

27 MAY 2015

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GUERNSEY

GUERNSEY STATUTORY INSTRUMENT

2015 No. 36

**The Financial Services Ombudsman (Case Fee and Levies)
(Bailiwick of Guernsey) Order, 2015**

<i>Made</i>	21 st May , 2015
<i>Coming into operation</i>	21 st May , 2015
<i>Laid before the States</i>	, 2015

THE COMMERCE AND EMPLOYMENT DEPARTMENT, in exercise of the powers conferred on it by section 27 of, and paragraphs 3, 4 and 5 of Schedule 2 to, the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014^a, hereby orders:-

Case fee scheme: prescription, contents and effects.

1. (1) OFSO must prescribe, and may amend, a scheme ("the fee scheme") of case fees payable by respondents to OFSO in respect of complaints against them that are referred to OFSO, in circumstances prescribed in the scheme.

(2) OFSO must publish -

(a) the fee scheme that it prescribes, and

(b) any amendment to that scheme.

^a Order in Council No. I of 2015.

(3) The fee scheme, or any amendment to it, does not take effect until a date specified in the fee scheme or amendment, being a date later than the date of its publication.

(4) The fee scheme -

(a) must provide for -

(i) the amount of the case fee or of each description of case fee, and

(ii) the means of calculating it,

(b) may make such provision on any basis appearing to OFSO to be appropriate,

(c) must provide for the determination of the date by which payment of a case fee is due,

(d) may make such provision by requiring payment of case fees at or in respect of any stage of the handling of a complaint by OFSO, or at a later date when a levy is payable by a respondent, or at a date determined by any other means,

(e) may set a rate of interest payable on any amount of a case fee remaining outstanding after payment is due,

- (f) may provide for OFSO to waive a case fee at OFSO's discretion in circumstances specified in the scheme, and
- (g) may, in relation to any or all of paragraphs (a) to (f), make different provision for different descriptions of complaints, including (without limitation) descriptions related to whether the respondent in the complaint -
 - (i) is a registered provider,
 - (ii) is zero-rated under article 6(4)(a) or (b) for the levy scheme, or
 - (iii) has any other characteristic.

(5) A respondent to a complaint must, before the date by which payment of a case fee is due under the fee scheme in relation to that complaint, pay to OFSO the case fee determined under that scheme in respect of that complaint.

(6) If the case fee is not paid in full by that date, OFSO may recover as a civil debt from the respondent -

- (a) any amount of the case fee remaining unpaid on that date, and
- (b) any interest accruing on that amount at a rate set by the fee scheme under paragraph (4)(e).

Case fee scheme: consultation.

2. (1) Before OFSO prescribes the initial fee scheme, the Department must inform OFSO of any steps taken by it, whether before or after the commencement of this Order, to discuss the potential contents of that scheme with persons appearing to the Department to be appropriate from among financial service providers and their representatives.

(2) OFSO must, subject to paragraph (4) -

- (a) take that information into account in prescribing the initial fee scheme,
- (b) publish, with the initial fee scheme, OFSO's response to that information, particularly stating reasons for departure from any proposed provisions discussed by the Department,
- (c) after the initial fee scheme is published, consult the persons mentioned in paragraph (3) as to whether any amendment should be made to the initial fee scheme, and
- (d) if, in the period of 4 months following the initial fee scheme, OFSO does not amend that fee scheme in response to the consultation, publish its reasons for not doing so.

(3) Before prescribing any subsequent fee scheme or varying a fee scheme, OFSO must consult -

- (a) any body appearing to OFSO to be representative of the interests of all or any of the descriptions of financial service provider who may be liable to pay case fees under the fee scheme,
- (b) the Commission, and
- (c) any other person appearing to OFSO to be appropriate.

(4) Paragraphs (2)(b) to (d) do not apply if OFSO consults on the initial fee scheme as if it was a subsequent scheme for the purposes of paragraph (3).

Levy scheme: prescription and publication.

3. (1) OFSO must prescribe, and may amend, a scheme ("the levy scheme") under which, in any financial year in respect of which OFSO decides that a levy is payable -

- (a) the liability for a levy is to be divided among those liable,
- (b) the amounts of levy are to be calculated, and
- (c) the persons liable to pay a levy are to be notified.

(2) OFSO must publish -

- (a) the levy scheme that it prescribes, and

(b) any amendment to that scheme.

(3) A scheme, or any amendment to it, does not take effect until a date specified in the scheme or amendment, being a date later than the date of its publication.

Levy scheme: consultation.

4. (1) Before OFSO prescribes the initial levy scheme, the Department must inform OFSO of any steps taken by it, whether before or after the commencement of this Order, to discuss the potential contents of that scheme with persons appearing to the Department to be appropriate from among financial service providers and their representatives.

(2) OFSO must -

- (a) take that information into account in prescribing the initial levy scheme,
- (b) publish, with the initial levy scheme, OFSO's response to that information, particularly stating reasons for departure from any proposed provisions discussed by the Department, and
- (c) after the initial levy scheme is published, consult the persons mentioned in paragraph (3) as to whether any amendment should be made to the initial levy scheme, and
- (d) if, in the period of 4 months following the initial levy scheme, OFSO does not amend that scheme in

response to the consultation, publish its reasons for not doing so.

(3) Before prescribing any subsequent scheme or varying a scheme, OFSO must consult -

- (a) any body appearing to OFSO to be representative of the interests of all or any of the descriptions of financial service provider who may be liable to pay levies under the levy scheme, and
- (b) the Commission, and
- (c) any other person appearing to OFSO to be appropriate.

(4) Paragraph (2)(b) to (d) do not apply if OFSO consults on the initial levy scheme as if it was a subsequent scheme for the purposes of paragraph (3).

Levy scheme: calculation of total amount required.

5. (1) The total amount required by OFSO in levies under this Order for a particular spending year (within the meaning of Article 6(1)) shall be determined by calculating, using the values obtained under paragraphs (2) and (3), the result of the formula " $\frac{X-Y}{2}$ ".

(2) For the purpose of paragraph (1), the value of "X" is to be obtained by calculating the total of the amounts that OFSO estimates for that year as -

- (a) the costs, appearing to OFSO to relate to that year, that are to be incurred by OFSO and by the equivalent body under a Jersey scheme ("**the Jersey body**"),
- (b) any amount by which it appears to OFSO to be necessary that a reserve of OFSO, the Jersey body or both should be increased in that year, and
- (c) any deficit from the previous year in the funds of OFSO, the Jersey body or both, after allowing for accumulation of a reserve.

(3) For the purpose of paragraph (1), the value of "Y" is to be obtained by calculating the total of the amounts that OFSO estimates in relation to that year, having regard to its budget as -

- (a) the income, by way of case fees, of OFSO and the Jersey body,
- (b) any other income of OFSO, the Jersey body or both, other than by way of levies, and
- (c) any surplus from the previous year in the funds of OFSO, the Jersey body or both, after allowing for accumulation of a reserve.

(4) For the purpose of this Article, OFSO may, in respect of any calculation -

- (a) make its own estimates,
- (b) rely on estimates made by the Jersey body, or
- (c) make estimates jointly with the Jersey body.

(5) For the purpose of paragraph (2)(a) the costs to be incurred may, without limitation, include -

- (a) the repayment of any loans and payment of interest on loans, and
- (b) the costs of establishing OFSO and the Jersey body, as well as of their operation.

(6) For the purpose of paragraphs (2) and (3), "reserve" means, in respect of OFSO, a reserve accumulated under paragraph 8 of Schedule 2 to the Law and taken into account in OFSO's budget under paragraph 2(5)(b) of that Schedule, and in respect of the Jersey body any equivalent reserve of that body.

- (7) In respect of a financial year after 2016, this Article applies -
- (a) without any of the references to the Jersey body, and
 - (b) with the substitution, for the formula in paragraph (1), of the formula "X - Y".

Levy scheme: imposition of levy.

6. (1) For the purpose of this Article -

- (a) the assessment year is the financial year by reference to which assessment is to be made as to whether a person is a financial service provider or will be entitled to zero-rating or other treatment under the scheme, and
 - (b) the spending year is the financial year by reference to which the needs of OFSO are to be assessed.
- (2) A financial service provider must pay a levy if -
- (a) it is a registered provider at any time during an assessment year,
 - (b) it is not zero-rated under the levy scheme in accordance with paragraph (4), and
 - (c) the OFSO serves a levy notice on it under Article 7.
- (3) A "**registered provider**", for the purpose of this Order, is a financial service provider that falls within any one or more of the following descriptions, in relation to the relevant financial services business carried on by that provider -
- (a) a licensee under any of the enactments set out in section 9(1)(a) or (b) of the Law in order to conduct financial services business,

- (b) a person registered under Part IIIA of the Criminal Justice (Proceeds of Crime) (Financial Service Businesses) Regulations, 2007^b in order to conduct financial services business,
 - (c) a person required by s.2 of the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008^c to register with the Commission in order to carry out financial services business within the meaning of section 1 of that Law.
- (4) The levy scheme -
- (a) must provide for zero-rating for descriptions of registered provider in respect of which it appears to OFSO that any complaint, that could relate to an act by a registered provider of that description in the financial year in respect of which a levy is payable, could not be, or is for any reason sufficiently unlikely to be, eligible for referral to OFSO by virtue of section 7 of the Law,
 - (b) may provide for zero-rating for other descriptions of registered provider,

^b G.S.I. No. 33 of 2007; Order in Council No. XV of 2008; No. XI of 2011; G.S.I. No. 48 of 2008; No. 30 of 2009; No's. 13 and 58 of 2010; No's. 13 and 20 of 2013.

^c Order in Council No. XV of 2008; as amended by No. XIII of 2010; Recueil d'Ordonnances Tome XXXIII, p. 141; G.S.I. No. 75 of 2008; No. 17 of 2010; No. 83 of 2010; and No. 16 of 2013.

- (c) may provide for different rates or methods of calculation of levy for other descriptions of registered provider,
- (d) may provide that zero-rating, or particular rates or methods of calculation of levy, do not apply to a registered provider unless that registered provider -
 - (i) certifies to OFSO, in such manner and period as may be prescribed by the levy scheme, that it falls within a description provided for under subparagraph (a), (b) or (c), or
 - (ii) if the levy scheme so requires (whether in every case or on demand, or by any other criteria), so certifies to OFSO and satisfies OFSO, in such manner and period as may be prescribed by the levy scheme, that it falls within that description, and
- (e) may set a rate of interest payable on any amount of levy remaining outstanding after the date specified in a notice under Article 7 as the date by which that levy must be paid.

(5) For the purpose of paragraph (4)(a), OFSO must in particular consider, in relation to any description of registered provider, whether a provider of that description is unlikely in the relevant year -

- (a) to have any required relationships with any persons who could be eligible complainants, or
- (b) to carry on any relevant financial services business at all, or to do so in or from within the Bailiwick.

(6) For the purpose of paragraph (4)(b) and (c), and without prejudice to the generality of those paragraphs, the descriptions of registered provider may include descriptions based on whether a person became or ceased to be a registered provider at any point in the assessment year.

(7) Without prejudice to the generality of paragraph (4)(c) and of Article 3(1)(a), the levy scheme may divide the liability for a levy among those liable on any basis -

- (a) whether by specifying classes of registered provider according to types of business carried on by that class, or otherwise, and
- (b) whether in proportion to numbers of complaints referred in relation to each such class, or otherwise.

(8) The levy scheme must specify whether the levy is calculated -

- (a) on the basis that the year of assessment is the spending year, or
- (b) on the basis that the year of assessment is the financial year preceding the spending year, or a specified previous year.

(9) If the levy scheme specifies that the basis that the year of assessment is the spending year, it must also provide for -

- (a) how assessment is to be made as to whether a person will be a financial service provider at a future date, or will be entitled to zero-rating or other treatment under the scheme based on future activity, and
- (b) whether and how amounts of levy are to be adjusted if such an assessment turns out not to have been accurate during or at the end of the spending year.

Levy scheme: notice and appeal.

7. (1) This Article applies in respect of a financial year if OFSO's budget for that year provides, in accordance with paragraphs 2(4) to (6) of Schedule 2 to the Law, for the income of OFSO for that year to include the proceeds of a levy.

(2) OFSO must serve a notice ("a levy notice") on each person from whom, under the levy scheme, OFSO is to demand an amount of levy in respect of that year.

(3) A levy notice is a notice that -

- (a) demands payment of an amount of levy in relation to that year by that person,
- (b) is served under the levy scheme as prescribed under Article 3,

- (c) specifies the amount of levy payable, and how that amount was calculated under the scheme,
- (d) specifies the date, being not less than 28 days after service of the notice, by which the amount must be paid, and
- (e) notifies the recipient of the right of appeal under paragraph (5).

(4) If OFSO serves a levy notice on a person -

- (a) that person must pay in full the amount demanded, by the date specified under paragraph (3)(d), and
- (b) OFSO may recover as a civil debt from that person -
 - (i) any amount remaining unpaid on that date, and
 - (ii) any interest accruing on that amount at a rate set by the levy scheme under Article 6(4)(e).

(5) A person on whom a levy notice is served, may, before the date specified under paragraph (3)(d), appeal to the Royal Court against the service of the notice on the ground that -

- (a) the person is not a registered provider,
- (b) zero-rating applies to the person under the scheme, or

(c) the amount demanded has not been correctly calculated under the scheme.

(6) If a person appeals under paragraph (5), paragraph (4)(b) does not apply pending the appeal.

(7) The Royal Court, when determining an appeal, may -

(a) reject the appeal,

(b) order that no amount is to be paid,

(c) order OFSO to recalculate the amount of levy, or

(d) substitute an amount of levy recalculated by the court,

and make any order it sees fit as to payment.

Establishment levy scheme: prescription, publication and consultation.

8. (1) OFSO must prescribe, and may amend, a scheme ("the establishment levy scheme") for the 2015 financial year under which -

(a) the liability for the establishment levy is to be divided among those liable,

(b) the amounts of the establishment levy are to be calculated, and

- (c) the persons liable to pay the establishment levy are to be notified.
- (2) OFSO must publish -
 - (a) the establishment levy scheme that it prescribes, and
 - (b) any amendment to that scheme.
- (3) A scheme, or any amendment to it, does not take effect until a date specified in the scheme or amendment, being a date later than the date of its publication.
- (4) Before OFSO prescribes the establishment levy scheme, the Department must inform OFSO of any steps taken by it, whether before or after the commencement of this Order, to discuss the potential contents of that scheme with persons appearing to the Department to be appropriate from among financial service providers and their representatives.
- (5) OFSO must -
 - (a) take that information into account in prescribing the establishment levy scheme,
 - (b) publish, with the establishment levy scheme, OFSO's response to that information, particularly stating reasons for departure from any proposed provisions discussed by the Department.

Establishment levy scheme: imposition of establishment levy.

9. (1) The total amount required by the establishment levy in the 2015 financial year shall be published by OFSO.

(2) A financial service provider must pay the establishment levy if -

(a) it is a registered provider in accordance with Article 6(3) at any time during the 2015 financial year,

(b) it is not zero-rated under the levy scheme in accordance with Article 6(4), and

(c) the OFSO serves a levy notice on it under Article 10.

(3) The establishment levy scheme -

(a) must provide for zero-rating for descriptions of registered provider in respect of which it appears to OFSO that any complaint, that could relate to an act by a registered provider of that description in the financial year in respect of which a levy is payable, could not be, or is for any reason sufficiently unlikely to be, eligible for referral to OFSO by virtue of section 7 of the Law,

(b) may provide for zero-rating for other descriptions of registered provider,

- (c) may provide for different rates or methods of calculation of levy for other descriptions of registered provider,
- (d) may provide that zero-rating, or particular rates or methods of calculation of levy, do not apply to a registered provider unless that registered provider -
 - (i) certifies to OFSO, in such manner and period as may be prescribed by the establishment levy scheme, that it falls within a description provided for under subparagraph (a), (b) or (c), or
 - (ii) if the levy scheme so requires (whether in every case or on demand, or by any other criteria), so certifies to OFSO and satisfies OFSO, in such manner and period as may be prescribed by the levy scheme, that it falls within that description, and
- (e) may set a rate of interest payable on any amount of levy remaining outstanding after the date specified in a notice under Article 8(3)(d) as the date by which that levy must be paid.

(4) For the purpose of paragraph (3)(a), OFSO must in particular consider, in relation to any description of registered provider, whether a provider of that description is unlikely in the 2015 financial year -

- (a) to have any required relationships with any persons who could be eligible complainants, or
- (b) to carry on any relevant financial services business at all, or to do so in or from within the Bailiwick.

(5) For the purpose of paragraph (3)(b) and (c), and without prejudice to the generality of those paragraphs, the descriptions of registered provider may include descriptions based on whether a person became or ceased to be a registered provider at any point in the 2015 financial year.

(6) Without prejudice to the generality of paragraph (3)(c) and of Article 8(1)(a), the levy scheme may divide the liability for a levy among those liable on any basis -

- (a) whether by specifying classes of registered provider according to types of business carried on by that class, or otherwise, and
- (b) whether in proportion to numbers of complaints referred in relation to each such class, or otherwise.

Establishment levy scheme: notice and appeal.

10. (1) OFSO must serve a notice ("**an establishment levy notice**") on each person from whom, under the establishment levy scheme, OFSO is to demand an amount of levy in the 2015 financial year.

(2) For the avoidance of doubt, a levy notice served under Article 7 which complies with the requirements of paragraph (3) shall also be deemed to be an establishment levy notice for the purposes of this Article.

- (3) An establishment levy notice is a notice that -
- (a) demands payment of an amount of establishment levy in relation to the 2015 financial year by that person,
 - (b) is served under the establishment levy scheme as prescribed under Article 8,
 - (c) specifies the amount of levy payable, and how that amount was calculated under the scheme,
 - (d) specifies the date, being not less than 28 days after service of the notice, by which the amount must be paid, and
 - (e) notifies the recipient of the right of appeal under paragraph (5).
- (4) If OFSO serves an establishment levy notice on a person -
- (a) that person must pay in full the amount demanded, by the date specified under paragraph (3)(d), and
 - (b) OFSO may recover as a civil debt from that person -
 - (i) any amount remaining unpaid on that date, and

- (ii) any interest accruing on that amount at a rate set by the establishment levy scheme under Article 9(3)(e).

(5) A person on whom an establishment levy notice is served, may, before the date specified under paragraph (3)(d), appeal to the Royal Court against the service of the notice on the ground that -

- (a) the person is not a registered provider,
- (b) zero-rating applies to the person under the scheme, or
- (c) the amount demanded has not been correctly calculated under the scheme.

(6) If a person appeals under paragraph (5), paragraph (4)(b) does not apply pending the appeal.

(7) The Royal Court, when determining an appeal, may -

- (a) reject the appeal,
- (b) order that no amount is to be paid,
- (c) order OFSO to recalculate the amount of establishment levy, or
- (d) substitute an amount of establishment levy recalculated by the court,

and make any order it sees fit as to payment.

Review of Order during first year.

11. OFSO must, after consulting persons appearing to OFSO to be appropriate and before the expiry of 12 months from the commencement of this Order, publish and provide to the Department -

- (a) proposals as to amendment of this Order in relation to future financial years, or
- (b) reasons why OFSO considers that no such amendment would be expedient.

Interpretation.

12. (1) In this Order, unless the context requires otherwise -

"**Bailiwick**" means the Bailiwick of Guernsey,

"**the Commission**" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^d,

^d Ordres en Conseil Vol. XXX, p. 243; as amended by Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. XX of 1991 (Ordres en Conseil Vol. XXXII, p. 471); Order in Council No. XIII of 1994 (Ordres en Conseil Vol. XXV(1), p. 271); Order in Council No. II of 1997 (Ordres en Conseil Vol. XXXVII, p. 24); Orders in Council No. XVII and XXI of 2002 (Ordres en Conseil Vol. XLII(2), p. 644 and 766); Order in Council No. III of 2003 (Ordres en Conseil Vol. XLIII(1), p. 49); Order in Council No. XXII of 2003 (Ordres en Conseil Vol. XLIII(2), p. 574); Orders in Council No. XIX, XXIII and XXIV of 2008; No. XIX of 2010; No. III of 2013; Ordinance No. XXXIII of 2003 (Recueil d'Ordonnances Tome XXIX, p. 406); Ordinance No. XXXIV of 2005 (Recueil

"the Department" means the States Commerce and Employment Department

"enactment" means any Law, Ordinance or subordinate legislation,

"the establishment levy scheme" has the meaning given in Article 8(1),

"the establishment levy notice" has the meaning given in Article 10(1),

"the fee scheme" has the meaning given in Article 1(1),

"the Jersey body" has the meaning given in Article 5(2)(a),

a **"Jersey scheme"** means a scheme established in Jersey with functions and powers that are, in the opinion of the Department, equivalent to the scheme established under the Law,

"the Law" means the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014,

"a levy notice" has the meaning given in Article 7(2),

"the levy scheme" has the meaning given in Article 3(1),

"registered provider" has the meaning given in Article 6(3),

d'Ordonnances Tome XXX, p. 722); Ordinance No. XXXIII of 2009 (Recueil d'Ordonnances Tome XXXIII, p. 617); G.S.I. No. 29 of 2009.

"**Royal Court**" means the Royal Court sitting as an Ordinary Court,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

and other expressions have the same meanings as in the Law.

(2) For the purposes of this Order, any reference to service of any document by OFSO includes service by a person authorised by OFSO to do so.

(3) The Interpretation (Guernsey) Law, 1948^e applies to the interpretation of this Order throughout the Bailiwick.

(4) Any reference in this Order to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation and commencement.

13. This Order may be cited as Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) Order, 2015 and shall come into force on the 21st May, 2015.

Dated this 21 day of May, 2015



^e Ordres en Conseil Vol. XIII, p. 355.

A. H. BROUARD

Deputy Minister of the States Commerce and Employment Department

For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision, for the purposes of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014, for the prescribing of schemes by the Office of the Financial Services Ombudsman in relation to case fees (Articles 1 and 2), levies (Articles 3 to 7) and establishment levies (Articles 8 to 10).

The Order sets out:

- the requirements of publication and consultation (Articles 1 to 4 and 8),
- the method of calculation of the total amount required by the levy scheme (Article 5),
- the method of imposition of levies and establishment levies (Articles 6 and 9),
- the provision of notices for the purposes of levies and establishment levies (Articles 7 and 10),
- the appeal mechanism against decisions of OFSO as to the sums payable by financial services providers under the levy and establishment levy schemes (Articles 7 and 10), and
- the requirement to review the Order during the first year of its operation (Article 11).

This Order comes into force on the 21st day of May, 2015.

