
Consultation Paper 7

Funding of the Channel Islands Financial Ombudsman

A: This consultation

The funding structure for the Channel Islands Financial Ombudsman (CIFO) is set out in the Financial Services Ombudsman (Case-fee and Levy) (Jersey) Regulations 2015¹, referred to in this consultation as the Jersey Regulations, and the Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) Order 2015², referred to in this consultation as the Guernsey Order. The Jersey Regulations and the Guernsey Order provide for CIFO to prescribe schemes for case-fees and levies to be paid by certain financial services providers in respect of CIFO's operating expenses. CIFO must consult on any proposed changes to the Jersey Regulations and Guernsey Order and make recommendations to the Jersey Minister of Economic Development (the Minister) and the Guernsey Department of Commerce and Employment (the Department) within 12 months of the commencement of the Jersey Regulations and the Guernsey Order. Representative bodies of financial services providers and the Financial Services Commissions are invited to respond.

In accordance with the Jersey Regulations and the Guernsey Order, CIFO published the following schemes on 9 September 2015 on <http://www.ci-fo.org>:

- the Financial Services Ombudsman Levy and Establishment Levy Scheme (Bailiwick of Guernsey) 2015 [the Guernsey Levy Scheme];
- the Financial Services Ombudsman Fee Scheme (Bailiwick of Guernsey) 2015 [the Guernsey Fee Scheme];
- the Financial Services Ombudsman Fee Scheme (Jersey) 2015 [the Jersey Fee Scheme];
- the Financial Services Ombudsman Levy Scheme (Jersey) 2015 [the Jersey Levy Scheme].

The four schemes set out the funding of the Office of the Financial Services Ombudsman (Jersey) and the Office of the Financial Services Ombudsman (Guernsey), collectively trading as the Channel Islands Financial Ombudsman, through case fees and levies on certain financial services providers. The Jersey and Guernsey Levy Schemes covered the initial establishment and 2015 operating costs of CIFO.

During the first quarter of 2016, in parallel with this consultation, CIFO will be proposing 2016 levy schemes for Jersey and Guernsey to cover the 2016 operating costs of CIFO. Under the Jersey Regulations and the Guernsey Order, CIFO must consult on the 2016 levy schemes. Representative bodies of financial services providers and the Financial Services Commissions will be invited to respond at that time. CIFO is not proposing any changes to the Jersey and Guernsey fee schemes for 2016.

¹ <http://www.jerseylaw.je/law/display.aspx?url=LawsInForce\htm\ROFiles%5cR%26OYear2015%2fR%26O-009-2015.htm>

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

Based on issues identified during the process for issuing 2015 Levy Notices, CIFO proposes to recommend the following changes to the Jersey Regulations and the Guernsey Order:

1. Modify Regulation 8(2) of the Jersey Regulations and Article 7(2) of the Guernsey Order to enable the Levy Notice to be sent by CIFO to the authorised agent/representative of the registered provider. This will avoid the situation of CIFO, in order to comply with the current Jersey Regulations and Guernsey Order, having to send the Levy Notice directly to the registered provider when the regulatory and/or administrative affairs of that registered provider may be handled on behalf of that registered provider by a Channel-Islands-based entity which is an authorised agent/representative. Specifically, the following changes are proposed:

Amend Regulation 8(2) of the Jersey Regulations and article 7(2) of the Guernsey Order to allow the OFSO to serve a notice on each person, **or their authorised agent/representative**, under the levy scheme.

2. Extend the current approach of dividing the overall costs of CIFO's operation evenly between Jersey and Guernsey through to the end of 2018. The extended period will provide for sufficient historical complaint volume data from the first two full years of CIFO's operation to inform consideration in 2018 of potential alternative approaches to funding the joint operation of CIFO. Any alternative approach, developed in 2018 in consultation with all stakeholders, could be considered for possible implementation in 2019. The current approach should therefore be extended through to the end of 2018. Specifically, the following changes are proposed:

Amend Regulation 6(7) in the Jersey Regulations and Article 5(7) of the Guernsey Order to extend the equal split of funding between Jersey and Guernsey to the end of 2018.

Regulation 10 of the Jersey Regulations currently amends Schedule 2 of the Financial Services Ombudsman (Jersey) Law 2014 to provide that references to funding include the funding of the equivalent scheme in Guernsey, for the financial years 2014 to 2016. It is proposed that this should be amended to extend this period to include the financial years 2017 and 2018.³

Stakeholders are asked to provide their views on these proposed changes as well as any other changes to the Jersey Regulations or Guernsey Order they consider warranted.

Section B explains how to respond. Section C explains the role of CIFO. Section D explains the background to the funding structure. Section E explains the issues covered by this consultation. The schemes are shown in the annex.

B: How to respond

Please send any response in writing by email to consultations@ci-fo.org or by post to Channel Islands Financial Ombudsman, P O Box 114, Jersey, JE4 4QG. Responses are

³ In the interest of maintaining consistency to the extent possible between the relevant pieces of legislation in Jersey and Guernsey, CIFO will also recommend to the Guernsey Department of Commerce and Employment that the corresponding provisions in Article 2 of The Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Commencement and Amendment) Ordinance, 2015 be amended accordingly to coincide with this recommendation for changes to the Jersey Regulations.

requested by 15 January, 2016. Responses may be published, unless clearly stated to be confidential.

C: Financial Ombudsman

CIFO is the joint operation of the statutory bodies established by the Financial Services Ombudsman (Jersey) Law 2014 [‘the Jersey Ombudsman Law’]⁴ and the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 [‘the Guernsey Ombudsman Law’].⁵

CIFO is independent of the States. The joint operation – working from a shared office in Jersey, with the same board, ombudsman and staff – covers complaints about financial services provided in and from Jersey, Guernsey, Alderney and Sark. It opened for business on 16 November 2015.

CIFO resolves complaints against financial services providers – independently, fairly, effectively, promptly, with minimum formality and so as to offer a more accessible alternative to court proceedings. This will help to underpin confidence in the finance sectors, both locally and internationally.

D: Legal background

The proposed framework for the funding of the Office of the Financial Services Ombudsman (Jersey) and the Office of the Financial Services Ombudsman (Guernsey) was set out by both of the States of Jersey⁶ and Guernsey⁷ in a joint consultation document.

The Financial Services Ombudsman (Case-fee and Levy) (Jersey) Regulations 2015⁸ [‘the Jersey Funding Regulations’] and the Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) Order 2015⁹ [‘the Guernsey Funding Order’] provide for CIFO to prescribe schemes for case fees and levies to be paid by certain financial services providers in respect of the expenses of CIFO.

CIFO published on 9th September 2015 the Guernsey Levy Scheme, the Guernsey Fee Scheme, the Jersey Levy Scheme and the Jersey Fee Scheme and subsequently issued levy notices in accordance with the schemes. A post-publication consultation on the 2015 schemes for case fees and levies was carried out and will shortly be published. CIFO proposes to consult on and then prescribe levy schemes and issue Levy Notices in early 2016.

⁴ www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cLawFiles%5c2014%2fL-14-2014.htm

⁵ www.guernseylegalresources.gg/article/115617/Financial-Services-Ombudsman-Bailiwick-of-Guernsey-Law-2014

⁶

<http://www.gov.je/SiteCollectionDocuments/Industry%20and%20finance/ID%20Joint%20funding%20consultation%20paper%20Final%2020140925%20LB.pdf>

⁷ <http://www.gov.gg/article/114386/Financial-Services-Ombudsman-funding-consultation>

⁸ <http://www.jerseylaw.je/law/display.aspx?url=LawsInForce\htm\ROFiles%5cR%26OYear2015%2fR%26O-009-2015.htm>

⁹ <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=95899&p=0>

E: Issues covered by this consultation

Stakeholders are invited to comment as to whether any amendment should be made to the Jersey Regulations¹⁰ and the Guernsey Order¹¹. In particular, stakeholders are asked to comment on whether they agree with CIFO's proposed recommendations (set out in section A) to amend the Jersey Regulations and the Guernsey Order.

¹⁰ <http://www.jerseylaw.je/law/display.aspx?url=LawsInForce\htm\ROFiles%5cR%26OYear2015%2fR%26O-009-2015.htm>

¹¹ <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=95899&p=0>

Annex:

- the Financial Services Ombudsman Levy and Establishment Levy Scheme (Bailiwick of Guernsey) 2015 [the Guernsey Levy Scheme] see <https://www.ci-fo.org/levy-and-establishment-levy-scheme-bailiwick-of-guernsey-2015/>;
- the Financial Services Ombudsman Levy Scheme (Jersey) 2015 [the Jersey Levy Scheme] see <https://www.ci-fo.org/levy-scheme-jersey-2015/>.