



# WHAT DOES ENFORCEMENT LOOK LIKE?



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Guidance for Organisations

This document is purely for guidance and does not constitute legal advice or legal analysis. It is intended as a starting point only, and organisations may need to seek independent legal advice when renewing, enhancing or developing their own processes and procedures or for specific legal issues and/or questions.



# JOIC

JERSEY OFFICE OF THE  
INFORMATION COMMISSIONER

[WWW.JERSEYOIC.ORG](http://WWW.JERSEYOIC.ORG)



## What Does Enforcement Look Like?

Jersey Office of the Information Commissioner (JOIC) has a number of powers at its disposal under the Data Protection Authority (Jersey) Law 2018 (**DPAJL**).

A range of investigative powers can be used to handle complaints and JOIC will decide on the most appropriate manner in which to investigate any complaint. Any investigation is conducted in accordance with our **Regulatory Action & Enforcement Policy**.

If on completion of an investigation it is determined that a breach has occurred under either the Data Protection (Jersey) Law 2018 (**DPJL**) or the Freedom of Information (Jersey) Law 2011, we will then determine whether or not to impose a sanction and if so which one or more than one to impose.

The JOIC mobilises its regulatory activity in a number of ways, including:

- Conducting investigations of complaints and conducting inquiries to establish compliance with the DPJL and the DPAJL;
- Issuing Information Notices;
- Making recommendations and determinations (including providing words of advice);
- Issuing orders, reprimands and warnings to Controllers and Processors following a breach of the DPJL or DPAJL;
- Issuing public statements;
- Issuing administrative fines;
- Exercising its powers of entry, search, inspection, test and seizure;
- Conducting or requiring data protection audits;
- Conducting criminal investigations where an offence under the DPJL or DPAJL has been or is being committed (this in collaboration with the States of Jersey Police or supporting any criminal investigations);
- Issuing opinions and guidance on issues relating to the protection of personal data and compliance with the DPJL and DPAJL.

### Selecting the appropriate enforcement action

Upon the conclusion of an inquiry/investigation, the JOIC must make a decision about whether the controller/processor has/is operating in breach of the DPJL. That is called a determination and once a determination has been made, the JOIC must then consider whether to impose any sanction and, if so, consider which one/more to impose (including whether to impose an administrative fine).

The sanctions available to the JOIC are as set out at Arts.25 and 26 of the DPAJL in that the JOIC can:

- Issue of a reprimand to the recipient (Art.25(1(a));
  - » A reprimand is an official recognition that the controller/processor has acted in breach of the DPJL;
- Issue a warning to the recipient that intended processing or other act or omission is likely to contravene the DPJL (Art.25(1)(b));
  - » This means that the controller/processor should take steps to address the act/omission.



- Order the recipient to do any or all of the following (Art.25(1)(c));
  - » Bring specified processing into compliance with the DPJL;
  - » Notify a data subject of any personal data breach;
  - » Comply with a request made by the data subject;
  - » Rectify or erase personal data in accordance with the law;
  - » Restrict or limit the recipients processing;
- Issue an administrative fine (Art.26).

The JOIC will adopt a tailored approach when determining the most appropriate action to take where we make a determination that a breach of the DPJL and/or the DPAJL has occurred. This means taking into account the following:

- The nature and severity of the breach or potential breach;
- The nature of the personal data affected and the level of privacy intrusion;
- The number of individuals affected, the extent of any exposure to financial, physical or psychological harm, and the degree of intrusion into their privacy;
- Whether the breach raises new or repeated issues, or concerns that the security measures adopted are insufficient to protect personal data;
- The gravity and duration of the breach or potential breach;
- Whether the issues raises concerns which may suggest systematic issues across a group of controllers or particular sector;
- The cost of measures to mitigate any risk, issue or harm;
- The public interest in regulatory action being taken;
- Whether another regulator, law enforcement body or competent authority is already taking action in respect of the same matter;
- Whether there are any other relevant aggravating or mitigating factors.

Controllers/processors will have the opportunity to have their voices heard throughout the inquiry/investigation/determination process.

Once the JOIC has decided upon a sanction (including any proposed fine), the controller/processor concerned will be given notice of the intended sanction and given 28 days to provide written or make oral representations on it. The JOIC must take those representations into account before making the final determination. (The full procedure to be followed is set out at Art.28 of the DPAJL.