

Explanatory notes for financial services providers

Summary

Financial services providers that have received a levy notice from the Channel Islands Financial Ombudsman (“CIFO”) must either pay the amount due or apply for a zero-rating (effectively an exemption from the 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.5).

Financial services providers are also asked to provide contact details for individual members of staff responsible for the provider’s dealings with CIFO.

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 is due to ‘open for business’ on 16th November 2015, subject to States’ approval, and start resolving complaints about financial services in accordance with its mandate. 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 will be met by the financial services industry falling within its scope through annual levies and case fees. The Jersey and Guernsey States are providing repayable loans for start-up capital. The detail of the funding mechanism for CIFO in the form of case fees and levies payable by financial services providers is set out in the following schemes, all of which are published 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].

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 Departments of Economic Development in Jersey and Commerce & Employment in Guernsey (“the Departments”) published a joint consultation paper in September 2014 to gather views on the proposed funding of CIFO. CIFO took account of the consultation and responses when developing the levy and fee schemes.

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 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.

The levy is payable per sector of activity for which, on 8 May 2015 for Jersey and 21 May 2015 for Guernsey, a provider is registered with or holds a licence, permit or certificate from the Commissions. Any such provider must pay to CIFO the levy as specified in the levy notice, unless it applies for a zero-rating in accordance with the procedure, see below. The levy notice is comprised of an invoice and covering letter.

The sectors are broadly based on the different licence or registration categories of the Commissions and 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 Category 2 investment activities 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 will not be charged 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.

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.5

The case fees will be collected annually in arrears. CIFO will invoice any case fees in conjunction with the levy for registered providers that are subject to the annual levy. However, if any financial services providers generate a large number of complaints they may be issued an interim case fee invoice after their 10th complaint since CIFO opened for business or since the last case fee invoice was issued.

How much will it cost?

The Jersey and Guernsey Levy Schemes raise the funding required for the operation of CIFO in 2015; the one-off establishment costs in 2015 and 2014; and the setting up of reserves. The total amount to be raised in levies is to be raised equally in each jurisdiction until the end of 2016, when it will be reviewed on the basis of experience to date. The total that CIFO requires to be raised from levies in 2015 is £1,081,463, as set out in the Levy Schemes.

The Departments' joint funding consultation used the following initial estimates for the amount requiring to be raised in levies:

£183,000	Establishment costs
£146,000	Three months' operating costs for initial reserves
£583,000	Annual operating costs estimate
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£912,000	Total estimate to be raised in levies

The Board has used a different approach from the Departments' proposal in the area of reserves. It has adopted a fixed-sum provision for reserves of an amount of £350,000, rather than the £146,000 estimate above, which it considers prudent in view of various uncertainties. These uncertainties include about the number and nature of complaints that may be expected and the implication for operating costs; about the number of registered providers that will claim zero-rating; and, about the time it will take for levy payments to be made.

Tables 1 and 2, below, show the levy amounts for Jersey and Guernsey. The calculation of these has taken into account best estimates of the numbers of registered providers that will certify entitlement to zero-rating. The levy amounts payable by providers in Jersey and Guernsey are different. This is due to two reasons: the different number of financial services providers in each jurisdiction and also the different commencement dates of the Guernsey and Jersey Laws, as this timing affects the categorisation of costs as establishment costs. (The Guernsey Law provides for a distinct establishment levy in relation to establishment expenses incurred before the commencement of the Guernsey Law and so distinguished from those incurred after the commencement date, which are met by the start-up levy). Notwithstanding this, the total levy amount to be raised in each jurisdiction is the same.

The start-up levy component in Jersey and the establishment levy and the start-up levy in Guernsey are one-off, flat amounts per provider across each sector of activity. The operational levy component in Jersey and operational levy in Guernsey 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. This is in accordance with the Departments' proposal for the levy, to reflect the expectation that the banking sector will generate proportionately more complaints than other sectors.

Table 1: Levy amounts for Jersey

Jersey	
Start-up levy component per sector	£952
Operational levy component for each sector	
Banking	£6,281
Functionaries of recognized funds	£821
Insurance including mediation business	£821
Investment business	£821
Money service business	£821
Providers of credit	£821

For example, a provider with only a general insurance mediation business licence in Jersey would pay a one-off start-up levy component of £952 plus an annual levy of £821 for 2015.

A provider registered or authorised in Jersey for banking, investment business and money services business would pay a levy of £10,779 in 2015. This is broken down as:

- the one-off start-up levy component of £952 per sector x 3;
- a banking operational levy component of £6,281;
- Plus operational levy components for the other sectors of £821 x 2.

Table 2: Levy amounts for Guernsey

Guernsey	
Establishment and start-up levies per sector	£1,199
Operational levy for each sector	
Banking	£5,229
Insurance including intermediation	£628
Investment	£628
Money service	£628
Providers of credit	£628

For example, a Guernsey provider with only a general insurance mediation business licence would pay a one-off start-up and establishment levy of £1,199 plus an operational levy of £628 for 2015.

A provider registered or regulated in Guernsey for banking, investment business and money services business would pay a levy of £10,082 in the first year. This is broken down as:

- the one-off start-up and establishment levy of £1,199 per sector x 3;
- a banking operational levy of £5,229;
- plus operational levies for the other sectors of £628 x 2.

Although CIFO will only start to resolve complaints about financial services on 16th November 2015, subject to States' approval, complaints may be referred about events going back to 1 January 2010 (if the financial services were provided from Jersey) or 2 July 2013 (if the financial services were provided from Guernsey).

Changes to status of registered providers after May 2015

If a provider changes its registered provider status or eligibility for zero-rating after May 2015 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 May 2015 it will not affect their levy payment for 2015. 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 May 2015 but subsequently became so, no levy for 2015 would be payable but the case fee for any complaints referred to CIFO in 2015 would be at the higher amount of £600. It would be picked up in the lists of registered providers for the 2016 levy round and become a levy payer for 2016. Conversely, if a provider ceased to be a registered provider in a sector for which a levy is payable after May 2015, no adjustment in the levy would be made but case fees for any complaints referred to CIFO in 2015 would be at the lower amount of £200.

Payment of the 2015 levy notice

Each provider's levy notice includes its share of CIFO's start-up costs and its share of CIFO's operating costs for 2015 as allocated in accordance with the approach noted above. No case fees have been invoiced as CIFO has not yet opened for complaints. The levies are due within 28 days of the date on the Levy notice, unless an application for zero-rating has been made within 28 days of that date.

Entitlement for zero-rating for the levy

Automatic zero-rating

CIFO has given automatic zero-rating for the levy to some 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 Category A

In Guernsey these are:

- General Partners licensed for Category 2 investment activities
- Category 2 & 4 insurers under the Insurance Business (Solvency) Rules 2015
- Insurance managers
- Fund services providers for funds other than Class A

CIFO has also given automatic zero-ratings for the levy to the following providers or categories where eligible complaints may be possible. In Jersey, in accordance with the proposal in the funding consultation, 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:

- insurers in Categories 5 & 6 of the Insurance Business (Solvency) Rules.

Application procedure 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 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; the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014 and the Financial Services Ombudsman (Exempt Business) (Amendment) (Jersey) Order 2015; Section 9 of the Guernsey Law, the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order 2015; Article 8 (2) of the Jersey Law and Section 8(2) of the Guernsey Law plus CIFO Consultation Papers 1 & 2. All of these are available on www.ci-fo.org.

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, as currently being consulted on, a small, local charity; 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, as currently being consulted on (see <https://www.ci-fo.org/wp-content/uploads/2015/08/150730-CP2-eligible-complainants-relationships-Final.pdf>), 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 draft guidelines on sufficiently-close relationships (see <https://www.ci-fo.org/wp-content/uploads/2015/08/150730-CP2-eligible-complainants-relationships-Final.pdf>).

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 <https://www.ci-fo.org/certification-for-zero-rating/>. This must be done within 28 days of the levy notice and will exclude them from the obligation to pay the 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 Guernsey Levy Scheme and the 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.

Registered providers that are unable to decide, until the final guidelines on sufficiently-close relationships are issued, should complete the certification form accordingly to obtain a provisional zero-rating. Once the final guidelines are issued, any such providers will be sent further notification to complete the zero-rating certification or pay the levy, as appropriate.

The online application must be submitted within 28 days of the 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. They also have the right to appeal to the Royal Court within 28 days of the levy notice.

Going Forward

This is an initial funding scheme to cover the start-up costs and the initial period (2014-2015) of CIFO's operating costs. Bodies representing the interests of registered providers are invited to comment on the case fee and levy schemes within two months of their publication.

There will be a levy notice covering the 2016 period distributed toward the end of 2015. 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. There will be consultation with industry stakeholders on this issue.

In the meantime, if financial services providers have any questions regarding the levies for 2015 or other funding aspects that are not covered by this explanatory note, please contact CIFO at billing@ci-fo.org.

Keeping In Touch – Contact Information to Be Provided to CIFO

The distribution of the levy notice for 2015 was achieved using data for financial services providers obtained from the Commissions. The data obtained does not contain information such as contact names, telephone numbers and email addresses for those individuals responsible for the firm's dealings with CIFO. Financial services providers are therefore asked 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 provided <https://www.ci-fo.org/cifo-contact-information-form/> within 28 days of the date on the levy notice. We thank all financial services providers in advance for their timely assistance in this regard.

This is an explanatory guide to the Jersey and Guernsey Levy Schemes. 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.”