee a notice stating the amount of the penalty. Written representations may be made with a specified period (not less than 7 days from the date of giving the notice) (s.28(1),(2)).

We shall impose a financial penalty unless it we are satisfied that (s.28(4)):

- the licensee is taking or has taken all reasonable steps to ensure compliance;
- the imposition of a financial penalty would [not] be consistent with the objectives set out in s.2 of the Regulation of Utilities (Bailiwick of Guernsey) Law 2001;
- the contravention is not material.

S.28(6) provides that penalty means an amount, not exceeding 10% of turnover, having regard to:

- the seriousness of the breach;
- the extent to which the contravention was deliberate or reckless;
- the objectives set out in s.2 of the Regulation of Utilities law; and
- the enforcement of the Regulation of Utilities Law and the Telecoms Law.

3. Powers to impose financial penalties: Ports Sector (Jersey Only)

Under the Air and Sea Ports (Incorporation) (Jersey) Law 2015 the JCRA has the power to impose a financial penalty (Article 20(1)) but not where the contravention is trivial or the licensee is taking reasonable steps to comply with the condition or to remedy the damage caused by the breach (Article 20(2)).

The total of any financial penalties imposed on any individual licensee shall not exceed 10% of the turnover of the licensee for any period (up to a maximum of 3 years) during which the licensee was in contravention of the condition (Article 20(3)).

The Law provides that financial penalties will be paid to the Treasurer of the States and paid into the Consolidated Fund.

4. Powers to impose financial penalties: Postal Sector (Jersey only)

The JCRA has no power to impose financial penalties in the postal sector.

5. Deciding to issue a financial penalty

Principles

Penalties will be appropriate and proportionate to the circumstances of each infringement when considered in the round.

Broadly speaking, CICRA will seek to impose penalties that are set at a level that achieves deterrence, both to the individual business and the wider industry, whilst also taking into account aggravating and mitigating factors.

In particular, the level of the penalty must have the appropriate impact on the regulated body at an organisational level. It should incentivise the board (which is ultimately responsible for the conduct and culture of the regulated body) to change the conduct of the regulated body as a whole and bring it into compliance. The level of the penalty should be high enough that it is not more profitable for a business to break the law and pay the consequences, than it is to comply with the law in the first instance. This should discourage bad conduct and encourage good practices and a culture of compliance across the organisation.

If, in making the assessment in any particular case, we consider that the level of penalties set in previous cases has not been sufficiently effective in achieving deterrence, and deter future breaches, we may set higher penalties.

Will a penalty be imposed?

When deciding whether or not to impose a financial penalty, we will take account of a number of factors, which will include the following:

- The degree of harm, whether actual or potential, caused by the contravention, including any increased cost incurred by consumers or other market participants
- Whether imposing a financial penalty is likely to create an incentive for future compliance and deter future breaches
- Whether the contravention is material or trivial
- Whether the breach should have been apparent to a diligent licensee
- Whether the contravention in question continued, or timely and effective steps were taken to end it, once the regulated body became aware of it.

6. Calculating the level of a financial penalty

Criteria relevant to the level of financial penalty

In considering the **level** of financial penalty to be imposed, CICRA will take account of the following criteria:

- The size and turnover of the regulated body
- The seriousness and duration of the contravention
- Any gain (financial or otherwise) made by the regulated body in breach (or any connected body)
- The degree of harm or increased cost incurred by customers or other market participants

The following factors may **increase** the level of the financial penalty:

- Whether the regulated body in breach has a history of contraventions

- The extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management and or the Board knew, or ought to have known, that a contravention was occurring or would occur.

The following factors may **decrease** the level of the financial penalty:

- Whether in all the circumstances reasonable steps had been taken by the regulated body to prevent the contravention
- Whether any steps have already been taken to remedy the consequences of the contravention;
- The extent to which the regulated body in breach has cooperated with the CICRA investigation

When considering the degree of harm caused by the contravention and/or any gain made by the regulated body as a result of the contravention, we may seek to quantify those amounts.

We will have regard to any relevant precedents set by previous cases, but may depart from them depending on the facts and context of each case.

Consumer Redress Payments

In certain circumstances, it may be of greater benefit to consumers for the organisation in question to make consumer redress payments rather than a financial penalty. These may be made in the form of direct compensation payments to customers where they have been affected by the case in question, or made to an appropriate cause approved by CICRA.

It will be for the organisation in question to propose such an alternative remedy to us. It is entirely within our discretion to accept or reject any alternative remedy proposed.

For the avoidance of doubt our acceptance of a proposed alternative remedy will not remove any financial penalty in its entirety.

7. Payment and issuing infringement decisions

The infringement decision will specify the date by which the financial penalty and any consumer redress payments must be made, which will usually be two calendar months after the financial penalty has been imposed. If payments have not been paid by that date, interest will accrue daily thereafter on any unpaid amount at a rate 4% above the base rate of the Bank of England, determined by CICRA in the infringement decision. The Royal Courts of Jersey and Guernsey can also be asked for an Order to enforce payment of a financial penalty.

A public version of the infringement decision, including the amount of the financial penalty, will be published on our website.

Any financial penalties received by CICRA are paid to the Treasury of the relevant jurisdiction.

8. How can I find out more?

Please contact us if you have a question about our regulatory role in either Island, or if you suspect that a business is breaching the law or its licence and wish to make a complaint or discuss your concerns:

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Publications

All our publications, including the detailed guidelines we publish covering specific areas of the laws, can be downloaded from our website www.icra.je and www.icra.gg. You can also request a copy of any of our publications by telephone from the numbers above.