

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE COMMITTEE *FOR* ECONOMIC DEVELOPMENT

FINANCIAL SERVICES OMBUDSMAN: NEW FUNDING STRUCTURE

The States are asked to decide:-

Whether, after consideration of the Policy Letter, entitled “Financial Services Ombudsman: New Funding Structure”, dated 16th August, 2019, of the Committee *for* Economic Development, they are of the opinion:-

1. To amend the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 and The Financial Services Ombudsman (Case Fee and Levies (Bailiwick of Guernsey) Order 2015, specifically to provide that the same annual levy can be applied to similar financial services providers in the Bailiwicks of Guernsey and Jersey.
2. To amend Schedule 2 of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 to allow for the amalgamation of the finances of the Offices of Financial Services Ombudsman in Jersey and Guernsey.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

16 August 2019

Dear Sir

1. Executive Summary

- 1.1 The Channel Islands Financial Service Ombudsman (“**CIFO**”) is the joint operation of two statutory ombudsman roles, established in the Channel Islands by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 and the Financial Services Ombudsman (Jersey) Law 2014 (the “**Legislation**”).
- 1.2 CIFO provides an independent dispute resolution service for unresolved complaints involving financial services provided in, or from, Jersey, Guernsey, Alderney and Sark.
- 1.3 Under the current funding structure, income and expenses of the two offices is shared equally between the two islands.
- 1.4 The Legislation and Memorandum of Understanding (the “**MOU**”) between Guernsey and Jersey established, from the outset, that CIFO would need to carry out a review of its funding within a few years of commencing operations, once its caseload was better understood.
- 1.5 CIFO has conducted a major funding review exercise. In letters dated 18th July 2018 to the Committee *for* Economic Development in Guernsey and the Minister for Economic Development, Tourism, Sport and Culture in Jersey, CIFO confirmed its desire to adopt a new funding model, reflecting a change to the methodology of calculating the annual levy. CIFO has requested that the political authorities in Guernsey and Jersey consider taking the necessary steps to update the MOU and the Legislation, to give effect to the same.

2. CIFO funding structure

- 2.1 The current costs of CIFO are met by the financial services providers falling within its scope, through annual levies and cases fees, in accordance with the relevant legislation in both Guernsey and Jersey.
- 2.2 Case fees are payable by financial services providers in respect of any complaint, in relation to services provided, referred to CIFO, whether or not the same is upheld.
- 2.3 Aligned to international good practice, and to avoid creating any barriers to access for consumers, no fees are payable by complainants who escalate their complaints to CIFO for review.
- 2.4 Pursuant to the MOU, the total amount required from relevant financial services providers, each year, is currently raised equally from each island, with operating costs, for the two offices, also being shared equally. The basis for the current 50:50 income split is set out in the Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) Order 2015¹. This was recently extended for a further year, to the end of 2019, by:
- the Financial Services Ombudsman (Bailiwick of Guernsey) (Amendment) Ordinance, 2018; and
 - the Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) (Amendment) Order, 2018 (the “**Order**”).
- 2.5 CIFO’s levies are payable by ‘registered providers’, as defined in the Order. Broadly, these are providers that, in relation to their carrying out ‘relevant financial services business’², are required to register with the Guernsey Financial Services Commission (“**GFSC**”), or are licensed or hold a certificate or permit under relevant regulatory laws. To facilitate the issuance of annual levy notices, the GFSC provides CIFO with relevant data on registered providers.
- 2.6 The total amount to be raised by levies is first split equally between the two islands, so that 50% is payable by registered providers in Guernsey and 50% is payable by registered providers in Jersey.

¹ Article 5.

² As defined in section 9 of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014. In Guernsey, sectors of activity include (i) banking, (ii) insurance (including intermediation), (iii) 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 and (iv) money services 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.

- 2.7 Within each island, half of its share (equal to 25% of the total levy income) is shared equally amongst the licensed banks. The other half (also 25% of the total levy) is shared equally among the remaining relevant financial services providers.
- 2.8 Registered providers operating in sectors in which a levy is payable, and which have been sent a levy notice, can apply for a zero-rating if, throughout the year, they could not give rise to an eligible complaint for the following reasons:
- they do not carry on relevant financial services business in, or from, the Bailiwick of Guernsey, or are sufficiently unlikely to do so; or
 - they do not do business with eligible complainants, or are sufficiently unlikely to do so.³
- 2.9 Due to the fact that the numbers of licensed banks, and other relevant financial services providers, in both islands are not identical, the outcome of this process is that individual financial services providers providing equivalent services in the two islands do not pay the same levies in both islands.

3. Proposal

- 3.1 In response to CIFO's request, it is proposed to amend the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (the "**Law**") and The Financial Services Ombudsman (Case Fee and Levies (Bailiwick of Guernsey) Order 2015, specifically to provide that the same annual levy can be applied to similar financial services providers in both Bailiwicks.
- 3.2 It is proposed that the weighting of the total levy between the banking and non-banking sector, whereby the banks pay a higher proportion on account of their greater usage, should continue.
- 3.3 The total amount raised in levies, in each island, would then relate to the number of levy payers in each island, rather than the current 50:50 split.
- 3.4 It is further proposed that Schedule 2 of the Law is amended to allow for the amalgamation of the finances of the Offices of Financial Services Ombudsman ("**OFSOs**") in Jersey and Guernsey. This, in conjunction with relevant amendments to the MOU, would remove the need to create complex provisions in respect of the sharing of costs between the OFSOs and the management of the financial reserves in the Legislation.

³ CIFO has also given automatic zero-rating, for the 2019 levy, to certain activities or categories of providers that could not, or are sufficiently unlikely to, generate eligible complaints.

4. Compliance with Rule 4

- 4.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 4.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not to be put into effect.
- 4.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.

Yours faithfully

C Parkinson
President

A C Dudley-Owen
Vice-President

J I Mooney
N Inder
D de Lisle

President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH

23rd August 2019

Dear Deputy St Pier

Preferred date for consideration by the States of Deliberation (the “States”)

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Economic Development (the “**Committee**”) requests that the policy letter entitled “Financial Services Ombudsman: New Funding Structure” (the “**Policy Letter**”) be considered at the States’ meeting to be held on 25th September 2019.

The current funding structure for the Channel Islands Financial Services Ombudsman (“**CIFO**”) is currently in place until 31st December 2019. The Committee requests that the Policy Letter, which proposes a new funding structure for 2020, be considered by the States at the earliest opportunity.

Yours sincerely



Deputy C Parkinson

President
Committee *for* Economic Development