Channel Islands Financial Ombudsman

Feedback on Consultation Paper 14
New CIFO funding structure

Issued: 29 October 2018

A: Executive summary

Consultation Paper 14 [CP14] was the fourth and final stage of a consultation process that was launched in April 2017. A strong consensus emerged amongst stakeholders on the main aspects of the new funding structure. Our Board has reached the following decisions –

1: What will change

We will adopt a new structure for the annual levies:

- Levies will be equalised between the two bailiwicks. The total levy will be divided among all the registered providers in both bailiwicks.
- For example, a Jersey bank will pay the same as a similar Guernsey bank, and a Guernsey investment business will pay the same as a similar Jersey investment business.
- If a financial services provider [FSP] is a registered provider in both bailiwicks, it will (as now) be required to pay the relevant levy in respect of each bailiwick.

2: When it will change

The changes to CIFO's funding structure require certain legislative changes to be made jointly by the States of Guernsey and States of Jersey. The States have informed us that – because of the complexity of making the necessary legislative changes on a coordinated basis across both bailiwicks and the competing priorities for legislative resources – they could not be completed in time for 1 January 2019.

Officers from the relevant departments in both Guernsey and Jersey have agreed to revisit this matter no later than 1 May 2019 in order to ensure that the required legislation is completed in time to enable the change to be implemented from 1 January 2020.

3: What will stay the same

We will retain the existing arrangements for:

- which FSPs pay the levy;
- zero-rating;
- the division of the levy among banking and other activities;
- changes in status during a financial year;
- when case fees are payable; and
- higher case fees for FSPs that do not pay the levy.

4: What will stay the same but be kept under review

We will retain the existing arrangements for, but keep under active review:

- the level of case fees; and
- the absence of a cap on the number of cases on which case fees can be charged.

B: Review of funding structure

1: First stage, from April 2017

In April 2017 CIFO held meetings with stakeholders, to brief them on CIFO's current funding structure and to help identify their views about the key issues to be addressed.

2: Second stage, from June 2017

In July 2017, in the light of the earlier discussions, CIFO issued a discussion paper[1] that set out the key issues and a broad range of options for consideration.

3: Third stage, from December 2017

In December 2017, in the light of responses to the discussion paper, CIFO issued a consultation paper[2], which set out a narrower range of favoured options for consideration. Discussions were also held with stakeholders.

4: Fourth stage, from April 2018

In the light of these consultations, and having regard to the views expressed by stakeholders, CIFO issued CP14[3], which set out the preferred option for a new funding structure for CIFO. Further discussions were also held with stakeholders. The consultation closed on 19 June 2018 and five formal responses were received. Details of the responses are in the annex. All were supportive of the recommended new funding structure and there were none that would suggest a change to the recommended approach.

After considering the responses to CP14, the CIFO board made its decision to implement the new funding structure. The board subsequently advised both the Committee for Economic Development in Guernsey and the Minister for Economic Development, Tourism, Sport and Culture in Jersey of its decision, and requested they take the necessary steps to enable the new structure to be put in place. These steps would be to update their agreement in respect of the pan-Channel Islands operation of CIFO and to make the necessary legislative amendments.

As noted in section A2, the new structure will be implemented for 1 January 2020. This means that the current funding structure will continue until the end of 2019. The necessary steps to extend the status quo for a further year, including amending legislation, are underway in Guernsey and Jersey[4].

The following sections set out the new funding structure for CIFO.

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[1] www.ci-fo.org/wp-content/uploads/2017/07/170710-DP1-funding-structure.pdf
[2] www.ci-fo.org/wp-content/uploads/2017/12/171205-CIFO-CP11-Final-1.pdf
[3] www.ci-fo.org/wp-content/uploads/2018/04/CP14-CIFO-Funding-Structure-Final-Consultation-Final-Version-180418[2].pdf
[4] https://statesassembly.gov.je/assemblypropositions/2018/p.118-2018.pdf

C: New funding structure

1: Annual levies to be equalised between bailiwicks

As proposed in CP14, we will adopt a new structure for the annual levies – so that they are equalised between the two bailiwicks. Once the change is made:

- The total levy will no longer be divided between the two bailiwicks and then among the registered providers in each bailiwick.
- In future, the total levy will be divided among all the registered providers in both bailiwicks.
- For example, a Jersey bank will pay the same as a similar Guernsey bank, and a Guernsey investment business will pay the same as a similar Jersey investment business.
- If an FSP is a registered provider in both bailiwicks, it will (as now) be required to pay the relevant levy in respect of each bailiwick.

As mentioned in CP14, this change requires some legislative changes to be made jointly by the States of Guernsey and States of Jersey.

The States have informed us that – because of the complexity of making the changes on a coordinated basis across both bailiwicks and the competing priorities for limited legislative resources – they cannot be completed in time for 1 January 2019.

Officers from the relevant departments in both Guernsey and Jersey have agreed to revisit this matter no later than 1 May 2019 in order to ensure that the required legislation is completed in time to enable the change to be implemented from 1 January 2020.

2: Who pays annual levies

We will continue the current structure under which levies are payable by 'registered providers' – FSPs licensed or registered by the Financial Services Commissions (FSCs) – for each sector in which they are licensed or registered, unless they are 'zero-rated'.

Registered providers are defined in:

- regulation 7(3) of the Financial Services Ombudsman (Case-fee and Levy) (Jersey) Regulations 2015;[5] and
- paragraph 6(3) of the Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) Order 2015.[6]

Broadly these are providers that, in relation to their carrying out financial services within CIFO's jurisdiction[7], are required to register with the Jersey and Guernsey FSCs or are licensed or hold a certificate or permit under the regulatory laws as specified.

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

6 www.guernseylegalresources.gg/CHttpHandler.ashx?id=95899&p=0

7 Defined in article 9 of the Financial Services Ombudsman (Jersey) Law 2014 and section 9 of the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 and further by the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014 and the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order 2015, see www.ci-fo.org/resource-room

CIFO has set the sectors in which levies are charged based on the financial services within CIFO's jurisdiction and also on the availability of data from both regulators. Broadly, the sectors are:

- banking business;
- insurance business, including intermediation;[8]
- money services;[9]
- provision of credit;[10] and
- relevant investment business (split between two categories in Jersey).

They exclude certain activities that are outside CIFO's jurisdiction, such as trust company and fiduciary business and the operation of excluded investment funds (namely, those other than Class A funds in Guernsey and recognized funds in Jersey).

The existing categories of registered providers might be extended by legislation in future, to cover any additional financial services activity that is made subject to licensing or registration. Once both FSCs can provide the necessary data on the pensions sector, a levy will be charged for that business activity.

3: Zero-rating

We will continue the existing arrangements for zero-rating.

CIFO automatically zero-rates registered providers in respect of the following categories, because it is able to identify them from the records held by the FSCs:

- In Jersey:
  - functionaries of non-recognized funds; and
  - insurance business in Class A.
- In the Bailiwick of Guernsey: insurance managers.

Other registered providers can self-certify[11] for zero-rating if they do not, or are sufficiently unlikely to:

- do business, with eligible complainants; or
- carry on relevant financial services business in or from within either bailiwick.[12]

After public consultation, CIFO has also given automatic zero-ratings to the following providers or categories, because of the particular nature of their businesses:

- In Jersey:
  - Community Savings Limited; and
  - class S general insurance mediation business.
- In the Bailiwick of Guernsey: insurers in categories 5 and 6 of the Insurance Business (Solvency) Rules, 2015.

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[8] In the Bailiwick of Guernsey, insurance business in categories 2 and 4 of the Insurance Business (Solvency) Rules 2015 is outside CIFO's jurisdiction and so these insurers are not subject to the levy.

[9] Required even if licensed for banking.

[10] Not required if licensed for banking.

[11] Following the process, and using the forms, specified at www.ci-fo.org/resource-room/funding.

[12] This includes 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, which are not identifiable from the data provided by Guernsey FSC.

4: How the annual levies are divided among registered providers

Once the annual levies are equalised between the two bailiwicks, the total levy covering both bailiwicks will be divided among registered providers in a similar way to the current division within each bailiwick:

- Half of the total will be divided equally among the holders of banking licences in both bailiwicks – resulting in individual banking providers in each bailiwick paying the same amount.
- The other half of the total will be divided equally (by each non-banking sector of activity) among regulated providers in both bailiwicks – resulting in individual providers in the other sectors of activity in each bailiwick paying the same amount per sector.

There will be one supplemental change, in order to be consistent with equalisation of the levies between both bailiwicks. Relevant investment business is currently:

- one sector in the Bailiwick of Guernsey; but
- two sectors in Jersey (functionaries of recognized funds are treated as a separate sector).

We will treat the two Jersey investment categories as one. Otherwise, a functionary of a recognized fund in Jersey that also did other relevant investment business would pay double the amount payable by a similar registered provider in the Bailiwick of Guernsey. This change does not require legislative change and so will take effect in 2019 through the publication, after the required consultation, of the 2019 levy scheme for Jersey.

5: Banking sector issues

We will continue the current structure in relation to three issues affecting the banking sector:

- treating all holders of banking licences the same;
- the 50 per cent proportion of the levy allocated to banking; and
- additional levies for other activities, particularly money service business (MSB).

Banking licences issued by the FSCs do not distinguish between types of bank, and the industry responses did not produce suggestions on how it would be possible to distinguish between types of banks simply, accurately and fairly.

The proportion of the levy allocated to banking reflects:

- that most consumers have far more interactions with their bank than other FSPs – so that banks benefit most from the underpinning of consumer confidence;
- discussions between the States and the industry when the initial funding structure for CIFO was first designed; and
- subsequent discussions suggesting that banks prefer a simple and administratively low-cost approach to the allocation of CIFO's operating costs.

Banks also pay the levy for other sectors in which they are active. For example, a bank that sells insurance also pays an insurance sector levy. MSB is a separate regulatory category in both bailiwicks, and not all banks have an MSB licence.

6: Changes in a regulated provider's status during a financial year

We will continue the existing arrangements for changes to a regulated provider's status during a financial year, which are designed to avoid administrative complexity by basing the levy on data at one fixed date:

- If an FSP ceases to be a registered provider in a particular category during a financial year, its liability to pay the levy will be reassessed from the beginning of the following financial year.
- If an FSP becomes a registered provider in a category during a financial year, its liability to pay the levy will be reassessed from the beginning of the following financial year (until when it will accrue any case fees at the higher rate in that category).
- If an FSP becomes entitled to zero-rating in a particular category during a financial year, its liability to pay the levy will be reassessed from the beginning of the following financial year.

7: Transition

There will not be a transition period in introducing the new levy structure from 1 January 2020, which was supported by most responses to the consultation.

8: Case fees

We will continue the existing structure for the circumstances in which a case fee is payable.

Case fees provide a user-pays charge, so that FSPs which produce more cases for CIFO make a larger contribution to its costs. Amounts received in case fees go to reduce the amount to be raised by the annual levy in the following year.

A case fee is payable by an FSP for each complaint against that FSP which is referred to CIFO unless, in the opinion of an ombudsman:

- on receipt of the complaint, it is apparent that it is not eligible or should be rejected; or
- at any time, the complaint is rejected as frivolous or vexatious.

9: Differential case fees

We will continue the existing arrangements under which FSPs that are required to pay the levy in the relevant sector (and so have already contributed to CIFO's costs) should pay a lower case fee than those FSPs that are not required to pay a levy (and so have not contributed to CIFO's costs).

CIFO can only raise a levy from FSPs that it can identify, on the basis of the lists of FSPs licensed/registered by the FSCs that both FSCs are able to provide to CIFO. But there are other FSPs that fall within CIFO's jurisdiction, such as credit brokers and providers of pension services, where CIFO cannot currently be provided with data from both FSCs to enable levies to be charged. It is fair that they should pay a higher case fee, to reflect the fact that they have not paid a levy.

10: Proportion raised by case fees

In response to previously-expressed stakeholder views that the user-pays element of CIFO's funding should be increased, case fees have been increased over time, based on the date CIFO received the complaint:

- Until 31 December 2016: £200 (levy-payers) or £600 (other FSPs);
- From 1 January 2017 to 31 March 2018: £300 (levy-payers) or £750 (other FSPs);
- From 1 April 2018: £400 (levy-payers) or £900 (other FSPs);

The December 2017 consultation paper discussed the option of continuing to raise case fees incrementally. Stakeholder responses were mixed. The amount of the case fees that would be required led to some change in sentiment.

Some feared the case-fee impact on an individual FSP of a sudden surge in cases. Others feared that an even higher case fee might encourage some FSPs to act inappropriately and try to supress legitimate complaints.

CP14 asked:

- What are the appropriate maximum figures for case fees through to 31 December 2021? Should they remain at the current £400/£900 figures? Should they increase incrementally to the £850/£1,350 figures mentioned in the December 2017 consultation paper? Should they be capped at some in-between figures? If so, what figures?
- Should CIFO set a maximum number of cases for which an FSP can be charged case fees in any one financial year, after which any cases will be 'free'. If so, what maximum number? Such a cap will mitigate the financial risk to a smaller FSP, but will run counter to the user-pays principle.

In the light of the responses received, we have decided to keep case fees at the current level and not to introduce a cap. But we will keep the position under review in the light of developing circumstances, and will welcome receiving ongoing stakeholder views.

E: Next steps

It is for the States to take forward the legislative and other changes required to equalise levies between the two bailiwicks, so that the new funding structure can be implemented in full from 1 January 2020.

Meanwhile, CIFO will be submitting to the States its 2019 budget (reflecting the resources needed to handle its increasingly complex workload) – and will then consult stakeholders on the resulting levies for 2019 in the usual way.

Annex: Formal responses to CP14

CP14 was published on 19 April 2019. It was published on the CIFO website, highlighted in a newsletter sent out to all subscribers and notified to contacts at specific organisations representing groups of stakeholders, such as industry associations and consumer groups.

The consultation period closed on 19 June 2018 and five formal responses were received from stakeholders, none of which were requested to be treated as confidential. The responses were received from the following entities and you can click through on the link to view the actual response:

1	Association of Guernsey Banks
2	Barclays
3	Guernsey Committee for Employment & Social Security
4	Close Finance Limited
5	Jersey Bankers Association (JBA)