



Telecommunications (Jersey) Law 2002

Information Note:

T-106 Guideline 12A: Guideline on
Financial Penalties in the regulated
sectors

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1. Information Note

- 1.1 The Jersey Competition Regulatory Authority (**Authority**) issued a proposed revised version of its Guideline 12A – Guideline on Financial Penalties in the regulated sectors (**Guideline**) to the holders of licences under the Telecommunications (Jersey) Law 2002 for their comments.
- 1.2 Comments were received from JT (Jersey) Limited in a letter of 22 March 2024. On careful consideration of these comments, the Authority made changes to the proposed Guideline and formally adopted the updated Guideline at its meeting of 23 May 2024.
- 1.3 The Guideline has been published by the Authority today, 1 July 2024.
- 1.4 In the interests of transparency, the substantive contents of JT’s letter and the Authority’s responses are set out in the Annex to this Information Note.

Case T-106: Guideline 12A – Guideline on Financial Penalties in the regulated sectors

Information note issued: 1 July 2024

Annex: Substantive text of JT’s letter of 22 March 2024 and the Authority’s responses

JT’s letter	Authority’s responses
Power to impose financial penalties	
<p>Generally, JT believes this update to the Guidance to have been a missed opportunity. While the paragraph on the Telecoms Sector has been brought into line with that on the Ports Sector, JT believes that the Authority could have amplified the guidance on aspects such as “trivial” and the “taking of reasonable steps”, the latter having been the subject of much debate between JT and the Authority.</p>	<p>Noted. The decision not to amplify the guidance on the ‘taking of reasonable steps’ was taken on the basis of the finding of the Law Officers’ Department that the wording was not ambiguous and did not need to be changed. It will depend on the circumstances as to whether any steps taken are reasonable in the view of the Authority.</p>
Calculation the level of a financial penalty	
<p>In the part of this section dealing with factors that may increase the level of the financial penalty:</p>	
<p>1. The additional words in brackets in the first bullet point fail to properly reflect the provisions of the telecommunications law. Article 19(2E) of the Telecommunications (Jersey) Law 2002 states that a “repeated contravention” is a contravention of the same condition in respect of which the Authority had given a notification or direction under this Article 19 less than 12 months earlier. That “same condition” and the “12-month period” tests must be reflected in the new wording.</p>	<p>This is incorrect. Article 19(2E) only relates to the giving of a direction and in the circumstances referred to in Article 19(2B)(a). It has no application to the aggravating factors in relation to Article 19A.</p>
<p>2. The Authority has added a new aspect to the test in the second bullet point and given itself a new ground on which to increase the level of the financial penalty. Now, in addition to reckless or deliberate contravention being grounds for increasing the level of the financial penalty, negligence is an exacerbating factor. The Authority needs to explain where it gets this power to add a ground for increasing penalties (please see our comments on transparency below). It appears to us that there seems to be very few circumstances that will not now allow the Authority to increase a penalty.</p>	<p>This is refuted: the reference to negligence is a logical adjunct to the references to reckless or intentional conduct. In amending the Guidelines, the Authority is explaining its processes, not exercising a power.</p>

JT's letter	Authority's responses
<p>In the part of this section dealing with factors that may decrease the level of the financial penalty, the wording used does not align with the telecommunications law.</p>	
<p>The Guidance says:-</p> <p><i>“The following factors may decrease the level of the financial penalty:</i></p> <ul style="list-style-type: none"> • <i>Whether in all the circumstances reasonable steps had been taken by the regulated body to prevent the contravention”</i> <p>However, under the Telecommunications (Jersey) Law 2003 (sic) and the Air and Sea Ports (Incorporation) (Jersey) Law 2015), the taking of reasonable steps is a circumstance in which the Authority has no power to issue any financial penalties. It is not a circumstance that decreases the level of a financial penalty.</p>	<p>As has been evidenced, the fact that some steps have been taken which fall short of the reasonable steps test in Article 19A(13) can serve to decrease the financial penalty.</p>
<p>Determining the amount of the Penalty</p>	
<p>We note that the majority of the points in this section are similar to Ofcom's Penalty Guidelines. However, one notable exception is there is no transparency point in the Guidelines. Ofcom's guidelines state:-</p> <p><i>“Ofcom will have regard to the need for transparency in applying these guidelines, particularly as regards the weighting of the factors considered.”</i></p>	<p>The Authority will include a similar statement in the Guidelines.</p>
<p>Consistent with its quasi-judicial function in the determination and imposition of penalties and an obligation to ensure due process and consistent with its own stated principles on Communications and Stakeholder Engagement — that it ensures openness and transparency with stakeholders and works on the basis of 'no surprises' — the JCRA should make clear its application of the transparency principle and a statement similar to that in the Ofcom document should be added to the Guidelines.</p>	<p>See above</p>
<p>Discount for settlement</p>	

JT's letter	Authority's responses
<p>Although JT has experience of the Authority offering a discount for settlement there are no details in the Guidelines or elsewhere of the discount for settlement process or the settlement criteria. The Ofcom guidelines layout the discount process and criteria and we believe that, in the interests of the Authority living up to its own transparency principles, it should include a section in the Guidelines that clearly details this process and the percentage savings.</p>	<p>The Authority does not as a matter of course offer a discount for settlement: it is a matter of judgement in relation to a particular set of circumstances. The discount recognises the savings in time and resources which arise from a settlement.</p> <p>A statement to this effect will be added to the Guidelines.</p>
<p>Consultation</p>	
<p>You state in your letter that the draft will be sent to all potentially affected licensees for comment. We believe that, again in the interests of transparency and open stakeholder engagement, the Authority should follow (or should have followed) its normal consultation process for the Guidelines.</p>	<p>The Guidelines were circulated to all licensees in the various sectors and no representations were received other than from JT.</p>