



Guernsey Financial
Services Commission

Industry Presentations – 23 November 2012

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In October 1971, 3 months after call to the Guernsey Bar, I was urgently consulted by some executives of one of Guernsey's more substantial merchant banks, then relative newcomers. Clutched in their sweaty hands was a law passed by the States a few weeks before. I cannot now recall the questions posed, nor the answers given, but the matter was complex. I wondered whether I should be giving advice quite so 'off the cuff'. The law their palms were wetting seemed rather substantial to my unpractised eye. It was the Protection of Depositors Ordinance, running to 23 sections followed by 4 schedules (comprising 34 paragraphs, covering applications for registration, contents of accounts, auditor's reports, and advertisements) all extending over 36 pages. This constituted the then sum total of Guernsey's financial services legislation. Little did I then think how much regulation would later intrude into my life.

But the purpose of this anecdote is not to show by how much regulation has increased, nor how inadequate I was to confront the questions being posed; but I vividly remember the bank explaining that, upon my answer, the future of its business in Guernsey depended, and particularly whether it might have to move parts elsewhere. So, for the first time I was confronted by the wider consequences of regulation. Little has changed. Of course, in those days the merchant banks here were mere fledglings compared with the birds of paradise and prey they were to become, and the 1971 Ordinance was the States' particular and necessary response to a number of late 1960s banking collapses and swindles, of which Bank of Sark and Atlantic Trust Bank come particularly to mind.

In 1986, the Advisory and Finance Committee submitted a Policy Letter to the States proposing the establishment of what became the Commission. In carrying their propositions the States acknowledged that Guernsey's government did not have the 'time or expertise' to assist and regulate and generally be responsible for the financial services sector; and Guernsey was thus blessed or cursed, depending on your point of view, with one of the first offshore unitary financial services regulators. That recognition of insufficiency by Guernsey's government, with its consequent concession of responsibility to the Commission, has shaped and focussed the Commission ever since. The emergence of international expectations that the regulator should not simultaneously both supervise and promote or develop business eventually led to our abandoning the latter, now in favour of GuernseyFinance, but otherwise the Commission has remained the initiator and driver of financial services policy, despite the States expressly stating in 1986 that policy should ultimately lie with them. To this I will return.

All but the most purblind or complacent must accept that the nature and reach of supervision are changing. The Commission does not say whether this is right or wrong, but it presently

appears inevitable, and we acknowledge – as do the States – that Guernsey cannot nowadays be aberrant or eccentric in demonstrating the practice of good regulation.

In one sense the Commission is merely the messenger of news from elsewhere, which is why to be critically targeted can be so frustrating. What amounts to ‘good regulation’ is a matter of debate; but it includes a continuing commitment to adopt promptly and apply effectively those standards by which we will be judged, particularly as against those who are in a position to compete against us or do us mischief. This is not to say that Guernsey should invariably and precisely transcribe into local regulation that which is preached and practiced elsewhere, but it does enjoin respectable and responsible external engagement. In financial services Guernsey cannot be insular or idiosyncratic.

The Commission’s attitude to the development of regulation is frequently misunderstood, occasionally out of mischief but mostly out of ignorance, which is one reason why I was so keen to introduce this event in 2009. To inform and engage remains our theme today.

The Commission is giving much thought to what ‘good’ regulation means. Guernsey does not aspire to be the best regulator. Indeed, such would be impracticable of achievement, and those who argue to the contrary contrive to miss the point. In any event how is ‘best’ to be measured? It cannot only be by reference to international assessment; regulation is as much about the needs of government and industry as it is applying and enforcing legislation which government has passed, besides pride in work well done. There is no shame in striving to do things properly, nor in encouraging perceptions of good achievement. Those who argue for a lessening of regulatory standards driven by business considerations fail to understand the real world. Engaging in standstill, or lowering standards, inevitably engages Guernsey in a race to the bottom – with no prize for success.

‘Good’ in the context of regulation is incapable of precise definition but any failure to be ‘good’ would be as evident as the proverbial elephant in the room. Much of what shapes or influences financial services and their regulation here is not local. Macmillan’s aphorism that political achievement is denied by events is as apposite in and for financial services as any other governmental endeavour. Events beyond Guernsey’s control, because they are beyond our shores or powers, will assuredly determine Guernsey’s future. But this is not to argue for our not seeking to shape or influence them: far from it.

All this leads me to propose that those who are stakeholders in Guernsey’s financial services sector – government, industry, regulator – should commit publicly to engage together to address whatever may be required to confront all the challenges faced by that sector.

In more than 40 years of my working with and for Guernsey financial services businesses – and in some cases long before local regulation – I have never heard it argued that reputation was unimportant; and indeed the legislation prescribing the Commission puts Guernsey’s reputation in the vanguard. All financial services here trade on our reputation. That Guernsey has a high reputation is attributable to the integrity and professionalism of those engaged in it; and Guernsey has no alternative but to apply that touch which does not risk reputation. But the regulatory touch must now do more: it must encourage business to become more skilful, and with experience insightful. It is no part of our functions to be concerned with promotional issues, which is occasionally ignored by those who argue, acutely or obtusely, for lighter regulation.

Furthermore, those who practise in financial services cannot but fail to be aware of the increasing focus given to fiscal arbitrage. In this respect our business world has changed.

Those economies embroiled in financial woes must prevent or limit opportunities for tax avoidance or tax deferral – tax mitigation if you will – particularly when running unsustainable budget deficits. Some years ago there weren't UK votes in attacking tax avoidance, yet all that has now changed. The characterisation of the Crown Dependencies as 'tax havens' now resonates with the British public. It may be unfair, it may be mischievous, and of course much of such criticism is tendentious and founded in resentment or jealousy; it may be ignorant or unsophisticated; but it plays well to the voting gallery. It cannot be ignored. This has consequences for our financial services sector, and the Commission.

- Firstly, Guernsey must seek to broaden its sources of business and develop new markets, and so products and services to meet the needs of those markets – relying upon current business sources and propositions will not be enough. This will necessitate the Commission in upskilling and resourcing.
- Secondly, Guernsey businesses likewise need to place greater emphasis on upskilling, enabling value to be added. This was being proposed years ago, and to some extent the threats implicit in its non-recognition have been heeded: but more needs to be done. This also engages the Commission but is more for government and industry.
- Thirdly, financial services business propositions which are fiscally provocative – which I don't define but can be readily recognised – should not be encouraged. This is a matter more for industry and government than for regulation, but their reaction to this development will shape the Commission strategically and operationally.

Government, industry and regulator must each undertake to support and enhance each other in and by the proper and proactive exercise of their respective functions, and use all ways and means available of doing so to ensure relevant and concerted action. This must be resourced. Like the great majority of those in this room I have young children whose futures, in one way or another, are inextricably linked to Guernsey. It remains of particular concern to me that much of our sector remains remote from ordinary Guernsey folk, who little know of or care for it, even though it sustains their present standards of living.

I don't articulate this tripartite commitment as a catch phrase – I'm not a 'meringue' man – but I do say that each of the three stakeholders must show, by deeds not words, that such a shared commitment subsists. I can assert with confidence that the Commission remains ready and able to fulfil its contribution. Government of course is in a difficult position. Resources are scarce. Revenues are limited. Cuts in public expenditure are necessary. Funds are more carefully allocated. I know there is political will to support the finance sector, but government can be somewhat erratic in delivering or diffident in announcing its commitment: it doesn't articulate it publicly as often as it might, and it can – *à la Macmillan* – be deflected by events. Above all government must be resourced – with your and our support – to be able to deliver.

I said last year that a financial services strategy developed by the States, but informed by industry and the Commission, is essential. With that Ernst & Young concurred. Government have not dissented. The Commission, so far as is consistent with it remaining apolitical, will support government in developing and implementing a financial services strategy, as part of a broader medium term economic plan for the Island.

I should like to now mention the Commission's implementation of Ernst & Young's recommendations. The projects directed towards centralising certain of the Commission's functions is well underway. Phase I of the creation of an Authorisations Unit, and the creation of an AML Division, have been completed, and are working well. As regards the new AML Division, it is clear that the increasing focus on investigating and countering financial crime, of all descriptions including fraud, bribery and corruption, will engage financial services regulators everywhere all the more. The creation of a Division with specific responsibility for AML will provide the nucleus of a skilled cohort for what will eventually become more broadly focussed financial crime activity, given particular impetus by the work currently being undertaken by the Financial Action Task Force on bribery and corruption, largely at the urging of the World Bank, and as our successful 'Puppet Masters' Conference earlier this year so effectively illuminated. Next Spring, Phase II of the Authorisations project will be launched; as will our Data Management Unit, the Commission being an assiduous gatherer, sifter and user of data. The details of these centralised functions as they affect your respective sectors will be matters on which the regulatory Divisions will touch, and be available for questions, in your specific sessions this afternoon.

Of more importance are the broader implications of the Review, which demonstrate that the Commission is prepared not only to be self-critical but also to address its deficiencies and needs. A significant consequence of its implementation has been the establishment of a Project Management team which is already benefiting the delivery not only of the Review's recommendations but also specific projects which may arise from time to time. For example, complex enforcement cases are as much susceptible of and benefit from project methodology as the creation of specialist or centralised functions. Also, the Commission has fulfilled its projects on time, and any of you here with experience of delivering change will appreciate just how difficult that can be. In this I have to pay tribute to all our staff who have been taxed to their limits, and beyond, at a time when the routine supervision of licensees still has to be undertaken. Their commitment to deliver business as usual besides learning new skills has been exemplary.

No regulator can stand still. Our Chairman, ever one for metaphor, likens the process to walking up an escalator going down – you have to keep moving. Despite what you might have been led to believe, the Commission has been regularly communicating on the Review with representatives of industry.

I know from conversations I have had with our counterparts in the Crown Dependencies, and more widely, that all are interested in the outcomes and our implementation of the Review. At the present time we are liaising evermore with them to endeavour to know how things might be done better. We have cordial, constructive and effective relationships with many, but particularly with Jersey and the Isle of Man. Of course the Commission is not perfect, but we are striving to get better. And we will do so.

Whilst the Commission as a regulator is required to be independent and impartial, it is only right – without prejudicing our statutory functions – that we should maintain close engagement with industry, and so them informed. That's what today is about. As I have repeatedly said, my door is always open, and for those who come at the end of the day a malt may be available afterwards. To characterise the Commission as remote is as unhelpful as it is fanciful, by which I mean inaccurate.

Supervision cannot come cheap. Guernsey's financial services sector is very different from what it was even 5, let alone 10, years ago. Considerable investment is being made by the Commission to deliver more cost effective regulation. Resourcing the Commission must

reflect developing regulatory expectations. This is not about the Commission being profligate with licensees' money, and the Ernst & Young Review was prompted by my doing some rough and ready costs calculations in June 2009, particularly of staffing, which demonstrated that ordinary expenditure had to be contained. The Commission is proposing a 2% increase in fees across the board in 2013, and has recently concluded its consultations thereon. On these, we will be liaising with the Policy Council's Fiscal and Economic Policy Group. The Commission would be delighted if it were able to hold, or even reduce, fees, provided there was no lessening of supervisory outcomes as a result. Undoubtedly how fees are categorised and calculated are ripe for review, which will feature amongst the Commission's work in 2013. This will be reflected eventually in the consolidation and review of regulatory legislation currently being undertaken.

I now hand over to Neville.