

Bailiwick of Guernsey

Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 [the Law]¹

Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) Order 2015 [the Order]²

Financial Services Ombudsman

Levy and Establishment Levy Scheme (Bailiwick of Guernsey) 2015

1 This levy and establishment levy scheme is made:

- on 9 September 2015 and amended on 21 December 2015;³
- by the Office of the Financial Services Ombudsman [OFSO] established by the Law; and
- in accordance with articles 3 and 8 of the Order.

2 This scheme:

- is for the 2015 year of assessment, which is the spending year ending on 31 December 2015;
- will be published on 8 September 2015; and
- will come into effect on 9 September 2015.

It will be published at www.ci-fo.org – the website of the Channel Islands Financial Ombudsman (CIFO), which is the joint operation of OFSO and the equivalent financial services ombudsman in Jersey.

3 In this scheme:

- 'levy notice' has the same meaning as defined in the Order;
- 'providers' means financial services providers within OFSO's jurisdiction;
- 'registered providers' has the same meaning as defined in the Order;
- 'higher case fee' means the higher case fee payable under the fee scheme made by OFSO under the Order; and
- 'relevant financial services business' has the same meaning as defined in the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order, 2015.⁴

4 Any provider that is a registered provider on 21 May 2015 must pay to OFSO a levy, unless it is entitled to zero-rating under schedule A below.

5 Any registered provider that claims a zero-rating incorrectly will be liable to pay the levy retrospectively plus interest at 6% per annum until paid. An adjustment will be made for any higher case fees already paid.

6 The total levy and establishment levy will be calculated, and divided among registered providers, as explained in schedule B below.

¹ <http://www.guernseylegalresources.gg/article/115617/Financial-Services-Ombudsman-Bailiwick-of-Guernsey-Law-2014>

² <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=95899&p=0>

³ The scheme was amended in the light of the consultation in paragraph 13. New text is underlined. Deleted text is struck through.

⁴ <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=95900&p=0>

- 7 OFSO will invoice the levy by issuing a levy notice. The levy is due and payable within 28 days of the date of the notice. If it remains unpaid, interest will accrue at 6% per annum from the due date until paid.
- 8 Starting on 9 September 2015:
- OFSO will start the process to contact all registered providers that are potentially liable to pay the levy – sending them a levy notice consisting of an invoice with a covering letter of explanation. ~~The levy notice will include links to further information on the website www.ci-fo.org and details of how to apply for zero-rating.~~ Note that the actual date of the levy notice received may be after 9 September 2015 due to the staged process for mail-out of the levy notices.
 - Ordinarily, the levy notice will include links to further information on the website www.ci-fo.org and details of how to apply for zero-rating. Exceptionally (at OFSO’s discretion), OFSO may first send an invitation to consider zero-rating to the registered provider or agent/representative of one or more registered provider(s).
- 9 No adjustment will be made to the levy payable, or to eligibility for zero-rating, for the 2015 year of assessment in respect of any provider that, after 21 May 2015 and before 1 January 2016:
- becomes (or ceases to be) a registered provider; or
 - becomes (or ceases to be) entitled to zero-rating.
- Such changes will only be given effect from the beginning of the subsequent year of assessment.
- 10 If, during or at the end of the assessment year, a levy assessment turns out not to have been accurate a corresponding adjustment will be made to the subsequent year of assessment’s levy to recover or reimburse the difference caused by the previous year’s inaccuracy.
- 11 OFSO has taken into account information received from the Commerce and Employment Department on the outcome of steps taken by the Department to discuss the potential provisions of the levy scheme with appropriate persons among providers and their representatives [the Consultation].⁵
- 12 OFSO confirms that it has made the following material departures from the provisions contained in the Consultation:
- Paragraph 9: The Consultation indicated that there would be transitional provisions but did not give any details. OFSO has adopted the provisions in the paragraph to provide simplicity for those concerned.
 - Schedule A, paragraph 2: Further consultation with the insurance industry identified that providers falling within insurance business categories 5 and 6 of the Insurance Business (Solvency) Rules will usually be unable to say whether or not policy beneficiaries include eligible complainants. So they have been zero-rated for the levy, but will pay the higher case fee if an eligible complainant refers a complaint to OFSO.
 - Schedule B, paragraph 4: OFSO has adopted a fixed-sum provision for reserves and is collecting a larger amount (£175,000 in each of Guernsey and Jersey) than that stated in the consultation, in view of the uncertainty about: the number and nature of complaints that may be expected, and hence the costs incurred; the number of registered providers that will claim zero-rating; and the amount of levy payments that may be delayed or remain unpaid.

⁵ www.gov.gg/CHttpHandler.ashx?id=92504&p=0

- 13 To assist OFSO in reviewing this scheme, OFSO invites any body representing the interests of registered providers to comment on this scheme within two months of its publication.
- 14 This scheme may be cited as the Financial Services Ombudsman Levy and Establishment Levy Scheme (Bailiwick of Guernsey) 2015.

David Thomas
Chairman of the Board of OFSO

Schedule A: entitlement to zero-rating

- 1 Under article 6 of the Order, OFSO:
 - must zero-rate any description of provider where it appears to OFSO that any complaint could not be, or is sufficiently unlikely to be, eligible; and
 - may zero-rate other descriptions of registered providers.
 - 2 OFSO will automatically zero-rate registered providers in respect of:
 - Category 2 investment activities of General Partners;
 - Category ~~2, 4,~~⁶ 5 and 6 insurers under the Insurance Business (Solvency) Rules, 2015;
 - Insurance managers;
 - ~~Fund service providers of funds other than Class A funds.~~⁷
 - 3 Other registered providers may apply to OFSO for zero-rating if they:
 - only do business with those who could not be, or are sufficiently unlikely to be, eligible complainants; or
 - do not, and are sufficiently unlikely to, carry on relevant financial services business in or from within Guernsey.
 - 4 Ordinarily, OFSO will only grant zero-rating under paragraph 3 of this schedule if the registered provider:
 - follows the process in the documents accompanying the levy notice; and
 - fully completes and submits the website certificate within 28 days of the levy notice.Otherwise, the registered provider will be liable to pay the levy.
 - 5 Exceptionally, where (at OFSO's discretion) OFSO first sent an invitation to consider zero-rating to the registered provider or agent/representative of one or more registered provider(s), OFSO will grant zero-rating under paragraph 3 of this schedule if the registered provider or agent/representative on their behalf:
 - fully completes and submits any schedule enclosed with the invitation; or
 - fully completes and submits the website certificate;within 14 days of the invitation.
-

⁶ Category 2 and 4 insurers do not have to pay the levy, because those classes of business are outside OFSO's jurisdiction.

⁷ Providers of funds other than class A funds do not have to pay the levy, because those classes of business are outside OFSO's jurisdiction.

Schedule B: calculation and division of levy

- 1 It was agreed between the States of Guernsey and the States of Jersey that the total initial costs for the establishment and operation of OFSO and the equivalent financial services ombudsman in the Bailiwick of Jersey are to be shared equally between Guernsey and Jersey, until the end of 2016.
- 2 Under the Order, the total levy payable by (Guernsey) registered providers is $(X-Y) / 2$ where:
 - X = costs plus reserves plus any prior-year deficit of OFSO and the equivalent financial services ombudsman in Jersey = £1,081,463; and
 - Y = income plus any prior-year surplus of OFSO and the equivalent financial services ombudsman in Jersey = nil;making a total of $£1,081,463 / 2 = £540,732$ [the total Guernsey levy].
- 3 The total Guernsey levy is comprised of:
 - the total establishment levy for one time establishment costs incurred before the commencement of the Law on the 30th January 2015;
 - the total start-up levy for one-time establishment costs incurred for the rest of the 2015 year of assessment and the establishment of reserves; and
 - the total operational levy for running costs for 2015.
- 4 The total Guernsey levy of £540,732 comprises:
 - A £72,842.44 Guernsey total establishment levy for establishment costs incurred before 30th January 2015
 - a £206,464 Guernsey total start-up levy for one time establishment costs plus reserves, comprising:
 - £31,464 one-time establishment costs from 31st January for the 2015 year of assessment; and
 - £175,000 to establish a prudent level of reserves; and
 - a £261,425.06 Guernsey total operational levy for running costs, from 31st January for the 2015 year of assessment.
- 5 The Guernsey establishment and start-up levies are to be divided equally among registered providers on a per sector of activity basis. The establishment levy amounts to £313 and the start-up levy amounts to £886; in total this amounts to £1,199 per sector of activity for each registered provider.
- 6 The Guernsey operational levy is to be divided among registered providers in proportions reflecting the expectation that some are likely to generate more complaints:
 - Half is to be divided among bank licensees in respect of their deposit-taking licence. This will amount to £5,229 for each bank licensee.
 - The balance is to be divided equally among registered providers on a per sector of activity basis. This will amount to £628 per activity for each registered provider (including bank licensees for activities other than deposit-taking).
- 7 For the purpose of dividing the Guernsey operational levy, the sectors are broadly based on the Guernsey Financial Services Commission's categories and will comprise:
 - banking;

- insurance including intermediation;
 - investment;
 - money service; and
 - credit providers that are required to register with the Guernsey Financial Services Commission under the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law 2008.
-