

# 2016 Explanatory notes for financial services providers

## Summary

Financial services providers that have received a 2016 levy notice from the Channel Islands Financial Ombudsman (“CIFO”) must either pay the amount due or, if applicable, apply for a zero-rating (effectively an exemption from the 2016 levy) within 28 days of the date on the notice. This document explains the amount due and the process for applying for a zero-rating (see p.3).

## Introduction

The Channel Islands Financial Ombudsman is the joint operation of the Office of the Financial Services Ombudsman in Jersey and the Office of the Financial Services Ombudsman in Guernsey, established by the Financial Services Ombudsman (Jersey) Law 2014 (“the Jersey Law”) and the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 (“the Guernsey Law”).

CIFO’s mandate is to resolve complaints independently, quickly, informally and fairly as a more accessible alternative to court proceedings for complainants.

The cost of CIFO is met by the financial services industry falling within its scope, through annual levies and / or case fees. The detail of the funding mechanism for CIFO is set out in the following schemes, all of which are published on [www.ci-fo.org/resource-room/funding/](http://www.ci-fo.org/resource-room/funding/):

- the Financial Services Ombudsman Levy Scheme (Bailiwick of Guernsey) 2016 [the 2016 Guernsey Levy Scheme];
- the Financial Services Ombudsman Levy Scheme (Jersey) 2016 [the 2016 Jersey 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].

This explanatory document provides further explanation of the Levy Schemes and the situations in which zero-rating for the levy has been applied by CIFO and the situations in which financial services providers may make an application for zero-rating. The Jersey and Guernsey fee schemes remain current from 2015.

## Who will pay the levy?

CIFO’s levies are payable by ‘registered providers’, as defined in the Financial Services Ombudsman (Case-Fee and Levy) (Jersey) Regulations 2015 and the Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) Order 2015. Broadly these are providers that, in relation to their carrying out ‘relevant financial services business’<sup>1</sup>, are required to register with the Jersey and Guernsey Financial Services Commissions (“the Commissions”) or are licensed or hold a certificate or permit under the regulatory laws as specified. Data on registered providers is provided by the Commissions to CIFO, as set out in the Jersey and Guernsey Laws, and financial services providers are not required to register separately with CIFO, reducing the burden on industry and avoiding duplication of effort.

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<sup>1</sup> As defined in article 9 of the Jersey Law and section 9 of the Guernsey Law

The 2016 levy is payable per sector of activity for which, on 4 January 2016, a provider is registered with or holds a licence, permit or certificate from the Commissions. Any such provider must pay to CIFO the 2016 levy as specified in the 2016 levy notice, unless it applies for zero-rating in accordance with the procedure set out in the levy notice, also see below. The 2016 levy notice is comprised of an invoice and covering letter. The sectors of activity are shown below for Jersey and Guernsey.

Jersey sectors:

- banking;
- functionaries of recognized funds within the meaning of the Collective Investment Funds (Jersey) Law 1988;
- 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.

Guernsey sectors:

- banking;
- insurance including intermediation;
- investment (specifically those entities licensed for 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.

Funds, the trust company business sector in Jersey and the fiduciary business sector in Guernsey are not charged a levy. Restricted activity in connection with non-Class A collective investment schemes is not relevant financial services business and fund services providers licensed for this will not be levied for this activity. However, if such a provider is also 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, these activities do incur a levy.

The providers of credit sector does not include entities registered or licensed as deposit-takers. The money service sector includes deposit-takers notifying or registered for money service business.

### How much will it cost?

The 2016 Jersey Levy Scheme and the 2016 Guernsey Levy Scheme raise the funding required for the operation of CIFO in 2016; with an equal amount to be raised from each jurisdiction. The total that CIFO requires to be raised from levies in 2016 is £586,054 as set out in the 2016 Levy Schemes.

Table 1 below, shows the 2016 levy amounts for Jersey and Guernsey. The calculation of these has taken into account the 2016 data from the Commissions on registered providers and the latest data held by CIFO on zero-rating certifications. The 2016 levy amounts payable by providers in Jersey and Guernsey are different. This is due to the different number of financial services providers liable for the levy in each jurisdiction. Notwithstanding this, the total levy amount to be raised in each jurisdiction is the same.

The 2016 levy in each jurisdiction is calculated so that the banking sector contributes 50 per cent of the amount required. The remaining 50 per cent is divided equally across the other sectors.

Table 1: 2016 Levy amounts

<b>2016</b>	<b>Banking sector levy</b>	<b>Other sector levy</b>
<b>Guernsey</b>	£5,426	£616
<b>Jersey</b>	£4,726	£701

### Payment of the 2016 levy notice

The 2016 levies are due within 28 days of the date on the 2016 levy notice, unless an application for zero-rating has been made within 28 days of that date.

### Entitlement for zero-rating for the 2016 levy

#### Automatic zero-rating

CIFO has given automatic zero-rating for the 2016 levy to certain activities or categories of providers that could not or are sufficiently unlikely to generate eligible complaints.

In Jersey these are:

- Functionaries/fund services providers for funds other than recognized funds;
- Insurance business in Class A.

In Guernsey these are:

- 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;
- Insurance managers.

General Partners involved in category 2 investment activities need to identify themselves to OFSO and be granted zero-rating. 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 CIFO.

CIFO has also given automatic zero-ratings to the following providers or categories where eligible complaints may be possible. In Jersey, zero-rating has been given to the following providers or categories due to the particular nature of their business:

- Community Savings Limited;
- Class S General Insurance Mediation Business.

In Guernsey, zero-rating has been given to the following categories after further discussion with industry identified that the majority of these insurers do not have policy beneficiaries that included eligible complainants and those that might would have difficulty in identifying whether this is the case:

- Categories 5 & 6 insurers under the Insurance Business (Solvency) Rules, 2015.

Insurance business carried out by category 2 & 4 insurers under the Insurance Business (Solvency) Rules 2015 falls outside CIFO's jurisdiction and so these insurers are not subject to the levy.

#### Consideration of eligibility for zero-rating

CIFO has carried forward, for the 2016 levy, the status of registered providers that have previously certified their eligibility for zero-rating.

Registered providers operating in the sectors in which a levy is payable and which have been sent a levy notice can apply for zero-rating if they could not give rise to an eligible complaint for the following reasons:

1. They do not carry on relevant financial services business **in or from within** Jersey or the Bailiwick of Guernsey or are sufficiently unlikely to do so; or
2. They do not do business with **eligible complainants** or are sufficiently unlikely to do so.

In considering whether this is the case for a financial services provider, consideration should be given to the definition of relevant financial services business and to the factors that make a complainant eligible. Providers are recommended to consider, as appropriate, Article 9 of the Jersey Law; Section 9 of the Guernsey Law; the exempt business orders and the eligible complainants orders – the links to these can be found in the legislation sections at [www.ci-fo.org/resource-room/](http://www.ci-fo.org/resource-room/). See also CIFO's guidelines on sufficiently-close relationships at [www.ci-fo.org/resource-room/policies/](http://www.ci-fo.org/resource-room/policies/).

Appendices 1 and 2 show the descriptions of business that are relevant financial services. To summarise Article 8 (2) of the Jersey Law and Section 8(2) of the Guernsey Law, to be eligible a complainant must:

- (a) be an individual, a microenterprise or, a local charity with income under a specified limit; and
- (b) not be a financial service provider currently or at the time of the event complained of; and
- (c) have, at the time of the event complained of, been the customer or prospective customer of or, had a sufficiently close relationship with the relevant financial service provider.

Registered providers that consider they do not do business with eligible complainants should consider the guidelines on sufficiently-close relationships (see [www.ci-fo.org/wp-content/uploads/2016/01/151114-Guidelines-on-sufficiently-close-relationships.pdf](http://www.ci-fo.org/wp-content/uploads/2016/01/151114-Guidelines-on-sufficiently-close-relationships.pdf)).

#### Partial Zero-rating

Some registered providers licensed or registered in more than one sector may consider their activities in only some of these sectors to be eligible for zero rating. These registered providers can certify as eligible for selected sectors using the relevant online form (see next section).

#### Certification procedure for zero-rating

Registered providers that conclude that they are unable to, or sufficiently unlikely to generate eligible complaints, can certify their eligibility for zero-rating using the online certification form at [www.ci-fo.org/certification-for-zero-rating/](http://www.ci-fo.org/certification-for-zero-rating/) or if only certifying in some of their sectors of activity, at [www.ci-fo.org/certification-for-partial-zero-rating/](http://www.ci-fo.org/certification-for-partial-zero-rating/). This must be done by the date specified in the levy notice (28 days from the date of the levy notice) and will exclude them from the obligation to pay the 2016 levy. Please note that information on the regulated providers that certify their entitlement to zero-rating, and their reasons for so doing, may be shared with the appropriate regulators. In fairness to other providers, if a zero-rating is claimed incorrectly, the registered

provider will be liable to pay the levy retrospectively, as specified in the 2016 Guernsey Levy Scheme and the 2016 Jersey Levy Scheme. In this situation, CIFO will send a revised levy notice and there is the right to appeal to the Royal Court before the payment due date in the revised levy notice.

**The online certification must be submitted by the date specified in the 2016 levy notice.**

Financial services providers that consider they are not a registered provider or the amount demanded has not been correctly calculated should contact CIFO by email at [billing@ci-fo.org](mailto:billing@ci-fo.org). They also have the right to appeal to the Royal Court within 28 days of the date of the levy notice.

If financial services providers have any questions regarding the levies for 2016 or other funding aspects that are not covered by this explanatory note, please contact CIFO at [billing@ci-fo.org](mailto:billing@ci-fo.org).

### Changes to status of registered providers after January 2016

If a provider changes its registered provider status or eligibility for zero-rating after January 2016 this will not result in an adjustment of the levy payable for that year. So, if a provider ceases to be licenced in a sector or expands into another sector after January 2016 it will not affect their levy payment for 2016. This is for simplicity and to keep administrative costs low. For example, if a provider was not a registered provider in any of the sectors in which a levy is payable in January 2016 but subsequently became so, no levy for 2016 would be payable but the case fee for any complaints referred to CIFO in 2016 would be at the higher amount of £600. It would be picked up in the lists of registered providers for the 2017 levy round and become a levy payer for 2017. Conversely, if a provider ceased to be a registered provider in a sector for which a levy is payable after January 2016, no adjustment to the 2016 levy would be made but case fees for any complaints referred to CIFO in 2016 would be at the lower amount of £200.

### Case fees

Where complaints are referred to CIFO, the provider the complaint is against must pay a case fee to CIFO unless, in the opinion of the ombudsman, it is apparent on receipt that the complaint is not eligible or should be rejected, or if at any time the complaint is rejected as frivolous or vexatious. Financial services providers that have paid the levy will pay a case fee of £200; the case fee for non-levy payers is £600. Non-levy payers could include trust or fiduciary businesses that have generated a complaint regarding a pension trust or Guernsey Category 5 or 6 insurers, see 'Automatic zero-rating', p.3.

In general, case fees will be collected annually in arrears. For registered providers that are subject to the annual levy, CIFO will invoice any case fees in conjunction with the next year's levy. However, if any financial services providers generate a large number of complaints they may be issued an interim case fee invoice after their 10<sup>th</sup> complaint since the last case fee invoice was issued.

No case fees have been invoiced with 2016 levy notices as none of the complaints received in 2015 reached the threshold for becoming billable by the end of 2015.

### Keeping In Touch – Contact Information to Be Provided to CIFO

The distribution of the levy notice for 2016 was achieved using data for financial services providers provided by the Commissions. The data does not contain information such as contact names, telephone numbers and email addresses for those individuals responsible for the providers' dealings with CIFO. Financial services providers are therefore asked, if they have not already done so in 2015, to complete and submit a contact form to ensure that CIFO has up-to-date contact information for the firm. This will enable ease of communication with financial services providers when necessary

and avoid unnecessary administrative costs. Financial services providers are asked to provide CIFO with contact information using the on-line form at [www.ci-fo.org/cifo-designated-contact-information-form/](http://www.ci-fo.org/cifo-designated-contact-information-form/). We thank all financial services providers in advance for their timely assistance in this regard.

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This is an explanatory guide to the 2016 Jersey Levy Scheme and 2016 Guernsey Levy Scheme. It is not a definitive statement of the legal position.

## Appendix 1: Jersey definition of relevant financial services business

Business that falls within these descriptions in the following extract from the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014 is relevant financial services business for the purpose of an eligible complaint:

Article 2 (2) “Those descriptions are –

- (a) deposit-taking business, within the meaning of the Banking Business (Jersey) Law 1991[3], for which the person carrying on the business must be registered under that Law;
- (b) business for which the person carrying on the business would be required to be registered under the Banking Business (Jersey) Law 1991, but for the operation of Article 4 of, or Schedule 1 to, the Banking Business (General Provisions) (Jersey) Order 2002[4];
- (c) money service business, within the meaning of the Financial Services (Jersey) Law 1998[5], for which the person carrying on the business must be a registered person under that Law;
- (d) business for which the person carrying on the business would be required to be a registered person under the Financial Services (Jersey) Law 1998, but for the operation of either or both of Articles 4 and 5 of the Financial Services (Money Service Business (Exemptions)) (Jersey) Order 2007[6];
- (e) the business of a functionary of a recognized fund, within the meaning of the Collective Investment Funds (Jersey) Law 1988[7], for which the functionary must hold a permit under that Law;
- (f) general insurance mediation business, within the meaning of the Financial Services (Jersey) Law 1998, for which the person carrying on the business must be a registered person under that Law;
- (g) insurance business for the purposes of the Insurance Business (Jersey) Law 1996[8], for which the person carrying on the business must be authorized by a permit under that Law;
- (h) business for which the person carrying on the business would be required to be authorized by a permit under the Insurance Business (Jersey) Law 1996, but for Article 5(5)(d) of that Law;
- (i) investment business, within the meaning of the Financial Services (Jersey) Law 1998, for which the person carrying on the business must be a registered person under that Law;
- (j) subject to Articles 3 and 6, relevant pension business, within the meaning of Schedule 3 to the Law;
- (k) subject to Articles 4, 5 and 6, relevant credit business, within the meaning of Schedule 4 to the Law;
- (l) subject to Article 6, relevant ancillary business, within the meaning of Article 9(2) of the Law, in respect of which the main business falls within any one or more of sub-paragraphs (a) to (k).”

## Appendix 2: Guernsey definition of relevant financial services business

Business that falls within these descriptions in the following extract from the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order, 2015 is relevant financial services business for the purpose of an eligible complaint:

Article 1 (2) “Subject to paragraph (3), those descriptions are —

- (a) deposit-taking business, within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, for which the person carrying on the business is required to have a licence under that Law,
  - (b) money service business, within the meaning of paragraph 4 of Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 for which the person carrying on the business —
    - (i) is required to be licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994, or
    - (ii) is required to be registered under the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008 or who would be required to register under section 2 of that Law but for a direction given by the Commission under section 44 of that Law,
  - (c) the business of being an insurance intermediary, within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, for which the person carrying on that business is required to be licensed as an insurance intermediary under that Law,
  - (d) insurance business within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002, for which the person carrying on the business is required to have a licence under that Law, except where the person is a person who falls under —
    - (i) Category 2 or 4, or
    - (ii) Category 5 or 6, where the person does not provide insurance business to or for the benefit of eligible complainants, of the Insurance Business (Solvency) Rules, 2015,
  - (e) controlled investment business, within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, where it involves —
    - (i) any restricted activity in connection with a Class A Collective Investment Scheme, or
    - (ii) the restricted activity of advising, managing or dealing in connection with a category 2 controlled investment within the meaning of that Law,
- and for which the person carrying on the business is required to have a licence under that Law,
- (f) the business of carrying out regulated activities, within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, in relation to a pension scheme for which the person carrying out the business must have a fiduciary licence under that Law,
  - (g) category 1 controlled investments that are authorised as Class A Collective Investment Schemes,
  - (h) subject to Articles 2 and 5, relevant pension business, within the meaning of Schedule 3 to the Law,
  - (i) subject to Articles 3, 4 and 5, relevant credit business, within the meaning of Schedule 4 to the Law, whether or not the person carrying out the business is registered under the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008, and
  - (j) subject to Article 5, relevant ancillary business, within the meaning of section 9(2) of the Law, in respect of which the main business falls within any one or more of subparagraphs (a) to (h).
- (3) Business which falls within any of subparagraphs (a) to (j) of Article 1(2) is nevertheless exempt business where that business is restricted to the provision of services to persons other than those set out in section 8(3) of the Law.”