



Guideline 12A – Sector Specific Financial Penalties

Issued September 2021

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 have the responsibility for administering and enforcing in Guernsey.

The purpose of this Guideline is to explain to consumers, business and their advisers, how we decide whether to issue a financial penalty to a licensed business.

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

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 the Sector Laws and with their licence conditions and, under certain circumstances, to impose financial penalties on licensees that breach the Sector Laws and/or licence conditions.

This Guideline describes how the GCRA determines whether or not to impose a financial penalty on a licensee and, where it does so, how the level of that penalty is determined.

¹ The Post Office (Bailiwick of Guernsey) Law, 2001 establishes regulation of the postal sector and has not been rescinded.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. Powers to impose financial penalties

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

Under the Sector Laws, the GCRA has the power to impose a financial penalty if a direction to comply with a licence condition is ignored.³

Before we do so, we must first serve on the licensee a notice stating the amount of the penalty and the reasons for its imposition and allow written representations/objections to be made to us within a specified period (not less than 7 days from the date of giving the notice).⁴

We will impose a financial penalty unless we are satisfied that⁵:

- the licensee is taking or has taken all reasonably necessary steps to ensure compliance with the direction;
- the imposition of a financial penalty would be inconsistent with the objectives set out in s.2 of the Regulation of Utilities (Bailiwick of Guernsey) Law 2001 (the **Regulation Law**) or States Directions;
- the contravention is not material.

We may impose a penalty of up to 10% of the infringing licensee's turnover, having due regard to:⁶

- 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 Law; and
- the enforcement of the Regulation Law and the relevant Sector Law.

³ s.27(5)(a)) of the Telecoms Law, s. 29(5)(a) of the Electricity Law and 31(5)(a) of the Postal Law.

⁴ s.28(1) and (2) of the Telecoms Law, 30(1) and (2) of the Electricity Law and 32(1) and (2) of the Postal Law.

⁵ s.28(4)) of the Telecoms Law, s.30(4) of the Electricity Law and s. 32(4) of the Postal Law.

⁶ S. 28(6) of the Telecoms Law. S.30(6) of the Electricity Law and s.32(6) of the Postal Law.

3. 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, the GCRA will seek to impose penalties that are set at a level that deters both the individual business and the wider industry from committing infringements, 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, we may set higher penalties in order to deter future breaches.

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.

4. 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, the GCRA 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 reasonable steps, in all the circumstances, have been taken by the regulated body in order 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 GCRA 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 fining precedents set by previous cases, but may depart from them as required by the facts and context of each case.

5. Payment and issuing infringement decision

The infringement decision will specify the date by which the financial penalty must be made. This 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 published base rate of the Bank of England, determined by the GCRA in the infringement decision. The GCRA may recover the penalty as a civil debt through the Royal Court.

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 the GCRA are paid to the Public Utilities Regulation Fund.

6. How can I find out more?

Please contact us if you have a question about our regulatory role in Guernsey, 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.gcra.gg.