

## **Co-Funded Payroll Scheme Appeals Process**

### **Guidance (version 3)**

#### **Aim of the appeals process**

The Co-Funded Payroll Scheme (CFPS) Appeals Process is a commitment in the Chief Minister's 100 Day Plan. It aims to ensure that claimants who have been asked to repay subsidies received under the Scheme have had the opportunity to provide new information that might reduce or eliminate the requirement to repay, or to seek additional time to make repayments.

#### **What the appeals process will consider**

The purpose of the appeals process will be to:

- a. Review decisions and calculations made in determining a repayment requirement to determine whether the rules of the CFPS have been appropriately applied.
- b. Consider new evidence such as revised tax assessments or evidence that 2019 was not a fair reflection of pre-pandemic income.
- c. Consider whether longer repayment terms would be warranted.

The appeals process will not consider:

- d. Issues of policy as implemented through CFPS Guidance and FAQs. The appeals process will not retrospectively amend the rules of the Scheme.
- e. Matters relating to peoples' experience of the Scheme. If you wish to make complaints about the CFPS or the customer service experience, please register a complaint via the [complaints procedure on gov.je](#).

#### **Decisions the appeals process can make**

Where appeals are successful the appeals process is able to:

- Reduce or eliminate a repayment requirement. Where money has already been paid back to government this could result in the appellant being refunded; and/or
- Consider the timeframe over which repayments to ensure repayments are affordable.

#### **When appeals can be made**

The appeals process will be open from 17:00 on 7<sup>th</sup> October 2022.

The appeals process will close at 17:00 on 31<sup>st</sup> December 2022. It will not be possible to accept new appeals after the application process has closed, though work will continue on appeals that have been submitted until they have reached a conclusion.

We aim to process appeals as quickly as possible and the process has been designed to automatically stream appeals with similar circumstances into groups. However, each appeal is unique and

evidence will be required to substantiate the circumstances related to each individual appeal. Appellants might need time to gather this evidence, however, we aim to reach a decision for each appeal within 30 days once all the necessary documentary evidence has been provided.

### **How to make an appeal**

Appeals must be made through the online appeals application form available on gov.je. If you require assistance to make an appeal via the online application form, the customer service officers located at the Customer and Local Services in La Motte Street offer an assistance service to help you complete the form.

If you would like advice on the completion of the online appeals claim form, please contact Jersey Business on 01534 610300. If you need further advice on making your appeal, please contact [CFPSappeals@gov.je](mailto:CFPSappeals@gov.je).

### **Requirement to register an appeal**

For an appeal to be considered as part of this process it will be necessary for you to register an appeal through the online claim form.

You may already be in dialogue with Government officials to question the repayment requirement and, through that discussion, you may already have provided information to Government. This process will be able to access historical information held in respect of claims made, payments made and repayment requests. However, we ask that you resubmit any other relevant documentation that supports the circumstances around your appeal via the online claim form – even if some of this information has previously been submitted to government. This helps to ensure no important information can be missed and will speed up the consideration of your appeal.

### **How the process will work**

The appeals process is overseen by the CFPS Appeals Ministerial Group, which has ministerial representation from the Cabinet Office, Department for the Economy and Treasury and Exchequer.

The Ministerial Group is ultimate decision-making authority for the CFPS Appeals Process. It sets the terms of the appeals and issues decision guidance to be implemented by an officer group that will administer the process.

The Officer Group will be responsible for the administration and implementation of the appeals process in line with the decision guidance established by ministers.

To ensure there is an independent business focus to the appeals process, the Officer Group will be chaired by Jersey Business. The Group will also include government officials with expertise in tax, accounting and the CFPS itself.

The role of the Officer Group is not to make decisions, it is to determine whether the circumstances surrounding an appeal fall within one of the pre-agreed scenarios for which the Ministerial Group has issued decision guidance. If it does, then the Ministerial Group's agreed solution will apply.

If the circumstances are novel, or otherwise not foreseen by the existing ministerial decision guidance, the circumstances of the appeal will be elevated to the Ministerial Group for consideration on an anonymised basis.

The process is designed to enable a prompt resolution to appeals, so that appellants are able to get a confirmed outcome for repayment requirements as soon as possible. The process therefore does not require individuals to make representations beyond those provided via the claim form and through supporting documentation. Wherever possible Government will seek to resolve appeals without having to seek additional information.

It is important to us that all appellants feel that their circumstances have been fully heard so if you prefer to make representations in person you are able to do so and you can request a meeting by emailing [CFPSappeals@gov.je](mailto:CFPSappeals@gov.je). Please be aware that, for purely practical scheduling reasons, we may be able to make quicker decisions on appeals that are focused on content submitted via the online claim form and by email.

If you would like advice on the completion of the online appeals claim form, please contact Jersey Business on 01534 610300.

### **Who can appeal**

Appeals can be made by any business (including self-employed individuals) that has successfully claimed under the CFPS (all Phases 1-7) and has been asked to repay some or all of the subsidies they received.

Appeals can be made even if you have already repaid the amount you were asked to repay or have entered into a mutually agreed repayment plan with the Government.

It is not possible to appeal the policy basis on which the CFPS was made available so appeals will only consider changes to repayment requirements and the timescales to repay. You cannot appeal whether individual businesses or sectors should have been eligible for support or for more support.

### **Requirements for evidence to substantiate appeals**

The Government recognises that people may qualify through the appeals process to have their repayment requirement revised or eliminated and that people may need more time to repay. At the same time, to comply with good governance standards and to meet public expectations surrounding the use of public money, it is necessary for Government to have sound evidence to substantiate its decisions. This means you will be asked for information and documentary evidence that proves the circumstances for your appeal. Government may require access to a significant amount of financial information and non-financial records held by businesses.

For the avoidance of doubt, should information or documentation supplied prove false or incomplete the results of the appeal could be invalidated and you will be liable to repay any balances owed.

The appellant is required to give consents and permissions to obtain and process these records. Once the appeal has been received and any other records have been obtained these records will be

processed in accordance with paragraphs 12 and 13 of Schedule 2 of the Data Protection (Jersey) Law 2018.

Government will contact employees if necessary to check they have been paid and that other terms of the CFPS have been adhered to. In making an appeal the appellant provides consent for the Government to contact any employee regarding the scheme.

The appellant can withdraw their permission and/consent at any time, however, if permission and/consent is withdrawn the Scheme may be unable to determine the Application or require the repayment of monies already provided under the Scheme.

Whether or not an appeal has been determined, the Scheme will retain copies of all relevant information relating to an application in accordance with established retention schedules.

### **Publication of information under the scheme**

Appellants should be aware that the Government of Jersey will periodically publish information in respect of businesses and self-employed individuals that have claimed under the scheme. Information related to appeals may be published alongside other information about payments and claims that were made.

### **Freedom of Information**

The Government of Jersey is subject to the requirements of the Freedom of Information (Jersey) Law 2011.

The Government of Jersey is responsible for determining whether any sensitive information and/or any other information:

- is exempt from disclosure in response to a Freedom of Information request in accordance with the provisions of the Freedom of Information (Jersey) Law 2011; or
- is to be disclosed.

### **Costs**

By way of clarity, the Scheme will not pay any contribution towards any legal or other professional fees incurred by an appellant in relation to their appeal or incurred in any other capacity as a result of decisions made in the administration of the CFPS.

### **Decision guidance**

To ensure the decision-making process for CFPS appeals is fully transparent and consistent, the Ministerial Group's decision guidance is published in this document. Any new guidance will be periodically published after it has been agreed. The tables that follow set out that guidance as it currently stands.





The CFPS provided the same level of support to individuals whether they were employed by a business or self-employed. However, given the difference in employment, Social Security and





taxation arrangements, the audit reviews had to differ for the self-employed and employers that are not self-employed.

Reflecting these differences, the appeals process has two streams

- ‘Employers’ – this route should be used by appellants who are appealing on behalf of their business for claims made related to the employees of that business. If you are self-employed (including owner-directors of a company) and you wish the appeal to include review of payments made to or for you, please use the ‘self-employed’ appeals route.
- ‘Self-employed’ – there is a broader range of circumstances that could have given rise to a repayment requirement for self-employed people as fewer automatic up-front checks were possible. The scenarios set out below focus on the following groupings:
  - Appeals related to detriment
  - Appeals related to the comparison year
  - Appeals related to tax declarations
  - Appeals related to income definitions
  - Other reasons for appeals

### Decision guidance made by employers that are not self-employed



Basis to Revise Repayment	Review time to repay	Scenario No.	Scenario Description	Applicable decision guidance and next steps
		EMP-1	My business failed the detriment test (20% or 30% fall in turnover) because 2019 was not a fair representation of my business’ pre-pandemic income	<p>Alternative comparator months can be used from:</p> <ul style="list-style-type: none"> <li>- 2018</li> <li>- Jan-Mar 2020</li> <li>- 2020</li> <li>- 2021</li> </ul> <p>You will be asked to demonstrate why the equivalent 2019 income figure is not a fair representation of pre-pandemic income.</p> <p>You will be asked to evidence that the alternate comparator month is a reasonable reflection of pre-pandemic trading.</p>
		EMP-2	My business received exceptional non-trading income in the month for which I claimed	<p>If you can demonstrate your business received extraordinary non-trading income, an alternate month can be used for detriment calculations.</p> <p>You will be asked to evidence that the alternate month is a</p>







Basis to Revise Repayment	Review time to repay	Scenario No.	Scenario Description	Applicable decision guidance and next steps
				better reflection of your business' performance.
		EMP-3	My business calculated detriment used the cash basis rather than the accruals basis	<p>The CFPS rules required businesses to use the accruals basis for detriment so there is no basis to revise the repayment requirement in these circumstances.</p> <p>The timescales for repayments will still be reviewed and you may be given more time to repay subject to affordability criteria.</p>
		EMP-4	My business calculated detriment using for forecast earnings rather than actual earnings	<p>The CFPS rules only permitted actual trading results to be used as comparable income so there is no basis to revise the repayment requirement in these circumstances.</p> <p>The timescales for repayments will still be reviewed and you may be given more time to repay subject to affordability criteria.</p>
		EMP-5	The Scheme rules changed, and my business was no longer eligible	<p>Over time, as public health restrictions were withdrawn, the range of sectors eligible for CFPS subsidies changed. Sectors that were back to trading as usual were no longer eligible. The CFPS claim form was updated to remove ineligible sectors so it was not possible to apply mistakenly unless a business changed its sector classification (which should remain static). As a result, there is no basis to revise the repayment requirement.</p> <p>The timescales for repayments will still be reviewed and you may be given more time to</p>

Basis to Revise Repayment	Review time to repay	Scenario No.	Scenario Description	Applicable decision guidance and next steps
				repay subject to affordability criteria.
New Guidance required	New Guidance required	EMP-6	If none of the other scenarios apply to your circumstances, you will be asked to explain your scenario	We may need to contact you to seek further information to ensure we fully understand the circumstances surrounding your appeal.  New decision guidance will be requested relevant to your scenario.

## Decision guidance for appeals made by self-employed people





### Appeals related to detriment

Basis to Revise Repayment	Review time to repay	Scenario No.	Scenario	Applicable decision guidance and next steps
		SE-1	My business failed the detriment test (20% or 30% fall in turnover) because 2019 was not a fair representation of my business' pre-pandemic income	Alternative comparator months can be used from: <ul style="list-style-type: none"> <li>- 2018</li> <li>- Jan-Mar 2020</li> <li>- 2021</li> </ul> <p>You will be asked to demonstrate why the equivalent 2019 income figure is not a fair representation of pre-pandemic income.</p> <p>You will be asked to evidence that the alternate comparator month is a reasonable reflection of pre-pandemic trading.</p>







Basis to Revise Repayment	Review time to repay	Scenario No.	Scenario	Applicable decision guidance and next steps
		SE-2	My business received exceptional non-trading income in the month for which I claimed	<p>If you can demonstrate your business received extraordinary non-trading income, an alternate month can be used for detriment calculations.</p> <p>You will be asked to evidence that the alternate month is a better reflection of your business' performance.</p>
		SE-3	My business calculated detriment used the cash basis rather than the accruals basis	<p>The CFPS rules required businesses to use the accruals basis for detriment so there is no basis to revise the repayment requirement in these circumstances.</p> <p>The timescales for repayments will still be reviewed and you may be given more time to repay subject to affordability criteria.</p>
		SE-4	My business calculated detriment using forecast earnings rather than actual earnings	<p>The CFPS rules only permitted actual trading results to be used as comparable income so there is no basis to revise the repayment requirement in these circumstances.</p> <p>The timescales for repayments will still be reviewed and you may be given more time to repay subject to affordability criteria.</p>





**Appeals Related to the Comparison Year**

Basis to Revise Repayment	Review time to repay	Scenario No.	Scenario	Applicable decision guidance and next steps
		SE-5	<p>The income on my 2019 tax assessment was not a fair reflection of the income I used to make from my business before the pandemic</p>	<p>Alternative comparator months can be used:</p> <ul style="list-style-type: none"> <li>- 2018</li> <li>- Jan-Mar 2020</li> <li>- 2021</li> </ul> <p>You will be asked to demonstrate why the equivalent 2019 income figure is not a fair representation of pre-pandemic income.</p> <p>The timescales for repayments will be reviewed and you may be given more time to repay subject to affordability criteria.</p>
		SE-6	<p>The income on my 2019 tax assessment did not represent a full year of trading as my business only started in 2019 or 2020</p>	<p>Alternative comparator months can be used:</p> <ul style="list-style-type: none"> <li>- 2018</li> <li>- Jan-Mar 2020</li> <li>- 2021</li> </ul> <p>You will be asked to demonstrate why the equivalent 2019 income figure is not a fair representation of pre-pandemic income.</p> <p>The timescales for repayments will be reviewed and you may be given more time to repay subject to affordability criteria.</p>





## Appeals related to tax declarations

Basis to Revise Repayment	Review time to repay	Scenario No.	Scenario	Applicable decision guidance and next steps
		SE-7	I made a mistake on my tax return by declaring a lower 2019 income than I received, and I now have a revised tax assessment	<p>You will be asked to provide your new tax assessment, which will be used to determine if there is any remaining difference between your tax assessed income and the relevant income for CFPS purposes.</p> <p>The timescales for repayments will be reviewed and you may be given more time to repay subject to affordability criteria.</p>
		SE-8	I made a mistake on my tax return and declared a higher income than I actually received - e.g. I merged my income with my partner's income	<p>You will be asked to provide your new tax assessment, which will be used to determine if your income exceeds the maximum amount supported by the CFPS.</p> <p>The timescales for repayments will be reviewed and you may be given more time to repay subject to affordability criteria.</p>
		SE-9	My 2019 tax return had not been submitted at the time of the CFPS audit, but I now have a final tax assessment	<p>You will be asked to submit your tax assessment, which will be used to determine whether there is any remaining difference between your tax assessed income and the relevant income for CFPS purposes.</p> <p>The timescales for repayments will be reviewed and you may be given more time to repay subject to affordability criteria.</p>

### Appeals related to income definitions

Basis to Revise Repayment	Review time to repay	Scenario No.	Scenario	Applicable decision guidance and next steps
		SE-10	I declared what I consider to be my gross income, but this differs from the gross income defined through the CFPS Guidance and FAQs	<p>The CFPS supported the personal income self-employed people generate through their self-employment as defined through the Scheme Guidance and FAQs. In these circumstances there will be no basis to revise the repayment requirement.</p> <p>The timescales for repayments will be reviewed and you may be given more time to repay subject to affordability criteria.</p>

### Other reasons for appeals

Basis to Revise Repayment	Review time to repay	Scenario No.	Scenario	Applicable decision guidance and next steps
		SE-11	The Scheme rules changed, and my business was no longer eligible	<p>The eligibility for the CPFS changed over time as restrictions affecting businesses were withdrawn. Subsidies were only provided to eligible businesses so there is no basis to revise the repayment requirement in these circumstances.</p> <p>The timescales for repayments will be reviewed and you may be given more time to repay subject to affordability criteria.</p>
		SE-12	The business changed ownership in 2019 or during the pandemic and I used the previous owner's income for my CFPS claim rather than my own	You will be asked to evidence that the business was conducted on a like-for-like basis. If it was the previous owner's income could be used as an alternate comparator.

Basis to Revise Repayment	Review time to repay	Scenario No.	Scenario	Applicable decision guidance and next steps
				<p>Where the business changed its product/service offering or where the exit of a previous owner meant the business became a smaller undertaking there will be no basis to revise the repayment requirement.</p> <p>The timescales for repayments will be reviewed and you may be given more time to repay subject to affordability criteria.</p>
New Guidance required	New Guidance required	SE-13	If none of the other scenarios apply to your circumstances, you will be asked to explain your scenario	<p>We may need to contact you to seek further information to ensure we fully understand the circumstances surrounding your appeal.</p> <p>New decision guidance will be requested relevant to your scenario.</p>