

Appendix 6

In this Appendix underlining indicates new text and striking through indicates deleted text.
Note: some text that is not being amended is included for reference only.

The DFSA Sourcebook



Regulatory Policy and Process (RPP Sourcebook)

6 PENALTY GUIDANCE

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6-5 FINANCIAL PENALTIES IMPOSED ON A FIRM

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Step 3: Mitigating and aggravating factors

6-5-7 The DFSA may increase or decrease the amount of the financial penalty arrived at after Step 2 (excluding any amount to be disgorged as set out in Step 1), to take into account factors which aggravate or mitigate the contravention. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

6-5-8 The following list of factors may have the effect of aggravating or mitigating the contravention:

- (a) the conduct of the firm in bringing (or failing to bring) quickly, effectively and completely the contravention to the DFSA's attention (or the attention of other regulatory authorities, where relevant);
- (b) the degree of cooperation the firm showed during the investigation of the contravention by the DFSA, or any other regulatory authority allowed to share information with the DFSA;
- (c) where the firm's senior management were aware of the contravention or of the potential for a contravention, whether they took any steps to stop the contravention, and when these steps were taken;
- (d) the nature, timeliness and adequacy of the firm's responses to any supervisory interventions by the DFSA and any remedial actions proposed or required by DFSA's supervisors;
- (e) whether the firm has arranged its resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
- (f) whether the firm had previously been told about the DFSA's concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
- (g) whether the firm had previously undertaken not to perform a particular act or engage in particular behaviour;
- (h) whether the firm concerned has complied with any requirements or rulings of another regulatory authority relating to the contravention;
- (i) the previous disciplinary record and general compliance history of the firm;
- (j) action taken against the firm by other domestic or international regulatory authorities that is relevant to the contravention in question;

- (k) whether DFSA guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials; ~~and~~
- (l) whether the DFSA publicly called for an improvement in standards in relation to the behaviour constituting the contravention or similar behaviour before or during the occurrence of the contravention; and
- (m) the treatment, if any, of a whistleblower involved in disclosing the contravention.

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6-6 FINANCIAL PENALTIES IMPOSED ON AN INDIVIDUAL

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Step 3: Mitigating and aggravating factors

6-6-7 The DFSA may increase or decrease the amount of the financial penalty arrived at after Step 2 (excluding any amount to be disgorged as set out in Step 1), to take into account factors which aggravate or mitigate the contravention. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

6-6-8 The following list of factors may have the effect of aggravating or mitigating the contravention:

- (a) the conduct of the individual (whether as a whistleblower or not) in bringing (or failing to bring) quickly, effectively and completely the contravention to the DFSA's attention (or the attention of other regulatory authorities, where relevant);
- (b) the degree of cooperation the individual showed during the investigation of the contravention by the DFSA, or any other regulatory authority allowed to share information with the DFSA;
- (c) whether the individual took any steps to stop the contravention, and when these steps were taken;
- (d) any remedial steps taken since the contravention was identified, including whether these were taken on the individual's own initiative or that of the DFSA or another regulatory authority;
- (e) whether the individual has arranged his resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
- (f) whether the individual had previously been told about the DFSA's concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
- (g) whether the individual had previously undertaken not to perform a particular act or engage in particular behaviour;
- (h) whether the individual has complied with any requirements or rulings of another regulatory authority relating to the contravention;

- (i) the previous disciplinary record and general compliance history of the individual;
- (j) action taken against the individual by other domestic or international regulatory authorities that is relevant to the contravention in question;
- (k) whether DFSA guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials;
- (l) whether the DFSA publicly called for an improvement in standards in relation to the behaviour constituting the contravention or similar behaviour before or during the occurrence of the contravention; and
- (m) whether the individual agreed to undertake training subsequent to the contravention.