

## **CONSULTATION DRAFT**

### **(NON-STATUTORY CONSULTATION)**

## **DRAFT FINANCIAL SERVICES OMBUDSMAN (CASE-FEE AND LEVY) (JERSEY) REGULATIONS 201-**

**THE STATES**, in pursuance of Article 6 of and paragraphs 3 and 4 of Schedule 2 to the Financial Services Ombudsman (Jersey) Law 2014, have made the following Regulations –

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#### **1 Interpretation**

In these Regulations –

- “fee scheme” has the meaning given by Regulation 2(1);
- “levy notice” has the meaning given by Regulation 6(3);
- “levy scheme” has the meaning given by Regulation 3(1);
- “registered provider” has the meaning given by Regulation 5(3).

#### **2 Case-fee scheme**

- (1) The OFSO must prescribe, and may amend, a scheme (the “fee scheme”) of case-fees payable by respondents to the OFSO in respect of complaints against them that are referred to the OFSO, in circumstances prescribed in the scheme.
- (2) The fee scheme –
  - (a) must provide for the amount of the case-fee or the means of calculating it;
  - (b) may do so on any basis and make different provision for different cases or descriptions of cases, including in respect of different descriptions of respondents (whether relevant providers or not);
  - (c) must provide for the determination of the date by which payment of a case-fee is due;
  - (d) may do so by requiring payment of one or more case-fees at or in respect of any stage of the handling of a complaint by the OFSO,

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- or at a later date when a levy is payable by a respondent, or at a date determined by any other means;
- (e) may set a rate of interest payable on any amount of a case-fee remaining outstanding after payment is due; and
  - (f) may provide for the OFSO to waive a case-fee at the OFSO's discretion in circumstances specified in the scheme.
- (3) Before the OFSO prescribes the first fee scheme the Minister must inform the OFSO of any steps taken by the Minister, whether before or after the commencement of these Regulations, to discuss the potential contents of that scheme with persons appearing to the Minister appropriate from among financial service providers and their representatives.
- (4) The OFSO must, subject to paragraph (6) –
- (a) take that information into account in prescribing the first fee scheme;
  - (b) publish, with the first fee scheme, the OFSO's response to that information, particularly stating reasons for departure from any proposed provisions discussed by the Minister;
  - (c) after the first fee scheme is published, consult the persons mentioned in paragraph (5) as to whether any amendment should be made to the first fee scheme; and
  - (d) if, in the period of 4 months following of the first fee scheme, the OFSO does not amend that fee scheme in response to the consultation, publish its reasons for not doing so.
- (5) Before prescribing any subsequent fee scheme or varying a fee scheme, the OFSO must consult –
- (a) any body appearing to the OFSO to be representative of the interests of all or any of the descriptions of financial service provider who may be liable to pay case-fees under the fee scheme; and
  - (b) any other person appearing to OFSO to be appropriate.
- (6) Paragraphs (4)(b), (4)(c) and (4)(d) do not apply if the OFSO consults under paragraph (5) on the first fee scheme as if it was a subsequent scheme.
- (7) The OFSO must prescribe the fee scheme by publishing it, and must at the same time publish the date on which the fee scheme is to come into effect.
- (8) A respondent to a complaint must, before the date by which payment of a case-fee is due under the fee scheme in relation to that complaint, pay to the OFSO that case-fee, determined under the fee scheme in respect of that complaint.
- (9) If the case-fee is not paid in full by that date, the OFSO may recover as a civil debt from the respondent –
- (a) any amount of the case-fee remaining unpaid on that date; and
  - (b) any interest accruing on that amount at a rate set by the fee scheme under paragraph (2)(e).

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### **3 Levy scheme**

- (1) The OFSO must prescribe, and may amend, a scheme (the “levy scheme”) under which, in any financial year in respect of which the OFSO decides that a levy is payable –
  - (a) the liability for a levy is to be divided among those liable;
  - (b) the amounts of levy are to be calculated; and
  - (c) the persons liable are to be notified.
- (2) The OFSO must publish the levy scheme that it prescribes, and any amendment to that scheme.
- (3) A scheme or amendment does not take effect until a date specified in the scheme or amendment, being a date later than the date of its publication.
- (4) Before the OFSO prescribes the first levy scheme the Minister must inform the OFSO of any steps taken by the Minister, whether before or after the commencement of these Regulations, to discuss the potential contents of that scheme with persons appearing to the Minister appropriate from among financial service providers and their representatives.
- (5) The OFSO must –
  - (a) take that information into account in prescribing the first scheme;
  - (b) publish, with the first scheme, the OFSO’s response to that information, particularly stating reasons for departure from any proposed provisions discussed by the Minister;
  - (c) after the first scheme is published, consult the persons mentioned in paragraph (6) as to whether any amendment should be made to the first scheme; and
  - (d) if, in the period of 4 months following of the first scheme, the OFSO does not amend that scheme in response to the consultation, publish its reasons for not doing so.
- (6) Before prescribing any subsequent scheme or varying a scheme, the OFSO must consult –
  - (a) any body appearing to the OFSO to be representative of the interests of all or any of the descriptions of financial service provider who may be liable to pay case-fees under the fee-scheme; and
  - (b) any other person appearing to OFSO to be appropriate.
- (7) Paragraphs (5)(b), (5)(c) and (5)(d) do not apply if the OFSO consults under paragraph (6) on the first levy scheme as if it was a subsequent scheme.

### **4 Calculation of total amount for levy**

- (1) The manner in which the total amount required by the OFSO in levies under these Regulations for a particular spending year (within the meaning of Regulation 6) is to be determined is by calculating, using the

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- values obtained under paragraphs (2) and (3), the result of the formula  $\frac{X-Y}{2}$ .
- (2) For the purpose of paragraph (1) the value of “X” is to be obtained by calculating the total of the amounts that the OFSO estimates for that year as –
- (a) the total of the costs, appearing to the OFSO to relate to that year, that are to be incurred by the OFSO and by the equivalent body under the law of Guernsey (“the Guernsey body”);
  - (b) any deficit from the previous year in the funds of the OFSO and the Guernsey body; and
  - (c) any amount by which it appears to the OFSO to be necessary that the reserves of the OFSO and the Guernsey body should be increased in that year.
- (3) For the purpose of paragraph (1) the value of “Y” is to be obtained by calculating the total of the amounts that the OFSO estimates in relation to that year as –
- (a) the income, by way of case-fees, of the OFSO and the Guernsey body; and
  - (b) any other income of the OFSO and the Guernsey body, other than by way of levies.
- (4) For the purpose of this Regulation the OFSO may, in respect of any calculation –
- (a) make its own estimates;
  - (b) rely on estimates made by the Guernsey body; or
  - (c) make estimates jointly with the Guernsey body.
- (5) For the purpose of paragraph (2)(a) the costs to be incurred may, without limitation, include –
- (a) the repayment of any loans and payment of interest on loans; and
  - (b) the costs of establishing the OFSO and the Guernsey body, as well as of their operation.
- (6) In respect of a financial year after 2016, this Regulation applies without any of the references to the Guernsey body.

## 5 Imposition of levy

- (1) For the purpose of this Regulation –
- (a) the assessment year is the financial year by reference to which assessment is to be made as to whether a person is a financial service provider or will be entitled to zero-rating or other treatment under the scheme; and
  - (b) the spending year is the financial year by reference to which the needs of the OFSO are to be assessed.
- (2) A financial service provider must pay a levy if –
- (a) it is a registered provider at any time during an assessment year;

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- (b) it is not zero-rated under the levy scheme in accordance with paragraph (4); and
  - (c) the OFSO serves a levy notice on it under Regulation 6.
- (3) A registered provider, for the purpose of these Regulations, is a financial service provider that falls within any one or more of the following descriptions, in relation to the relevant financial service business carried on by that provider –
- (a) a registered person within the meaning of the Financial Services (Jersey) Law 1998;
  - (b) a certificate holder within the meaning of the Alternative Investment Funds (Jersey) Regulations 2012;
  - (c) a registered person within the meaning of the Banking Business (Jersey) Law 1991;
  - (d) a holder of a permit, or a certificate holder, within the meaning of the Collective Investment Funds (Jersey) Law 1988;
  - (e) a permit holder within the meaning of the Insurance Business (Jersey) Law 1996;
  - (f) a registered person within the meaning of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, being so registered (or deemed registered) in respect of business falling within paragraph 7(1)(b) of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999.
- (4) The levy scheme –
- (a) must provide for zero-rating for descriptions of registered provider in respect of which it appears to the OFSO that any complaint, that could relate to an act in the assessment year by a registered provider of that description, could not be, or is for any reason sufficiently unlikely to be, eligible for referral to the OFSO by virtue of Article 7 of the Financial Services Ombudsman (Jersey) Law 2014;
  - (b) may provide for zero-rating for other descriptions of registered provider;
  - (c) may provide for different rates or methods of calculation of levy for different descriptions of registered provider to which zero-rating does not apply;
  - (d) may provide that zero-rating, or particular rates or methods of calculation of levy, do not apply to a registered provider unless that registered provider –
    - (i) certifies to the OFSO, in a manner prescribed by the levy scheme, that it falls within a description provided for under sub-paragraph (a), (b) or (c), or
    - (ii) if the levy scheme so requires (whether in every case or on demand, or by any other criteria), so certifies to the OFSO and satisfies the OFSO, in a manner prescribed by the levy scheme, that it falls within that description; and

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- (e) may set a rate of interest payable on any amount of levy remaining outstanding after the date specified in a notice under Regulation 6(3)(d) as the date by which that levy must be paid.
  - (5) For the purpose of paragraph (4)(a) the OFSO must in particular consider, in relation to any description of registered provider, whether a provider of that description is unlikely in the assessment year —
    - (a) to have any required relationships with any persons who could be eligible complainants; or
    - (b) to carry on any relevant financial services business at all, or to do so in or from within Jersey.
  - (6) For the purpose of paragraph (4)(c), and without prejudice to the generality of that paragraph —
    - (a) the rates or methods of calculation of levy may include provision based on whether a person became or ceased to be a registered provider at any point in the assessment year; and
    - (b) the levy scheme may divide the liability for a levy among those liable on any basis —
      - (i) whether by specifying classes of registered provider according to types of business carried on by that class, or otherwise, and
      - (ii) whether in proportion to numbers of complaints referred in relation to each such class, or otherwise.
  - (7) The levy scheme must specify whether the levy is calculated —
    - (a) on the basis that the year of assessment is the spending year; or
    - (b) on the basis that the year of assessment is the financial year preceding the spending year, or a specified previous year.
  - (8) If the levy scheme specifies that the basis that the year of assessment is the spending year, it must also provide for —
    - (a) how assessment is to be made as to whether a person will be a financial service provider at a future date, or will be entitled to zero-rating or other treatment under the scheme based on future activity; and
    - (b) whether and how amounts of levy are to be adjusted if such an assessment turns out not to have been accurate during or at the end of the spending year.

## **6 Levy notice and appeal**

- (1) This Regulation applies if the OFSO decides that a levy is payable in respect of a financial year.
- (2) The OFSO must serve a levy notice on each person from whom, under the levy scheme, the OFSO is to demand an amount of levy in respect of that year.
- (3) A levy notice is a notice that —
  - (a) demands payment of an amount of levy in relation to that year by that person;

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- (b) is served under the levy scheme as prescribed under Regulation 3(1)(c);
  - (c) specifies the amount of levy payable, and how that amount was calculated under the scheme;
  - (d) specifies the date, being not less than 28 days after service of the notice, by which the amount must be paid; and
  - (e) notifies the recipient of the right of appeal under Regulation 6.
- (4) If the OFSO serves a levy notice on a person –
- (a) that person must pay in full the amount demanded, by the date specified under paragraph (3)(d); and
  - (b) the OFSO may recover as a civil debt from that person –
    - (i) any amount remaining unpaid on that date, and
    - (ii) any interest accruing on that amount at a rate set by the levy scheme under Regulation 5(4)(e).
- (5) A person on whom a levy notice is served, may, before the date specified under paragraph (3)(d), appeal to the Royal Court against the service of the notice on the ground –
- (a) that the person is not a registered provider;
  - (b) that zero-rating applies to the person under the scheme; or
  - (c) that amount demanded has not been correctly calculated under the scheme.
- (6) If a person appeals under paragraph (5), paragraph (4)(b) does not apply pending the appeal.
- (7) The Royal Court determining an appeal may –
- (a) reject the appeal;
  - (b) order that no amount is to be paid;
  - (c) order the OFSO to recalculate the amount of levy; or
  - (d) substitute an amount of levy recalculated by the court, and make any order it sees fit as to payment.

## **7 Review of Regulations during first year**

The OFSO must, after consulting persons appearing to OFSO to be appropriate and before the expiry of 12 months from the commencement of these Regulations, publish and provide to the Minister –

- (a) proposals as to amendment of these Regulations in relation to future financial years; or
- (b) reasons why the OFSO considers that no such amendment would be expedient.

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**8 Amendment of Schedule 2 to the Financial Services Ombudsman (Jersey) Law 2014**

After paragraph 2(6) of Schedule 2 to the Financial Services Ombudsman (Jersey) Law 2014 there is added the following sub-paragraph –

“(7) For the purposes of sub-paragraphs (4)(a) and (5), in relation to the financial years 2014, 2015 and 2016, the references to financial service providers, fees, levy, resources, OFSO, income, functions and reserve are to be read as including references to the equivalents of those terms under any law of Guernsey that establishes an Ombudsman scheme in relation to financial services.”.

**9 Citation and commencement**

These Regulations may be cited as the Financial Services Ombudsman (Case-Fee and Levy) (Jersey) Regulations 201- and come into force on being made.



