

Consultation Paper 8 2016 Levy schemes

A: This consultation

The Channel Islands Financial Ombudsman (CIFO) is funded by a system of case fees and levies payable by financial services providers. In 2015, CIFO published its first schemes¹, which set out the detail of the levies for 2015 and the case fees. The levies for 2015 included one-off costs for the initial establishment of CIFO as well as 2015 operating costs.

CIFO has prepared new schemes for the 2016 levies, in which the amounts of levy payable in 2016 are a little lower than in 2015. This is not a consultation about CIFO's total budget for 2016, which has already been approved, but a consultation about how the total cost should be divided. CIFO does not propose alterations to the 2015 Jersey and Guernsey Fee Schemes.

Interested parties – including representative bodies of financial services providers and the Financial Services Commissions – are invited to respond on the proposed Financial Services Ombudsman Levy Scheme (Jersey) 2016 [‘the 2016 Jersey Levy Scheme’] and the proposed Financial Services Ombudsman Levy Scheme (Bailiwick of Guernsey) 2016 [‘the 2016 Guernsey Levy Scheme’].

Section B explains how to respond. Section C explains the role of CIFO. Section D explains the legal background. Section E explains the background on the 2015 levy process. Section F explains the issue covered by this consultation. The proposed 2016 Jersey Levy Scheme and the proposed 2016 Guernsey Levy Scheme 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 may be published. Any sections that respondents consider to be confidential (for example, because they relate to security systems or provide commercially-confidential data) should be clearly marked as such, indicating the reason why they are considered to be confidential. The reason will be taken into account by the Principal Ombudsman in deciding what to publish.

Responses must reach us by no later than 28th March 2016.

¹<http://www.ci-fo.org/funding/>

C: The Channel Islands Financial Ombudsman (CIFO)

CIFO is the joint operation of the Office of the Financial Services Ombudsman (Jersey) and the Office of the Financial Services Ombudsman (Guernsey) established by the Financial Services Ombudsman (Jersey) Law 2014 [‘the Jersey Ombudsman Law’]² and the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 [‘the Guernsey Ombudsman Law’].³

CIFO is independent of the States. It 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. 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 commenced resolving complaints on 16th November 2015.

D: Legal background

The Financial Services Ombudsman (Case-fee and Levy) (Jersey) Regulations 2015⁴ [‘the Jersey Funding Regulations’] and the Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) Order 2015⁵ [‘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.

As set out in the Jersey Funding Regulations and the Guernsey Funding Order, the funding of CIFO for the 2016 financial year continues to be shared on an equal basis between Guernsey and Jersey.

E: Background on the 2015 levy process

The original proposed framework for the funding of CIFO was set out by the States of Jersey and the States of Guernsey in a joint consultation document⁶ in the autumn of 2014. This included a 50/50 split of the total levies payable by relevant financial services providers in Jersey and the Bailiwick of Guernsey.

The Financial Services Ombudsman (Case-fee and Levy) (Jersey) Regulations 2015⁷ and the Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) Order 2015⁸, gave CIFO power to make schemes for levies and case fees for 2015 and subsequent financial years.

CIFO made the following schemes on 9th September 2015. Copies are at www.ci-fo.org/funding/:

² www.jerseylaw.je/Law/display.aspx?url=LawsInForce%5cLawsFiles%5c2014%2fL-14-2014.htm

³ www.guernseylegalresources.gg/article/115617/Financial-Services-Ombudsman-Bailiwick-of-Guernsey-Law-2014

⁴ <http://www.jerseylaw.je/law/display.aspx?url=LawsInForce\htm\ROFiles%5cR%26OYear2015%2fR%26O-009-2015.htm>

⁵ <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=95899&p=0>

⁶ <https://www.gov.je/government/consultations/pages/ofsofunding.aspx>;
<http://www.gov.gg/CHttpHandler.ashx?id=92504&p=0>

⁷ <http://www.jerseylaw.je/law/display.aspx?url=LawsInForce\htm\ROFiles%5cR%26OYear2015%2fR%26O-009-2015.htm>

⁸ <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=95899&p=0>

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

An amended 2015 Guernsey Levy Scheme was subsequently made on 21 December 2015 to reflect issues that had arisen, primarily in identifying those entitled to zero-rating in the investment sector.

CIFO would like to thank registered providers, the GFSC and the JFSC for their assistance and co-operation in the 2015 levy process.

F: Issues covered by this consultation

CIFO is proposing to issue levy schemes for 2016 in the form set out in the attached annex. The proposed schemes maintain the existing funding approach for 2016. CIFO does not propose to amend the Guernsey Fee Scheme and Jersey Fee Scheme at this time.

Once CIFO has been in operation for a sufficient time and the volume of complaints becomes clear, there will be an opportunity to review the funding approach and consider alternative means of allocating CIFO's operating costs.

Stakeholders are invited to comment on the proposed 2016 Guernsey Levy Scheme and proposed 2016 Jersey Levy Scheme, which are shown in full in Annex A.

This section gives more background on the levy calculations and the zero-rating process under the proposed schemes.

Calculation and division of levy

CIFO became fully operational and commenced resolving complaints on 16th November 2015. The 2015 levies included one-off charges to cover establishment costs, as well as operational costs. Under the proposed levy schemes, the levy amount to be charged in 2016 for this first full year of operation is lower than the 2015 levy.

CIFO seeks to raise £636,054, which is the total of the budgeted operating costs for 2016 in accordance with the 2016 budgets that have been approved by Guernsey's Commerce and Employment Department and Jersey's Minister for Economic Development.

The case fee income for 2016 has been set at nil, as case fees will ordinarily be collected with the following year's levies, as set out in paragraph 6 of the Guernsey Fee Scheme and the Jersey Fee Scheme⁹. The case fee income collected in this way will be used to maintain the operating reserves at a prudent level and, subject to that, will be factored into levy calculations for 2017. The case fee income for 2015 was nil, as none of the complaints received reached the threshold for becoming billable by the year-end.

⁹ www.ci-fo.org/funding/

The method of dividing the levy amongst registered providers is the same as for the operational levy in 2015. Half of the total 2016 levy to be raised will be divided among bank licensees in respect of their deposit-taking licence. The balance is to be divided equally among registered providers in respect of the other sectors on a per sector of activity basis. See schedule B, paragraph 2 of the proposed 2016 Jersey Levy Scheme and 2016 Guernsey Levy Scheme. The levy amounts for the banking sector of activity and other sectors are shown in table 1.

Table 1	Banking sector levy	Other sector levy
Guernsey	£6,361	£764
Jersey	£6,116	£807

Entitlement to zero-rating

Data has been provided by the Financial Services Commissions on registered providers as at 4th January 2016 for the relevant sectors.

Providers that are registered providers on 4th January 2016 in the relevant sectors must pay a levy, unless they are entitled to zero-rating. CIFO has granted automatic zero-ratings to certain registered providers as shown in schedule A of the proposed schemes. CIFO will also grant zero-rating to registered providers that are sufficiently unlikely to generate eligible complaints and that have certified as such in accordance with schedule A of the proposed 2016 Jersey Levy Scheme and 2016 Guernsey Levy Scheme.

Because of the way in which the data are classified by the Financial Services Commissions, it is not consistently apparent whether or not a particular provider is entitled to zero-rating – so CIFO needs to seek information on that from some providers themselves.

The automatic zero-ratings in the proposed schemes remain the same as in the 2015 Jersey Levy Scheme and 2015 Guernsey Levy Scheme as amended. The proposed 2016 Guernsey Levy Scheme clarifies that although General Partners receive an automatic zero-rating, they need to identify themselves as such, as they cannot be clearly identified from the data held by the GFSC and provided to CIFO.

CIFO will carry forward the status of registered providers that have previously certified their eligibility for zero-rating, including General Partners as above.

CIFO will invite any entities that became registered providers in the period May 2015 to January 2016 first to consider their entitlement to zero-rating and to certify if appropriate, using the online form on CIFO’s website. After the due date for doing so has passed, CIFO will send levy notices to those that have not certified as eligible for zero-rating.

Other registered providers that have not certified as eligible for zero-rating before the publication of the levy schemes will be sent levy notices. The levy notice will include an option to zero-rate on receipt of the levy notice and complete the certification within 28 days of the levy notice.

Existing registered providers that have become entitled to zero-rating will be able to certify their eligibility via CIFO’s website either before the publication of the proposed 2016 levy schemes or in response to a levy notice. Registered providers that have ceased to be entitled to zero-rating must inform CIFO. This change in status will be applied for the 2017 year of assessment. CIFO will assist during 2016 by sending reminders to the email addresses provided in the certifications.

Planned timing

April 2016: Prescribe 2016 Jersey Levy Scheme and 2016 Guernsey Levy Scheme and commence issuing levy notices.

Q1: Do you have any comments on the proposed levy schemes?

Q2: Do you have any feedback on the 2015 levy process, such as on the ease of use of the zero-rating certification form and the clarity of the documentation?

Annex:

The Financial Services Ombudsman Levy Scheme (Jersey) 2016 (draft)
The Financial Services Ombudsman Levy Scheme (Bailiwick of Guernsey) 2016 (draft)

Jersey

Financial Services Ombudsman (Jersey) Law 2014 [the Law]¹⁰

Financial Services Ombudsman (Case-Fee and Levy) (Jersey) Regulations 2015 [the Regulations]¹¹

Financial Services Ombudsman Levy Scheme (Jersey) 2016 (draft)

- 1 This levy scheme is made:
 - on [xx] 2016;
 - by the Office of the Financial Services Ombudsman [OFSSO] established by the Law; and
 - in accordance with regulation 4 of the Regulations.

- 2 This scheme:
 - is for the 2016 year of assessment, which is the spending year ending on 31 December 2016;
 - will be published on [xx] 2016; and
 - will come into effect on [xx+1] 2016.

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

- 3 In this scheme:
 - 'levy notice' has the meaning as defined in the Regulations;
 - 'providers' means financial services providers within OFSSO's jurisdiction;
 - 'registered providers' has the same meaning as defined in the Regulations;
 - 'higher case fee' means the higher case fee payable under the fee scheme made by OFSSO under the Regulations;
 - 'relevant financial services business' has the same meaning as defined in the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014¹²; and
 - 'sector of activity' means the area of activity for which a levy is incurred as shown in paragraph 3 of schedule B.

- 4 Any provider that is a registered provider on 4 January 2016 must pay to OFSSO 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 will be calculated, and divided among registered providers, as explained in schedule B below.

- 7 OFSSO 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, OFSSO may add interest at 6% per annum from the due date until paid plus any debt-collection costs incurred by OFSSO.

- 8 Starting on [xx+1] 2016:

¹⁰ www.jerseylaw.je/Law/Display.aspx?url=LawsInForce%2fhtm%2fawfiles%2f2014%2f1-14-2014.htm

¹¹ www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%26OYear2015%2fR%26O-009-2015.htm

¹² www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%26OYear2014%2fR%26O-158-2014.htm

- OFSO will start the process to send levy notices to registered providers, in the sectors of activity shown in schedule B, paragraph 4, that are not zero-rated. Note that the actual date of the levy notice received may be after [xx+1 March 2016] 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.ciffo.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 2016 year of assessment in respect of any provider that, after 4 January 2016 and before 1 January 2017:
- 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 This scheme may be cited as the Financial Services Ombudsman Levy Scheme (Jersey) 2016.

David Thomas
Chairman of the Board of OFSO

Schedule A: entitlement to zero-rating

- 1 Under paragraph 7 of the Regulations, 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 Community Savings Limited in respect of all its activities and other registered providers in respect of:
 - all functionaries of non-recognized funds;
 - general insurance mediation business (GIMB) in class S; and
 - insurance business in class A.
- 3 Other registered providers may apply to OFSO for zero-rating in respect of the 2016 levy if they:
 - do not do business, or are sufficiently unlikely to do business, with eligible complainants; or
 - do not, and are sufficiently unlikely to, carry on relevant financial services business in or from within Jersey.
- 4 Zero-rating may be in respect of one or more applicable sectors of activity.
- 5 OFSO will only grant zero-rating under paragraph 3 of this schedule, above, if the registered provider:
 - certified their eligibility for zero-rating in respect of the 2015 year of assessment; or

- follows the process set out in the documents accompanying the levy notice and fully completes and submits the website certificate within 28 days of the levy notice; or
- fully completes and submits the website certificate within 28 days of being invited to do so by OFSO.

Otherwise, the registered provider will be liable to pay the levy.

Schedule B: calculation and division of levy

- 1 Under the Regulations, the total levy payable by (Jersey) 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 the Bailiwick of Guernsey = £636,054; and
 - Y = income plus any prior-year surplus of OFSO and the equivalent financial services ombudsman in the Bailiwick of Guernsey = nil;making a total of $£636,054 / 2 = £318,027$ [the total Jersey levy].
 - 2 The total Jersey 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 £6,116 for each bank licensee.
 - The other half is to be divided equally among registered providers on a per sector of activity basis. This will amount to £807 per activity for each registered provider (including bank licensees for activities other than deposit-taking).
 - 3 For the purpose of dividing the total Jersey levy, the sectors of activity are broadly based on the Jersey Financial Services Commission's categories and will comprise:
 - banking;
 - functionaries of recognized funds within the meaning of the Collective Investment Funds (Jersey) Law 1988¹³;
 - insurance, including general insurance mediation business;
 - investment business;
 - money service business (MSB); and
 - providers of credit that are required to register with the Jersey Financial Services Commission under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.
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¹³ Chapter 13.100

Bailiwick of Guernsey

Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 [the Law]¹⁴

Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) Order 2015 [the Order]¹⁵

Financial Services Ombudsman

Levy Scheme (Bailiwick of Guernsey) 2016 (draft)

- 1 This levy scheme is made:
 - on [xx] 2016;
 - 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 2016 year of assessment, which is the spending year ending on 31 December 2016;
 - will be published on [xx] 2016; and
 - will come into effect on [xx+1] 2016.

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;
 - 'relevant financial services business' has the same meaning as defined in the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order, 2015.¹⁶; and
 - 'sector of activity' means the area of activity for which a levy is incurred as shown in paragraph 3 of schedule B.

- 4 Any provider that is a registered provider on 4 January 2016 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 will be calculated, and divided among registered providers, as explained in schedule B below.

- 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, OFSO may add interest at 6% per annum from the due date until paid plus any debt-collection costs incurred by OFSO.

- 8 Starting on [xx+1] 2016:

¹⁴ <http://www.quernseylegalresources.gg/article/115617/Financial-Services-Ombudsman-Bailiwick-of-Guernsey-Law-2014>

¹⁵ <http://www.quernseylegalresources.gg/CHttpHandler.ashx?id=95899&p=0>

¹⁶ <http://www.quernseylegalresources.gg/CHttpHandler.ashx?id=95900&p=0>

- OFSO will start the process to send levy notices to registered providers, in the sectors of activity shown in schedule B, paragraph 3, that are not zero-rated. Note that the actual date of the levy notice received may be after [xx+1 March] 2016 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.ciffo.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 2016 year of assessment in respect of any provider that, after 4 January 2016 and before 1 January 2017:
- 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 This scheme may be cited as the Financial Services Ombudsman Levy Scheme (Bailiwick of Guernsey) 2016.

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-rate¹⁷ registered providers in respect of:
- General Partners carrying on the restricted activities of advising, managing or dealing in connection with a category 2 controlled investment under the Protection of Investors (Bailiwick of Guernsey) Law, 1987;
 - Category 5 and 6 insurers under the Insurance Business (Solvency) Rules, 2015;
 - Insurance managers.
- But registered providers involved in category 2 investment activities as General Partners will need to identify themselves to OFSO and be granted zero-rating as set out in paragraph 5 of this schedule. That is because – unlike the other automatically zero-rated categories – they cannot be identified from the data held by the Guernsey Financial Services Commission and provided to OFSO.
- 3 Other registered providers may apply to OFSO for zero-rating in respect of the 2016 levy if they:
- do not do business, or are sufficiently unlikely to do business, with eligible complainants; or

¹⁷ Please note that the following fall outside OFSO's jurisdiction and do not have to pay the levy: service providers of funds other than class A funds; and category 2 and 4 insurers

- do not, and are sufficiently unlikely to, carry on relevant financial services business in or from within Guernsey.
- 4 Zero-rating may be in respect of one or more applicable sectors of activity.
- 5 OFSO will only grant zero-rating under paragraph 3 of this schedule if the registered provider:
- certified their eligibility for zero-rating in respect of the 2015 year of assessment; or
 - follows the process set out in the documents accompanying the levy notice and fully completes and submits the website certificate within 28 days of the levy notice; or
 - fully completes and submits the website certificate within 28 days of being invited to do so by OFSO.
- Otherwise, the registered provider will be liable to pay the levy.
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Schedule B: calculation and division of levy

- 1 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 = £636,054; and
 - Y = income plus any prior-year surplus of OFSO and the equivalent financial services ombudsman in Jersey = nil;
- making a total of $£636,054 / 2 = £318,027$ [the total Guernsey levy].
- 2 The total Guernsey 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 £6,361 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 £764 per activity for each registered provider (including bank licensees for activities other than deposit-taking).
- 3 For the purpose of dividing the total Guernsey levy, the sectors of activity are broadly based on the Guernsey Financial Services Commission's categories and will comprise:
- banking;
 - insurance including intermediation;
 - investment, specifically those entities licensed to carry on the restricted activities of advising, managing or dealing in connection with a category 2 controlled investment under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 and fund services providers of Class A funds);
 - 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.
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