



GCRA Guideline 11 – Regulatory Enforcement

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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 Guernsey Competition and Regulatory Authority (**GCRA**), apply the laws we are responsible for administering in Guernsey.

The purpose of this guideline is to explain to consumers, businesses and their advisers how the GCRA approaches concerns with compliance or breaches of the sector laws and licence conditions by the licensees that we regulate. The procedures that we use in respect of competition law matters are set out in a separate guideline.

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

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1 Introduction

As well as being required to follow Guernsey competition law, the electricity and telecommunications sectors¹ in Guernsey are subject to additional regulation (referred to in this Guideline as Sector Laws²). In those sectors, where services have historically been supplied by a single company and where competition may therefore not be as strong as in other areas of the economy, regulation “stands in the gap” for competition to help ensure that consumers still enjoy the benefits that competition normally delivers.

The Guernsey Competition and Regulatory Authority (“GCRA”) carries out a range of regulatory functions. These include:

- Advising the States in relation to utility activities;
- Granting and renewing (or refusing to grant or renew) licences;
- Modifying licences;
- Setting licence fees.

The GCRA also has powers to ensure that licensees comply with Sector Laws and with their licence conditions. This Guideline describes how the Guernsey Competition and Regulatory Authority (“GCRA”) carries out its enforcement work under the Sector Laws in Guernsey.

¹ The Post Office (Bailiwick of Guernsey) Law, 2001 establishes regulation of the postal sector and has not been rescinded. However, the regulatory system is currently dormant.

² The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001; The Electricity (Guernsey) Law, 2001; The Post Office (Bailiwick of Guernsey) Law, 2001; the Telecommunications (Bailiwick of Guernsey) Law, 2001.

2 The GCRA's regulatory activities

Functions

The regulatory **functions** of the GCRA are prescribed by law³ and include enforcement and non-enforcement activities. The enforcement functions of the GCRA under the Sector Laws, which are the subject of this Guideline, are:

- to monitor, enforce, suspend, revoke or consent to the surrender of licences, and
- to receive and to conduct inquiries and investigations and to hear complaints by any person regarding utility activities.

Powers

The law gives the GCRA the **power** to take the steps necessary to exercise its functions, which may include:

- Requiring the production of documents, accounts or information.
- Imposing any direction, sanction or requirement under any Sector Law.

Duties

When carrying out its regulatory functions, including its enforcement work, the GCRA has a **duty** to act in accordance with the six principles for economic regulation and to promote (and, where these conflict, to balance) a number of objectives, which are set out in Annex 1 to this Guideline.

In determining whether or not to take enforcement action in any particular case, we will apply our **prioritisation principles**⁴.

³ The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, sets out the functions of the GCRA under that law and the various Sector Laws that it administers.

⁴ <https://www.gcra.gg/strategic-plans/prioritisation-principles/prioritisation-principles/>

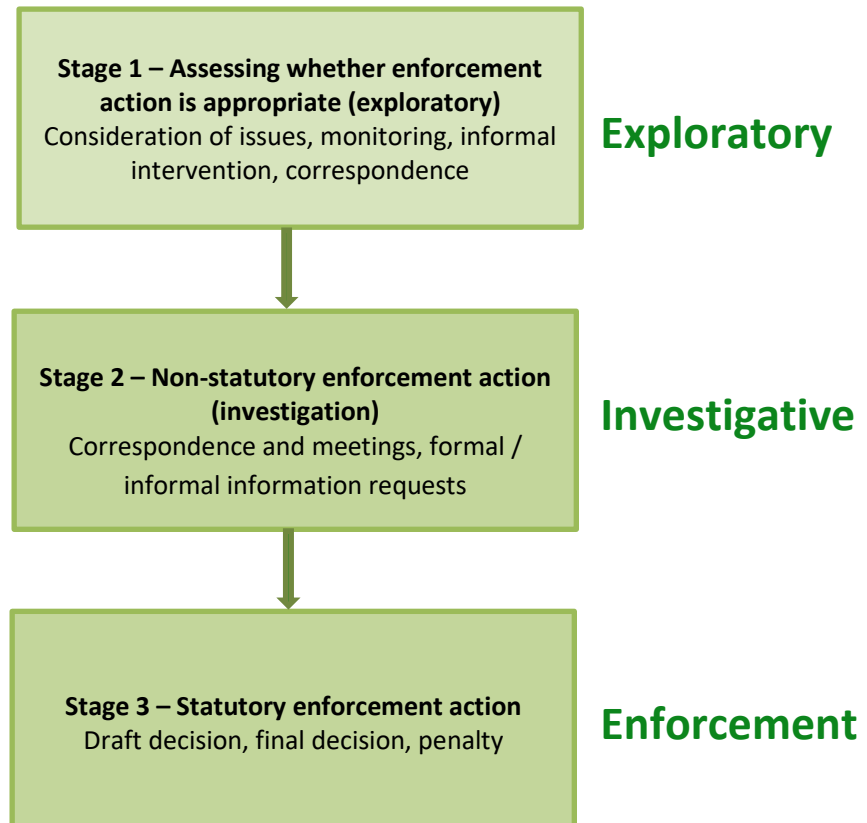
3 How we work

The purpose of our regulatory enforcement activity is to secure compliance with the Sector Laws and/or with licence conditions. The type of intervention that is appropriate will, however, depend on the specific circumstances of each case.

There are a number of ways in which the GCRA can intervene to ensure compliance. These are:

- Exploratory work (assessing whether it is appropriate to take enforcement action)
- Investigating (non-statutory enforcement action)
- Statutory enforcement action

This staged approach to enforcement, which is illustrated in the diagram below, and the way in which we will escalate a matter through these levels, is explained in more detail in the following sections of this Guideline.



4 Assessing whether enforcement action is appropriate (exploratory)

The GCRA's view is that intervention at the early stages of an issue can be an effective way of resolving issues so that formal action is not required.

The GCRA has a number of regulatory tools which it can use to monitor potential compliance issues and which minimise the likelihood of the GCRA having to take formal action. These include:

- Informal and formal review meetings
- Preliminary investigation of third party complaints
- Informal or formal requests for information or other correspondence with licensees and/or affected third parties.

When requiring the production of information we will specify:

- The reason that the information is required.
- In the case of a formal request, the legal basis on which the information is being requested.
- The format in which the information must be provided to us.
- The timescale within which the information must be provided.

Where we consider that attending the premises of a licensee is the most efficient and effective way of obtaining information at any stage of our regulatory enforcement, we may carry out an on-site (i.e. at the premises of a licensee) examination, investigation or audit of any aspect of the provision of regulated activities. Such examination, investigation or audit may include the copying of documents and or the extraction of information.

5 Non-statutory enforcement action (investigative)

Where informal steps have not been effective, or where the nature of the case means that those steps are unlikely to, or not appropriate to, achieve regulatory compliance, the GCRA will undertake non-statutory enforcement action (investigative stage).

In those cases, the GCRA will issue a formal “case to answer” to the party or parties concerned.

The formal “case to answer” will set out:

- The legal basis for the case to answer, including, if applicable, the licence condition that may have been contravened.
- A brief description of the issue giving rise to the case to answer.

The GCRA will then engage with relevant stakeholders and gather evidence. Such evidence gathering measures may include:

- Informal or formal requests for information or other correspondence with licensees and/or affected third parties.
- Obtaining reports from third party experts
- Meetings and/or other engagement with licensees and/or third parties.

Requests for information at this stage are likely to be formal and will specify:

- The reason that the information is required.
- The legal basis on which the information is being requested.
- The format in which the information must be provided to us.
- The timescale within which the information must be provided.

As explained above, we may also conduct an on-site investigation, examination or audit.

6 Statutory enforcement action

Where non-statutory enforcement action has not achieved regulatory compliance, or where the nature of the case means that non-statutory enforcement action is not appropriate or is unlikely to achieve regulatory compliance, the GCRA will undertake statutory enforcement action (direction and penalty).

We will give notice of a proposed direction to the licensee where we consider that a licensee remains or has been in contravention of:

- Any condition of a licence; or
- Any provision of, or provision of a direction under any Sector Law

We may also publish notice of the proposed direction but are not obliged to do so.

The notice of the proposed direction must contain the following information:

- A statement that the GCRA proposes to give a direction to the licensee;
- The relevant section of the Sector Law under which the direction is proposed to be given;
- The requirements of the proposed direction;
- The condition of the licence or the provision of the direction or of the Sector Law that the GCRA considers the licensee to have breached.

The notice will specify the time, which will generally be not less than 7 days from the date of giving notice, within which written representations or objections in respect of the proposed direction may be made.

We will consider any representations or objections received before deciding whether or not to adopt the proposed direction.

We will give notice of our decision to adopt, or not to adopt, the proposed direction. We will also publish non-confidential versions of any representations or objections received on our website.

7 Financial penalties

In appropriate cases, the GCRA may, impose financial penalties. The procedure it follows when determining whether a penalty is appropriate and the level of any penalty is set out in GCRA Guideline 12A.

8 Confidentiality

The GCRA is permitted to disclose information from which an individual or body may be identified under a number of circumstances, including with consent and/or if disclosure would enable the Authority to exercise its functions. These are exceptions to the general rule that such information must not be disclosed.

Even where to do so would be permitted, we will generally avoid the disclosure of information supplied to us if that information is confidential and/or commercially sensitive. Before we disclose any information, we will give the party who submitted it an opportunity to identify information that it considers to be confidential and/or commercially sensitive. Any claims of confidentiality must be duly substantiated.

Before disclosing information, including in our published documents, the GCRA will require all parties that have provided information during the investigation to make known to us which information they consider to be confidential and why. Such

claims should be kept to the minimum necessary to protect confidentiality and, for reasons of transparency and open decision making, blanket or unsubstantiated claims will not be accepted. Having taken into account parties' confidentiality representations, the GCRA will decide whether it is appropriate to disclose the information.

Information may be viewed as confidential if it is:

- a. commercial information, the disclosure of which the GCRA considers would significantly harm the legitimate business interests of the business to which it relates; or
- b. information relating to the private affairs of an individual the disclosure of which the GCRA considers would significantly harm the individual's interests.

9 Consequences of obstructing an investigation

The Sector Laws provide that it is a criminal offence for any person knowingly or recklessly to provide false, deceptive or misleading information, documents or statements to the GCRA.

Failure to provide relevant information is also an offence, if withholding that information is likely to lead to the GCRA being misled.

A person committing any such offences is potentially liable for penalties that include imprisonment of up to 2 years, payment of a fine, or both.

10 Legal Professional Privilege

The GCRA may not require the disclosure of information or documents that would be protected from disclosure in the Royal Courts on the grounds of legal professional privilege.

11 How can I find out more?

Please contact us if you have a question about utility regulation in Guernsey or if you suspect that a business is breaching the law or its licence conditions and wish to complain 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.gcra.gg.

Annex 1

General duties of the GCRA

- The protection of the interests of consumers in respect of prices, quality, service levels, permanence and variety of utility services.
- To ensure, as far as possible, that supply of utility services meets reasonable demand.
- To ensure that the way in which utility services are provided serves and contributes to the economic and social development and well-being of the Bailiwick.
- To introduce, maintain and promote effective and sustainable competition in the provision of utility services in the Bailiwick, subject to any special of exclusive rights awarded to a licensee by the GCRA pursuant to States' Directions.
- To improve the quality and coverage of utility services and to facilitate the availability of new utility services in the Bailiwick.
- As far as possible, to reduce the environmental impact of utility services.

GCRA Prioritisation principles

- **Actionable** – Does the GCRA have the necessary legal powers to properly assess and address the nature of the concerns that have arisen?
- **Meaningful** – Is the GCRA as sure as it can be that the actions it takes have a net positive contribution to the functioning of local markets, mindful of the fact that any intervention – or indeed not intervening at all – will have some cost?
- **Realistic** – Even if it has the power to intervene, the GCRA takes into account the practicalities of taking action, mindful that it is a small competition and regulatory authority.

Principles for Economic Regulation

- Accountability
- Focus
- Predictability
- Coherence
- Adaptability
- Efficiency