Financial Services Ombudsman: funding consultation

Purpose of consultation

The purpose of this consultation is to gather views on the proposal for the funding scheme for the Office of the Financial Services Ombudsman (OFSO) developed by the Departments of Economic Development in Jersey and Commerce & Employment in Guernsey. The proposal and industry feedback will then be presented to OFSO for its consideration in prescribing the first fee and levy schemes. Jersey and Guernsey are at different stages in their legislative processes, so have somewhat different requirements from the consultation. Hence, the main consultation document sets out the proposed funding scheme and separate appendices for Guernsey and Jersey set out the situation in each. Readers in each jurisdiction should read the consultation document and the relevant appendix. Views on the proposals and specific responses to the questions posed are welcomed.

Closing date

14 November 2014.

Summary

A Financial Services Ombudsman for the Channel Islands is in the process of being established by law in each jurisdiction and will have powers to investigate and determine individual customer complaints regarding financial services provided in or from within Jersey, Guernsey, Sark and Alderney.

OFSO is to be funded by the financial services industry through two mechanisms: levies on financial services providers and case fees on providers in respect of complaints against them. The Jersey and Guernsey Laws provide for OFSO to make levy and case-fee schemes, under secondary legislation made by the States, and the Departments' funding proposal will be suggested to OFSO for consideration as the funding scheme for the initial period of OFSO's operation, with the intention that it is revised when sufficient actual data on complaints volume and distribution is available.

This paper sets out the proposed funding scheme and principles including who will pay the case-fees and levies, how they will be calculated and applied, how exemptions would apply and gives illustrations of potential fees and levies.

We would like to know the views of financial services providers on the funding proposals and specific questions as relevant for each jurisdiction. Readers of the consultation should refer to the appendices for each island to understand the island-specific purpose of the consultation.

How to comment

Comments should be sent by 14th November 2014.
You can submit your comments in writing, by email or by phone to the relevant contact in your jurisdiction.

Jersey responses:

Write to:

Darren Scott
Economic Development Department
Ground Floor, Cyril Le Marquand House
The Parade
St Helier, Jersey
JE4 8UL

Email Darren Scott

Call: +44(0)1534 440659

Guernsey responses:

Email: ombudsmanconsultation@commerce.gov.gg

Write to:
Ombudsman Consultation
Commerce and Employment Department
Raymond Falla House
Po Box 459
Longue Rue
St Martins
Guernsey
GY1 6AF

Call: 01481 234567

Make sure you provide the following information:

- your name
- your contact details
- whether you are responding on behalf of a financial services provider, another company or organisation, or as a member of the public

Section 1: Introduction

A Financial Services Ombudsman for the Channel Islands is in the process of being established by law in each jurisdiction[1] and will have powers to investigate and determine individual customer complaints regarding financial services provided in or from within Jersey, Guernsey, Sark and Alderney.

OFSO is planned as a joint arrangement for the Bailiwicks of Jersey and Guernsey, to be funded by the financial services industry in each jurisdiction through two mechanisms: levies on financial services providers and case fees on providers in respect of complaints against them. The Jersey and Guernsey Laws set out that the levies and fees must raise sufficient income to enable the OFSO to carry out its functions and to provide sufficient reserves. The States are given powers to make Regulations (Jersey) or Orders (Guernsey) to provide for case fees and levies (Schedule 2 paragraph 3 and 4) and also, under Article / Section 6, to unite the finances of the Ombudsman with any corresponding Ombudsman scheme in the other jurisdiction.

OFSO must adopt a budget approved by the Minister for Economic Development in Jersey and the Department of Commerce & Employment in Guernsey and must submit accounts and a report on operations to the same each year.

Timetable and Joint arrangements

The Jersey Law is now registered and the earliest the Guernsey Law is anticipated to be registered is late 2014. A Chairman has been appointed and work is currently underway to appoint the Board for OFSO. The same appointments will be made in Jersey and Guernsey so that the Board in each is identical. The appointments in Guernsey will be on a shadow basis until the Guernsey Law is in place. The Board will appoint the Ombudsman and oversee the establishment of the Office of the Financial Services Ombudsman. Arrangements are being considered with the States of Jersey and the States of Guernsey for an interim loan facility, with interest payable, to be available to OFSO until sufficient income is received from the funding scheme. Once all the legislation is in place, funding is secured and the operational side is ready, the ombudsman service can open for complaints simultaneously for Jersey and Guernsey. This will be as early as possible in 2015.

The legislative intention is to bring in Regulations in Jersey and Orders in Guernsey, not necessarily utilising all the provisions in Schedule 2 of the Laws at the outset but that provide for joint arrangements between the jurisdictions, so that OFSO can raise its funding through a relatively simple scheme based on currently available data, for the first few years. Financial services providers will not be required to register separately with OFSO to reduce the administrative burden of the new scheme on industry and to avoid duplication. Instead the

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[1] The draft Financial Services Ombudsman (Bailiwick of Guernsey) Law 201- ("the Guernsey Law") and the Financial Services Ombudsman (Jersey) Law 2014 ("the Jersey Law"),

scheme will utilise the lists maintained by the financial regulators of those providers required to register with them or hold a licence, permit or certificate under the regulatory laws. The initial funding scheme will allow OFSO to establish itself and become operational and later to consider revision of the scheme and funding Regulations, potentially utilising more of the provisions in the Laws and reviewing the equity of the funding approach across the jurisdictions.

Development of a funding scheme

Once the secondary legislation is in place, OFSO can devise a funding scheme made up of levies and case fees to raise the necessary funds to bring the service into operation. The Departments of Economic Development in Jersey and Commerce & Employment in Guernsey have already worked with industry working groups and received analytical and statistical information, where available, from the Financial Services Commissions to enable the Departments to develop a potential levy and fee scheme. The Departments are most grateful for their assistance. The purpose of this consultation is to gather views on the scheme, relevant to each jurisdiction, so that the proposal and consultation feedback can be presented to OFSO. OFSO will be an independent body and it can then use the information to inform its own deliberation on funding.

If OFSO uses this proposal and feedback as a basis for its levy and fee schemes, it is proposed that this would speed up the process so that OFSO could go straight to prescribing its schemes with subsequent, rather than prior, consultation. If OFSO were to choose not to use the information, it would be required to consult before prescribing its schemes.

Guernsey States Report

A States report on the Ombudsman was published in September 2013 in Guernsey seeking approval in principle for the establishment of a Financial Services Ombudsman and for the necessary legislation to be drafted. The report was on the Billet d'Etat for 30th October 2013 and was approved in debate on 27 November 2013. The Guernsey States report contained much of the outline detail on the funding proposals; whereas the proposal has not been published to a Jersey audience. Hence the main consultation document sets out the proposal for the benefit of the Jersey audience and also gives details of specifics that have been developed or identified since the Guernsey States report. Guernsey secondary legislation on funding is being drafted, again this will mirror the Jersey equivalent as far as possible.

As much of the information on the funding proposal has already been considered as part of the States Report, the issues that are relevant for the Guernsey audience are summarised in the Guernsey appendix.

Section 2: Proposed funding scheme outline

A potential funding scheme has been developed by the Economic Development Department in Jersey and the Commerce and Employment Department in Guernsey, with the assistance of industry working groups. It was developed from assessment of funding arrangements in other ombudsman schemes and evaluation of the available complaints information. As there are no existing bodies to handle financial complaints in Jersey or Guernsey, information on complaints from the Financial Services Commissions, Citizens Advice Bureaux and financial ombudsman schemes in other jurisdictions was considered. This data cannot be relied on to predict ombudsman complaints volumes accurately due to differences in definitions, scope and requirements to record complaints but it has been used for guidance in the development of budgets and the funding proposals. A general estimate has been used that the joint scheme may receive around 700 'mature' complaints per year, i.e. those that have already been considered by the financial services provider. OFSO's establishment costs are estimated at £183,000 and its annual operating costs are estimated at £583,000.

There are many complexities to be overcome introducing an entirely new ombudsman service, especially where it is to be a pan-Channel Islands operation, so the initial funding scheme should aim to be simple to administer while fair to those contributing. The Jersey and Guernsey Laws provide for OFSO to make levy and case-fee schemes, under secondary legislation made by the States, but the Departments' funding proposal will be suggested to OFSO, once it is established, for consideration as the funding scheme for the initial period of OFSO's operation with the intention that it is revised when sufficient actual data on complaints volume and distribution is available. The proposal is in the form of principles and general approach, once the OFSO Board is appointed it would need to develop the detail.

The two main funding methods in use at financial ombudsman schemes are:

- Case fees for each complaint investigated (chargeable in arrears throughout year or at year-end) and/or
- annual levies on all providers covered by the scheme (in advance).

The most basic format for annual levies is a flat levy across all providers to deliver the total required by the scheme. Many schemes that cover a range of financial sectors use levies that are specific to each industry sector covered – each to deliver a total to meet the expected operational costs of handling that sector's complaints. The levy within the sector can be either a flat fee or variable depending on measures of relevant business (such as number of consumer accounts; total premium income; group deposits or number of authorised persons) and / or the proportion of complaints received by the Scheme (in the preceding year) relating to each financial services provider.

The funding scheme proposed generates OFSO's funding primarily from levy income at the outset, with some case fee income to introduce an element of "user pays" and to help manage any variance in actual complaints volume. It aims to be a cautious and realistic approach to ensure the costs of OFSO are fully covered in its first year and to use any budget surplus to reduce the levies in the second year, in preference to raising insufficient income and having to increase levies in future years. The funding model proposed comprises in summary the following:

1. A component of the first-year levy covering start-up costs: this will be a one-off, flat levy charged to registered or regulated providers with the first annual levy. It would fund the establishment costs of the Ombudsman Scheme and begin establishing reserves.
2. A component of the first-year levy covering annual running costs: this will be charged to registered and regulated providers and calculated to be larger for those expected to generate more complaints. It will fund the year's running costs.
3. Case fees: these will be charged to providers in respect of complaints against them and will be used to increase the reserves steadily up to the level of six months' operating costs, with any excess being used to reduce the size of the next year's levy.
4. Once the Ombudsman Scheme has been in operation for perhaps 2 – 3 years or once a sufficient body of complaints data has been recorded, OFSO can review the funding scheme with a view to moving towards an increased "user pays" basis. This could include revising the proportion of funding received from levies and case fees; adjusting the levies for different industry sectors (or even individual providers) to reflect the actual proportion of work generated by that sector (or individual provider); reviewing the contribution of non-levy paying providers; and considering whether to utilise the powers for OFSO to gather data to inform the levy (or for the Commissions to gather this information on OFSO's behalf), for example, to take into account the size of entities.

Section 3: How funding will be split between the islands

Initially the OFSO will be funded principally by levies, on the basis of a 50:50 contribution from Jersey and Guernsey. So, the Jersey and Guernsey financial services industries will each raise 50% of the establishment and operating costs of OFSO through levies. The Minister for Economic Development and the Department of Commerce & Employment have agreed this arrangement for the first two years of operation of the joint OFSO.

One area where the jurisdiction of the two islands' ombudsman schemes will differ is on retrospection in complaints. Guernsey's Law will allow complaints relating to acts or omission on or after 2 July 2013 to be considered by OFSO, Jersey's draft Law has a starting point of 1 January 2010. This might affect the number of Guernsey complaints that are within jurisdiction but it is very hard to quantify the impact of this on the workload for OFSO in advance.

In subsequent years, once OFSO has sufficient data from its caseload of complaints and enquiries to reassess the balance between the jurisdictions, it can propose a new ratio to the Minister for Economic Development and the Department of Commerce & Employment.

Section 4: Who will pay

The OFSO is to be funded by a system of case fees and levies payable by financial services providers in Jersey and Guernsey. Case fees will be payable by financial services providers in respect of complaints against them, see Section 6 for more detail.

The Jersey and Guernsey Laws allow levies to be imposed on financial services providers carrying on "relevant financial services business" which is defined in Article 9 and Section 9 of the Laws and further detailed in Orders exempting certain classes of business. [see Jersey consultations during 2014 on the Financial Services Ombudsman (Exempt Business)(Jersey) Order 201- for the proposed scope of financial services to be covered by the Ombudsman http://www.gov.je/Government/Consultations/Pages/FinancialServicesOmbudsmanLaw.aspx and the Guernsey States Report]. The main premise behind the funding proposal is that OFSO's levies are payable by providers that are required to register with the Financial Services Commissions or hold a certificate, licence or permit under the regulatory laws. This avoids the need for providers to have to register separately with the OFSO, reducing the burden on industry and avoiding duplication of effort.

The intention is to charge a levy to an entity on each sector that it operates in. This is the approach used in the UK for the funding of the Financial Ombudsman Service and was supported by the Working Groups. The sectors will be broadly based on the Commissions' categories so in Jersey will comprise banking, funds, insurance including general insurance mediation business, investment business, and money service business (MSB). Also, the intention is to charge a levy to providers of credit that are required to register with the Jersey Commission (JFSC) under the Proceeds of Crime (Supervisory Bodies)(Jersey) Law 2008. The Guernsey sectors will comprise banking, investment, insurance including insurance intermediaries, as well as those registered as money service providers and for credit (lending). The Commissions hold the details of these entities and it is thought that these will include the significant majority of providers that are within the scope of the OFSO. All are held on public registers by the Commissions, except providers of credit in Jersey and the JFSC maintains a private list of lenders that register under the Proceeds of Crime (Supervisory Bodies)(Jersey) Law 2008, that it will share with OFSO.

Trust company business ("TCB") in Jersey and fiduciary business in Guernsey are to be exempt generally from the scope of OFSO. While there is no specific regulated pensions sector in either jurisdiction, the trust company business sector in Jersey and the fiduciary sector in Guernsey provide some trust-based pensions services. It had been the intention to levy those in the TCB and fiduciary sectors that provide pensions services, however because of the general exclusion of TCB and fiduciary business from the scope of OFSO, it will not be possible to levy these sectors unless data is available to identify providers that are active in pensions. This data is available in Guernsey as the Guernsey Commission (GFSC) collects it but it is not collected at present in Jersey. This means that OFSO will not be able to levy Jersey TCB providers carrying out relevant pensions business at the outset. As stated earlier, the premise of the proposed funding model is to use data readily available from the Commissions (ie the lists of licence-holders and registered entities) in the initial few years and it is not considered practicable for OFSO to put in place the necessary legislative powers to gather this information at the outset.

The preferred approach would be to treat Jersey and Guernsey in an equitable fashion and so not to charge a levy to either the TCB sector in Jersey or the fiduciary sector in Guernsey. These would then be treated as non-levy payers, see below, and charged higher case fees for any complaints brought to OFSO, see Section 6.

Question 1:
Do you agree that the trust company business sector in Jersey and the fiduciary sector in Guernsey should be treated the same and, as the necessary data is not available in Jersey, both should not be charged a levy but only case fees?

To the extent that there are any, providers that are not registered with the Commissions under the regulatory Laws but that carry out relevant financial business will not be charged a levy under the initial proposed funding scheme but would pay a case fee for any complaints considered by OFSO. The numbers of such providers are expected to be low, examples could include debt-collectors; mortgage advisers that do not do any investment business or insurance broking; or entities that are not required to register due to a regulatory exemption such as low-turnover bureau de change in Jersey. It is intended that the case fee for these entities would be higher, see Section 6.

This approach could be reviewed at a later date by OFSO if it appears that the numbers of unregulated FSPs are significant or that they are not contributing appropriately under the funding scheme. For example, the secondary legislation could be amended to enable a system of voluntary levies for unregulated entities.

Levies will not necessarily be raised from all providers licensed or registered with the Commissions. The levy-paying or “funding population” is intended to comprise those entities with the potential to generate complaints that could be referred to OFSO. Those without the ability to have customers that are “eligible complainants” or that are not conducting “relevant financial services business” in or from within Jersey or Guernsey (as defined in the Guernsey and Jersey Laws) could apply for an exemption in the form of a ‘zero rating’ for the levy. See Section 7 for details.

For the funds sector, the intention is to follow the approach in the UK (where the managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes pay the general levy) and charge a levy to the relevant functionaries rather than the fund itself. Those liable for the levy will be those entities acting as manager, administrator, trustee, custodian or depositary on funds within the scope of OFSO.

The levy will raise funds for the next year's operation of OFSO. It would be helpful for industry to provide views on the period/date to be used in identifying those providers that are liable to pay the levy and on the date(s) when the levy is actually payable. GFSC charges its annual fees to all providers that are licensed or registered on 1 January[2]. JFSC uses four different dates for different sectors. In respect of liability to pay the OFSO levy, one approach would be for providers to be liable if they were regulated/registered at any time in the preceding year. An alternative would be for all providers regulated/registered on some specified date (e.g. 1 January) to be liable. In respect of when the levy is actually payable, OFSO might choose a particular date for all providers. Alternatively, to simplify payment for providers, OFSO might consider harmonising the payment date with the date on which the provider also has to pay the relevant FSC.

Question 2: Do you agree a provider should pay a levy if it was a registered provider at any time in the year of assessment? If not, do you favour using those registered on one particular date and if so, what date do you suggest?

Section 5: Proposed system of levies

The first levy on FSPs will be made up of two parts: a one-off start-up levy component and an annual levy component. These two components are explained below with illustrations given of the potential levy. The funding population used for these illustrations is based on estimates and analytical and statistical information provided by the Commissions and Working Groups, to the extent available. The levy amounts given are for illustration purposes at this time, as OFSO will need to develop further the actual number in the funding population through the process of inviting providers to apply for exemptions in the form of zero ratings, see section 7, and this will affect the actual amount of the levies. The levies for Jersey and Guernsey differ due to the different number of financial services providers in each jurisdiction.

Start-up levy component

A start-up levy component is proposed to cover the initial establishment costs of the Ombudsman scheme and to initiate reserves. It would be desirable to have six months' operating costs set aside as reserves but in order to keep the initial costs lower for financial services providers it is planned that only three months' operating costs will be put into reserves from the start-up levy. Income from case fees will be used to supplement the amount in reserves up to six months' over the first few years of operation.

The start-up levy is proposed as a one-off charge to all entities in the funding population, payable for each sector in which an entity operates. It will form part

[2] The Financial Services Commission (Fees) Regulations, 2013

of the first levy. It is proposed as a flat levy across all sectors in each jurisdiction, with the total from each jurisdiction representing 50% of the total required. The establishment costs are estimated at around £183,000 and three months' operating costs at £146,000.

Table 1: Start up levy component illustration

Start-up levy component per licence	
Jersey	Guernsey
£670	£680

Using these figures and current estimates of the funding population, Table 1 shows a potential start-up levy of £670 for a Jersey provider for each sector in which it is registered or regulated and £680 for Guernsey providers, assuming fiduciaries doing pensions work are not levied (see Section 4).

Question 3: Do you agree that the funding scheme should start establishing reserves for OFSO at the outset and, if so, is 3 months appropriate?

Annual levy component

This component will raise the full operating cost for the next financial year. The working groups considered how the levy calculation could be set so that those with more customers, which therefore could be expected to generate more complaints, would pay more. The groups considered options such as calculating the levy with reference to the size of each entity, such as using currently available published statistics on size or headcount, but this was felt to be unjustifiably complex for a temporary arrangement. It is proposed that the annual levy has a degree of weighting built in so that sectors that are expected to produce proportionally more complaints contribute more.

Before the Scheme comes into operation, it cannot be known for sure what volume of complaints each sector will generate. The working groups reviewed unpublished sectoral data from the regulators that they considered may give some indication of the future spread of complaints to the Ombudsman Scheme. A key finding was that, while the banking sectors in each island contain a small proportion of the total licence-holders, they generate a larger proportion of the total complaints. This is not surprising due to the more 'everyday' nature of banking products and similar patterns are also seen in the published complaints data at other ombudsman schemes.

Based on the experience of other ombudsman schemes, from assessment of available complaints information and due to the "everyday" nature of banking services, it is expected that the banking sector will generate proportionately more complaints than other sectors. Therefore, initially, the annual levy will be weighted so that the banking sector makes an appropriate contribution, proposed at around 50% of the total. Entities in other sectors will pay a lower levy. Once a body of complaints data has been built up after 2 – 3 years, the funding approach can be re-evaluated to reflect the proportion and distribution of work generated by the sectors or even from individual providers. OFSO can also consider the availability of data on the size of particular providers' relevant business (such as the number of consumer accounts; total premium income; group deposits or number of authorised persons).

Tables 2 and 3 give examples of the potential annual levies based on current estimates of the funding population. See Section 7 for exemptions and applications for zero rating for the levy.

Table 2: annual levy illustration for Jersey

Jersey	Annual levy per licence
Money Service Business	£665
Credit	£665
Banking	£4,665
TCB	n/a
Investment	£665
Funds	£665
Insurance including mediation business	£665

For example, a provider with only a general insurance mediation business licence in Jersey would pay a one-off start-up levy of £670 plus an annual levy of £665 for the first year.

A provider registered or authorised in Jersey for banking, investment business and money services business would pay a levy of £8,005 in the first year. This is broken down as:

- the one-off start-up levy of £670 per sector x 3;
- a banking annual levy for the first year of £4,665;
- plus levies for the other sectors of £665 x 2.

Table 3: annual levy illustration for Guernsey

Guernsey	Annual levy per licence
Money Service Providers	£680
Credit (non-regulated financial services business)	£680
Banking	£4,775
Fiduciary	n/a
Investment	£680
Insurance including intermediaries and managers	£680

For example, a Guernsey provider with only a general insurance mediation business licence would pay a one-off start-up levy of £680 plus an annual levy of £680 for the first year.

A provider registered or regulated in Guernsey for banking, investment business and money services business would pay a levy of £8,175 in the first year. This is broken down as:

- the one-off start-up levy of £680 per sector x 3;
- a banking annual levy for the first year of £4,775;
- plus levies for the other sectors of £680 x 2.

The levy amounts given are for illustration purposes as OFSO will need to develop further the actual number in the funding population through the process of inviting providers to apply for exemptions/zero ratings, see section 7 and this will affect the actual amount of the levy.

The Departments consider that OFSO should explore with the Commissions the opportunity for co-ordination on the levy collection with a view to improving cost efficiency and lowering the burden on industry in terms of the number of separate invoices to process.

Section 6: Proposed system of case fees

Case fees will be charged to the financial services provider against whom a complaint is brought. Charging case fees will help to manage any variance between the estimated and actual number of complaints and introduce an element of "user pays". They will be used to build up the reserves steadily to the level of six months' operating costs over the first three years, with any excess used to reduce the size of the next year's annual levy. They would also compensate for any differences in actual complaints volume to the estimates. This is a cautious approach initially, to ensure that all OFSO's costs are covered by the levies. If the complaints volume is as estimated, the case fees in the first year will generate more than is required for increasing the reserves by one month's operating costs, so that OFSO would go into the second year with a budget surplus which would mean that less would be required to be raised from the next annual levies.

A similar approach is proposed to that in the UK, namely, that a complaint is chargeable unless it is apparent to the Ombudsman on receipt that it is not eligible or should be rejected or if it is later identified by the Ombudsman as being frivolous or vexatious. Thus, on complaints where it is not immediately clear whether they are within jurisdiction and OFSO is required to investigate and it is only identified at a later point that the complaint is outside jurisdiction, a case fee would be charged, to recognise that work was incurred by OFSO. Financial services providers can assist OFSO in this area by providing clear, objective information on jurisdictional areas in their own responses to complainants.

The case fee will be a flat charge proposed at £200 for levy-payers across all sectors. This can if necessary be collected with the next year's levy however a case fee of £200 is uneconomic to collect for non-levy payers and arguably is unfair to levy payers. One option could be for non-levy payers to pay a fee for the first case that is equivalent to a levy plus £200, however, for simplicity, a standard, flat fee of £600 is proposed for all non-levy payers, applicable to the first and subsequent cases. As covered in Section 4, the non-levy payers would include providers in the TCB and fiduciary sectors providing relevant pension business, plus what is expected to be low numbers of providers not registered with or regulated by the Commissions.

OFSO will have the ability to waive case fees in certain circumstances (for example, as above, it is proposed that case fees are waived if at any point the Ombudsman identifies a complaint as frivolous and vexatious). OFSO should also consider waiving case fees for certain charitable organisations in circumstances where such payment would have a significant impact on the organisations' service provision. It has been suggested that case fees should be waived for Community Savings Ltd, a not-for-profit organisation largely staffed by volunteers that provides access to basic financial services for the financially or socially disadvantaged in Jersey, as well as mentoring and emergency financial support.

Question 4: Views are invited on the proposal of a case fee of £200 for levy-payers and £600 for non-levy-payers
Question 5: Do you agree that case fees should be waived for certain charitable entities such as Community Savings Ltd?
Question 6: Are there any other financial services providers that should be considered for special dispensation?

Section 7: Exemptions from the levy

There will be exemptions from the levy available for financial services providers that from the nature of their customers or financial services provided could not give rise to a complaint that could be considered by the Ombudsman. This will be in the form of a zero rating of the levy. Providers will be able to apply for a zero rating for the levy in the following situations:

1. If by the nature of their business or business model, they could not have customers that could be eligible complainants (for example, re-insurers or banks providing group treasury services);
2. If they carry out no relevant financial services business[3] in or from within Jersey or Guernsey (for example, entities only providing financial services from their home state outside Jersey or Guernsey or fund entities only acting in relation to excluded fund types).

[3] see http://www.gov.je/Government/Consultations/Pages/FinancialServicesOmbudsmanLaw.aspx and the Guernsey States Report

A third category of exemptions are proposed for entities deemed to merit it by the particular nature of their business. It is proposed that in Jersey, a general exemption is given to Community Savings. Also, after consideration by the Jersey working group, a special levy exemption is proposed for Jersey financial services providers carrying out Class S general insurance mediation business, as these are non-financial services entities carrying on incidental general insurance mediation business. These would however be liable for case fees in the case of any complaints made against them.

In order to have a fair funding scheme but one that is as simple to administer as possible at the outset, it is not proposed to differentiate the levies on volume of business. As discussed earlier, this could be considered once the funding scheme is reviewed after 2 – 3 years' operation.

In order to calculate the levies OFSO will need to publicise and invite applications from financial services providers for a zero rating of the levy and then define the funding population accordingly. At this point OFSO can calculate the levies.

It would be useful to gain views on whether any whole classes of regulated entities would qualify for a zero rating from the nature of their customers or financial services provided and could therefore be taken out of the funding population as a block without each having to apply individually for a zero rating. An example could be a class of licence where no licenceholders conduct any business in or from within Jersey or Guernsey, as their home jurisdiction is elsewhere.

Question 7: Are there any whole classes of regulated entities that would qualify for exemption?

Question 8: Do you agree with the proposed system of exemptions/zero rating for the levy? Are there any other special cases that should be considered for zero-rating for the levy?

Consultation Question 9: Views are invited generally on the suggested proposal for OFSO to use as the basis for its funding scheme, bearing in mind the difficulty of devising an appropriate scheme with an entirely new complaints handling body.

Appendix 1: Jersey

The Financial Services Ombudsman (Jersey) Law 2014 ("the Jersey Law") was registered in the Royal Court on 25th July 2014, establishing the Office of the Financial Services Ombudsman ("OFSO") and bringing the administrative provisions of the Jersey Law into effect. An appointed day Act is required to bring the complaints handling provisions into force.

Guernsey's Department of Commerce & Employment and Jersey's Minister for Economic Development are to enter into an arrangement for the ombudsman services established by the Guernsey and Jersey Laws to share resources and operate as a joint, pan-Channel Islands scheme. A memorandum of understanding to this effect is being drafted and details will also be in secondary legislation as required under Article 6 of the Jersey Law[4].

Draft Financial Services Ombudsman (Case-fee and levy)(Jersey) Regulations 201- are attached.

Readers of the consultation in Jersey are invited to respond with general views on the funding proposal, on the specific issues raised in the main document and with any observations on the draft Regulations.

The draft Financial Services Ombudsman (Case-fee and levy)(Jersey) Regulations 201- (the "draft Jersey Regulations") set out potential ways that the Departments' proposals can inform OFSO's approach. Broadly speaking, if OFSO chooses to take into account the Departments' proposals, it can publish its first funding scheme based on them, with the reasoning behind any differences; with consultation and amendments considered within a set period after their publishing or, instead, OFSO can choose to consult before prescribing any funding scheme. See Regulation 2 and 3 in the draft Regulations for details.

The draft Jersey Regulations enable the initial funding proposal of case fees and an annual levy (including a start-up levy component for the first year) and cover the necessary joint financial arrangements between Jersey and Guernsey. The Regulations include a requirement for OFSO to review the Regulations within a year of their commencement, (see Regulation 7) with OFSO either proposing amendments or giving reasons why none are expedient. The intention is for the initial approach to continue for 2 – 3 years until a sufficient body of complaints data has been accrued.

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[4] The draft Financial Services Ombudsman (Case-fee and levy)(Jersey) Regulations 201- include regulations made under this article.

Appendix 2: Guernsey

The Bailiwick of Guernsey ("Guernsey") has drafted its own Financial Services Ombudsman (Bailiwick of Guernsey) Law 201- ("the Guernsey Law"), to mirror the Jersey Law as far as possible. This is due to be debated in September 2014 in the States and in Alderney and in Sark in October.

Guernsey's Department of Commerce & Employment and Jersey's Minister for Economic Development are to enter into an arrangement for the ombudsman services established by the Guernsey and Jersey Laws to share resources and operate as a joint, pan-Channel Islands scheme. A memorandum of understanding to this effect is being drafted and details will also be in secondary legislation as required under section 6 of the Guernsey Law.

A States report on the Ombudsman was published in September 2013 seeking approval in principle for the establishment of a Financial Services Ombudsman and for the necessary legislation to be drafted. The report was on the Billet d'Etat for 30th October 2013[5] and was approved in debate on 27 November 2013. The Guernsey States report contained much of the outline detail on the funding proposals; whereas the proposal has not been published to a Jersey audience. Hence the main consultation document sets out the proposal for the benefit of the Jersey audience and also gives details of specifics that have been developed or identified since the Guernsey States report. Guernsey secondary legislation on funding is being drafted, again this will mirror the Jersey equivalent as far as possible.

As much of the information on the funding proposal has already been considered as part of the States Report, the key issues that are relevant for the Guernsey audience are summarised in this appendix. The Guernsey consultation questions do not include question 3 in the main document on reserves as information on this was previously given in the States Report

Fiduciary sector and pensions

Trust company business ("TCB") in Jersey and fiduciary business in Guernsey are to be exempted from being "relevant financial services business" for the purposes of OFSO. TCB and fiduciary providers will not carry on relevant financial services business unless such business falls under another description, such as relevant pension business. The funding proposal had intended to levy such providers carrying on relevant pension business, however, because of the general exclusion of TCB and fiduciary business from the scope of OFSO, it will not be possible to levy these sectors unless data is available to identify providers that are active in pensions. This data is available in Guernsey as it is collected by the Commission but it is not collected in Jersey. This means that OFSO will not be able, at the outset, to levy Jersey TCB providers carrying out relevant pensions business. This is because the premise of the proposed funding model is to use data readily available from the Commissions (ie the lists of licence-holders and

[5] http://www.gov.gg/CHttpHandler.ashx?id=84338&p=0

registered entities) in the initial few years and it is not considered practicable for OFSO to put in place the necessary legislative powers to gather this information at the outset.

Although the fiduciary sector was included in the potential funding population in the States Report, given the desire for the OFSO scope and funding approach to be as similar as possible in each jurisdiction and given that the TCB sector in Jersey will not be levied, it is proposed that the fiduciary sector in Guernsey is also not levied. Providers in this sector would be liable for case fees on any complaints referred to OFSO at the higher non-levy payer rate of £600, see Section 6.

If the fiduciary sector were to be levied, those identified from GFSC data as carrying out relevant pensions business could potentially apply for an exemption from the levy, see Section 7. However, these exemptions are intended for situations where, by the nature of their customers or financial services provided, a provider could not give rise to a complaint that could be considered by the Ombudsman. It is not proposed to differentiate the levies on volume of business in the initial years of operation of the OFSO. So, providers in the fiduciary sector where pensions business might only be an incidental part of their business would not qualify for an exemption.

Table 4: start-up levy illustration

Start-up levy component per licence		
Jersey	Guernsey	
	Fiduciaries not levied	Fiduciaries levied
£670	£680	£540

Tables 4 and 5 show the illustrations of potential levies for Guernsey. The levy is different to that in Jersey due to different numbers of entities in each sector. The estimated funding population has been reviewed since the Guernsey States report, so the numbers differ slightly to those in the report, published in September 2013.

Table 5: annual levy illustration

Guernsey	Annual levy per licence (without fiduciaries)	Annual levy per licence (with fiduciaries)
Money Service Providers	£680	£530
Credit (non-regulated financial services business)	£680	£530
Banking	£4,775	£4,730
Fiduciary	n/a	£530
Investment	£680	£530
Insurance including intermediaries and managers	£680	£530

Taking the fiduciary sector out of the funding population, as currently estimated, has an impact on the size of the levy for other sectors. However it should be noted that the numbers in the funding population are currently based on estimates from the working groups and data from the Commissions where available. Once the numbers of providers eligible for zero rating of the levy are known, the number in the funding population may alter and therefore the actual levy may differ from the illustrations here, so consideration of the treatment of the fiduciary sector should include consideration of the principle, not just the impact on the size of the levy shown here.

Consultation Question 1:
Do you agree that the trust company business sector in Jersey and the fiduciary sector in Guernsey should be treated the same and, as the necessary data is not available in Jersey, both should not be charged a levy but only case fees?

Assessment basis for liability for the levy

The levy will raise funds for the next year's operation of OFSO. It would be helpful for industry to provide views on the period/date to be used in identifying those providers that are liable to pay the levy and on the date(s) when the levy is actually payable. GFSC charges its annual fees to all providers that are licensed or registered on 1 January[6]. JFSC uses four different dates for different sectors. In respect of liability to pay the OFSO levy, one approach would be for providers to be liable if they were regulated/registered at any time in the preceding year. An alternative would be for all providers regulated/registered on some specified date (e.g. 1 January) to be liable. In respect of when the levy is actually payable, OFSO might choose a particular date for all providers. Alternatively, to simplify payment for providers, OFSO might consider harmonising the payment date with the date on which the provider also has to pay the relevant FSC.

[6] The Financial Services Commission (Fees) Regulations, 2013

Question 2: Do you agree a provider should pay a levy if it was a registered provider at any time in the year of assessment? If not, do you favour using those registered on one particular date and if so, what date do you suggest?

Start-up levy component

Information on reserves was previously included in the States Report so Guernsey respondents do not need to answer question 3, which is listed here for information. However, any views given on this will be considered.

Question 3: Do you agree that the funding scheme should start establishing reserves for OFSO at the outset and, if so, is 3 months appropriate?

Case fees

The States Report indicated that the case fee for any entities not on GFSC lists but within OFSO scope can be set at a different rate. It is now proposed that the fee for such entities should be £600 for each case. It is also proposed that a voluntary levy scheme for such entities is not included at the outset, to limit administrative complexity, and to review this once the complaints caseload relating to such entities is better known.

Question 4: Views are invited on the proposal of a higher case fee of £600 for non-levy payers

Question 5: Do you agree that case fees should be waived for certain charitable entities such as Jersey's Community Savings Ltd?

Question 6: Are there any other financial services providers that should be considered for special dispensation from case fees?

Exemptions from the levy

Section 7 of the consultation document should be referred to, as it gives some more detail on the approach as regards exemptions from the levy than the States Report.

It would be useful to gain views on whether any whole classes of regulated entities would qualify for a zero rating from the nature of their customers or financial services provided and could therefore be taken out of the funding population as a block without each having to apply individually for a zero rating. An example could be a class of licence where no licenceholders conduct any business in or from within Jersey or Guernsey, as their home jurisdiction is elsewhere.

Question 7: Are there any whole classes of regulated entities that would qualify for exemption?

Question 8: Do you agree with the proposed system of exemptions/zero rating for the levy? Are there any other special cases that should be considered for zero-rating for the levy?