



## Financial Services Act 2008

### Guidance on Rule 7.13 Staff Disciplinary Action

The purpose of this requirement is to inform the Authority at an early stage of any event that could potentially affect the licenceholder's reputation or financial soundness, and also enable the Authority to consider whether there are any material and relevant concerns about the role of the individuals involved – in connection with sections 10, 10A (Prohibitions) or 11 (Warning Notices) of the Financial Services Act 2008 ("the Act"). See also Rule 7.12 Fitness and Propriety and Rule 8.18 Fraud and Dishonesty.

The licenceholder should use its own human resources policy to determine what should be disclosed as "serious disciplinary action", but the Authority would expect it to include at least any action which involved dishonesty, criminality, or contravened measures for the protection of customers and which could lead to suspension or termination of the person's employment.

Under rule 7.13 (1) the Authority must be notified within 10 business days of the discovery of an event that may give rise to serious disciplinary action. Names of individuals must be disclosed as follows:

- Those appointed in 'controlled functions' – the name of the individual **must** be provided at the same time as the initial notification.
- Other staff – the licenceholder should **not** include the individual's name when making the initial notification. However, the name of the individual **must** be disclosed (Rule 7.13(2)(c)) once an investigation has been completed, **IF** a final warning or other serious disciplinary action has taken place.

Following any notification under rule 7.13(1), where a disciplinary process is terminated due to a compromise agreement (or similar) being reached, or the resignation of the individual, the Authority expects to be advised of this, together with the rationale for the licenceholder's decision to accept that solution rather than pursue the disciplinary process to a conclusion.

Where the names of individuals are disclosed to the Authority, the information will be used as follows:

- **Individuals in Controlled Functions** are subject to a fit and proper person regime. The Authority must have regard to such individuals' continuing integrity, financial standing and competence. The Authority will consider the circumstances of any case notified to it and may undertake regulatory action against the individual, as provided by Sections 10, 10A and 11 of the Act. Any action that may be taken against the individual would be proportionate to the event from which the disciplinary action arose.

The information may also be retained for the purpose of assessing the suitability of the individual for any other Controlled Functions for which they may be subsequently proposed.

- In **all other** cases (i.e. not individuals in Controlled Functions) where an individual's name is required to be disclosed, the Authority will consider whether the circumstances could warrant the taking of regulatory action against the individual, as provided by Section 10A of the Act. Any action that may be taken against the individual would be proportionate to the event from which the disciplinary action arose.

Rule 7.13 should not be construed as conflicting with employment law ([the Code of Practice on Disciplinary and Grievance Procedures 2007](#)) or the [Data Protection Act 2018](#) ) which also applies to the Authority's processing of personal data.

Licenceholders may discuss any specific queries with the Authority on a no-names basis before disclosing personal data. Licenceholders should also ensure that staff are made aware of this rule if relevant disciplinary action is to be taken, and provided with a copy of any notification to the Authority (Rule 7.13(4)).

### **Status of guidance**

*The Isle of Man Financial Services Authority ("the Authority") issues guidance for various purposes including to illustrate best practice, to assist licenceholders to comply with legislation and to provide examples or illustrations. Guidance is, by its nature, not law, however it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.*