



Guernsey Financial  
Services Commission

**Industry Seminar – 21 November 2014**

**Conduct Unit Presentation:  
Guernsey – International and Interconnected**

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Good day. Before I hand over to Rose, I would like to spend a few minutes outlining how the Commission has been implementing its vision for consumer protection over the last year.

At this conference last year, the Commission outlined to you the aims of the new Conduct Unit which Rose heads. This Unit consists of five people. It has particular expertise in life and general insurance intermediation, especially around sales advice and corporate governance. We have also over the last year moved into the Unit accountability for the consumer side of the UK clearers in the Bailiwick. The Conduct Unit has specific accountability for certain classes of firms but is also becoming a centre of excellence in the Commission on consumer issues generally. It is however still early days.

Over the last year, the Conduct Unit has concentrated on the implementation of government's Guernsey Financial Advice Standards (GFAS) requirements. The task has absorbed this year much time and resource at the Commission; as well as in the industry and the government. However, overall it has been time well spent as GFAS is the long-term infrastructure for retail conduct regulation in the Bailiwick.

This year has also seen the end of the second thematic on long term life insurance and investment sales advice. The Commission has published its overall impression on this subject on its website. Although there are many examples of good practice, this feedback document makes sombre reading with too many examples of poor practice. Several firms have therefore had to undertake significant remedial action plans and adjustments in their business strategy.

Looking forward to next year, we intend in particular to cover general insurance intermediary add-ons. On the latter, we already have plenty of anecdotal evidence to suggest that local intermediaries are adding on costs that need not be borne by clients.

The Commission recognises that regulatory change creates business challenges. Economies of scale may mean that compliance costs are proportionally less for larger intermediary firms. However, we have observed that good compliance is not in practice linked to the size of a firm. We are therefore open to the concept that small is beautiful; which is important in a jurisdiction of a limited size. We are also, within our resource limits, keen to offer a degree of support to licensees. For example the seminars to insurance intermediaries this year garnered good feedback and we plan something similar next year.

Within the wider context next year the Commission intends to develop further a consumer website; which will help the local industry as well as consumers. We had hoped to do this this year but re-writing the codes took much longer than we had thought; nevertheless we are now returning to the website objective. More generally, we have strengthened our ties with local

stakeholders such as the Citizens Advice Bureau and we continue to refuse to register offshore pay day lenders – surely the right decision given what has happened in the UK. We are working with government to consider the impact of consumer lending practices in the Bailiwick.

Next year will see the emergence of the Channel Islands Ombudsman. The Commission is committed to working closely with the Ombudsman. Firms that already have an effective complaints procedure will welcome the Ombudsman as providing an effective way of dealing with consumer issues. Meanwhile the Ombudsman itself will enhance consumer confidence – both in Guernsey and overseas. Away from Guernsey, we continue to benefit by the fact that the UK clearers have informally agreed to treat redress in Guernsey on the same basis as in the UK.

Within the wider world, the delivery of suitable financial products continues to pose a challenge to regulators. The UK has problems due to its disintermediation model and the sheer number of financial advisers. Countries like France have a more direct sales approach but this may not deliver the best deal for the consumers. The US model is generally perceived to be too dependent on Wall Street. In all cases, there is the problem of low financial literacy and sometimes unreasonable expectations around returns. Recently the Financial Stability Board said that regulators should hold producers more accountable for inappropriate products. It will be interesting to see where this view will lead regulators. These global examples demonstrate that consumer regulatory and business problems are not limited to Guernsey and are unlikely to be resolved by action within the Bailiwick alone.

Back at home, overall therefore the Commission has implemented its consumer agenda markedly over the last year. For firms whose practices have been below par this has not been easy but we make no apology for that. Standards are going up – not least in the education sphere for example – and firms need to adjust to that. However, Guernsey has some way to go yet before we reach the level of consumer protection that is appropriate. To conclude, the on-going improvement in standards needs to take place with government, the Commission and the industry acting together, but in the knowledge that we are all ultimately here to serve the consumer.

### **Slide: Guernsey – International and Interconnected**

Good morning ladies and gentlemen and welcome to my presentation which will provide you with an insight into the work of the Conduct Unit in its first year.

As you are aware, the theme of this year's presentations is Guernsey International and Interconnected. As was explained yesterday afternoon, this will require sensible and balanced regulation in the light of international regulatory standards to safeguard financial stability and protect consumers.

The Conduct Unit has a significant role in the goal to achieve a fair degree of consumer protection. It was established during the latter half of 2013 to take a Commission-wide lead on conduct supervision and policy, in particular the implementation of Guernsey Financial Advice Standards, which I shall refer to as GFAS.

The Conduct Unit is a small team sitting within the Banking and Insurance Supervision and Policy Division. It looks at all financial services consumer matters to help ensure that a Commission-wide approach is developed whilst being mindful to the goals of risk-based

supervision.

### **Slide: The Conduct Unit**

During our session today I will talk more about GFAS and what we have been doing over the last year in preparation for its implementation on 1 January. I will be highlighting to you those that are affected by the new rules and codes – this includes investment licensees and their advisers, insurance intermediaries and their authorised insurance representatives, not only those advising on long term insurance business but also those advising on general insurance business. In addition, the changes that have been made will affect insurance managers and any authorised insurance representatives they may have.

I will then move on to talk about the Commission's findings from the thematic on-site visits that were carried out by the Conduct Unit in the final quarter of 2013 together with some detail of other supervisory and policy work and initiatives we have undertaken.

Finally I will focus on our plans for 2015 and beyond.

There will then be an opportunity for you to ask questions of Jeremy and myself at the end of my presentation.

### **Slide: Background to GFAS**

The subject of the FSA's Retail Distribution Review was first mentioned as a significant policy issue in the annual industry presentations in September 2011. This was the UK's response to long-standing problems in the intermediary sector, especially around mis-selling. You may also recall that the Commerce and Employment Department issued a consultation paper in 2012 and, having considered the representations it received, asked the Commission to implement GFAS with commencement to be effective in 2015.

Commerce and Employment identified that their proposals for GFAS contained the following key areas:

- Educational requirements to be compliant with FSA (now FCA) level 4;
- Both commissions and fees to be allowed but both will require full disclosure; and
- Categorisation of advice.

### **Slide: Responses to the 2014 consultation paper**

We received 25 representations to the second consultation paper and I would like to take this opportunity to thank everyone who took the trouble to respond to the paper or telephone or email Louise or I with queries. I am particularly grateful to those who took the time to read through the drafts of the proposed rules and codes and come forward with practical suggestions on where clarification may be needed.

As the Commission's feedback on the second consultation paper has just been published, I do not intend to go into detail today on the representations that we received and the Commission's response to those representations. However I will say that we did listen to what you said and made changes where appropriate – for instance not to impose a licence condition on those investment licensees who are licensed for the activity of advising and having a standard

number of days for notifications to the Commission that are made under the conduct of business rules. We have also referred certain representations to other work-streams within the Commission such as the Revision of Laws Project, the work being done on MiFID II, and the consultation on revising the Retirement Annuity Trust Scheme Rules as although the suggestions received were outside the scope of our work on GFAS, these comments require further consideration as appropriate.

For those of you that may not have had the opportunity to read the feedback on the second consultation paper, I will include a link to that paper in the copy of this presentation when it is published on our website.

[http://www.gfsc.gg/Insurance/News/Pages/Implementation-of-Guernsey-Financial-Advice-Standards-\(GFAS\).aspx](http://www.gfsc.gg/Insurance/News/Pages/Implementation-of-Guernsey-Financial-Advice-Standards-(GFAS).aspx)

### **Slide: GFAS – The new rules and codes**

The new rules and codes have now been approved by the Commissioners and will come into effect on 1 January 2015 with the simultaneous repeal of the existing rules and codes. These new documents are available on the Commission's website, however, for ease of reference, each new document can be readily accessed from both the website news item and the feedback paper itself. It is important to appreciate that the new rules have an impact on investment licensees, insurance intermediary licensees – including those who do general insurance business - and insurance manager licensees and not just those who are directly affected by the qualification and disclosure requirements of GFAS.

The new conduct of business rules for insurance intermediaries will affect licensees doing long term business and those doing general insurance business. In addition the existing Code of Conduct for Authorised Insurance Representatives is being repealed and replaced with two codes - a new code which will apply to all authorised insurance representatives who are not Financial Advisers and a separate code for those who are.

Insurance manager licensees are less affected. They will have their own set of conduct of business rules as opposed to the ones they currently share with the insurance intermediaries. These new rules are based on the existing rules with only the changes necessary to make them apply solely to insurance managers. However if an insurance manager has any authorised insurance representatives that fall into the financial adviser category, these advisers will need to comply with the Code of Conduct for Financial Advisers, otherwise the adviser will need to comply with the new Code of Conduct for Authorised Insurance Representatives.

### **Slide: Who are Financial Advisers?**

The new sets of conduct of business rules for investment, insurance intermediary and insurance manager licensees require Financial Advisers who give advice to retail clients to be qualified to a minimum standard as set down by the Commission. These are the qualifications published by the Commission in the Table of Acceptable Qualifications and are at level 4 standard. Existing advisers, who will become Financial Advisers on 1 January 2015, are required to reach this standard by 31 December 2015.

In addition there is a continuing qualification requirement for authorised insurance representatives who provide advice on pure protection products.

We have also published a guidance note on Training & Competency Schemes, which is referred to in the new conduct of business rules for investment and insurance intermediary licensees, and to which licensees are required to refer in respect of such schemes. Although some representations received to the second consultation paper asked the Commission to be prescriptive on requirements and in particular, supervision, the scheme put in place by each licensee must be effective given the size of that licensee and the nature of the business carried out with the board having responsibility for determining its effectiveness.

Turning to industry's engagement with GFAS, we are encouraged by those who have contacted their professional bodies to identify whether they hold an acceptable qualification. The information we have received indicates that most advisers are either already qualified or well on their way to being so and plan to be qualified by the deadline of 31 December 2015.

We are aware that a small number of advisers are still undecided on whether they will undertake study and/or gap fill. For those falling into this category we would strongly recommend that if they have not spoken with their professional bodies they do so to confirm the extent of any study or gap-fill required and make an informed decision. There are training bodies on island that are geared up to help in this area. It may also be worth considering the alternative assessment route which is included in the list of acceptable qualifications. This alternative route is offered by Chartered Institute for Securities and Investment and comprises a written submission and an assessment made up of a competency interview and a case study presentation. It may also be worth exploring routes to other acceptable qualifications with the professional bodies listed in the guidance note on Training & Competency Schemes.

It's not too late but the deadline for existing authorised insurance representatives or for those advising retail clients on controlled investments of 31 December 2015 is approaching fast.

You may be asking how many advisers have decided not to undertake study for a level 4 qualification and whether we foresee that there will be insufficient numbers of advisers for the Bailiwick. Our information is that of approximately 80 long term authorised insurance representatives, 12 appear not to be progressing to a required level 4 qualification. These figures are only an indication and it may well be that some of these have decided to go ahead. Although this figure represents 15% of advisers we are aware that licensees have been and are taking steps to address this decrease by realigning their business and adviser responsibilities.

#### **Slide: Future milestones for GFAS**

In order to identify existing financial advisers at 1 January 2015, the Commission will shortly be issuing a return for completion by licensees. We will be asking licensees to confirm certain qualification or study information so that we can compile an overview of advisers in the industry on the date of implementation. This return will replace the quarterly adviser report which has been used over the last year and no further quarterly reports are required to be submitted.

We will also be revising the current form for completion by insurance intermediary licensees for notification of changes of authorised insurance representative. This revised form will be in use from 1 January 2015 for both investment licensees with financial advisers advising retail clients on controlled investments and insurance intermediary licensees with authorised insurance representatives - who in turn may also be authorised as financial advisers.

### **Slide: Qualification deadline**

In due course, we will be asking all licensees to confirm that those authorised as financial advisers on 1 January 2015 have attained the required acceptable standard by 31 December 2015. Those that fail to do so will no longer be able to advise retail clients with effect from 1 January 2016 and must be de-authorised by their licensee.

There will be an ongoing requirement for licensees to obtain a Guernsey statement of professional standing from each of their financial advisers within a 3 month period of the expiry of the valid statement of professional standing that is already held. The first such statement will not be required before 1 January 2016 although we understand that certain of the professional bodies will be willing to issue these a few months in advance of that date. A benefit of a statement issued in 2015 is that it will provide the financial adviser and his employer with formal confirmation that the required acceptable qualification has been met in advance of the deadline. I should perhaps mention that the main professional bodies intend to contact their members in due course when the Guernsey statement of professional standing is available.

### **Slide: On-site Supervision**

I mentioned last year that we had just conducted on-site visits to 12 insurance intermediary and investment licensees in relation to sales practices. These thematic visits focussed on an assessment of the extent to which the licensee complied, or otherwise, with the relevant rules and codes. Our visits focussed on whether the adviser acted, fairly and transparently, in the best interest of the client with a suitable product being found for the client that met the client's circumstances and attitude to risk.

In summary, we found that the majority of licensees visited had made improvements and rectified a number of the issues identified in similar visits that had been carried out in 2012. However a number of licensees had not made sufficient efforts to implement the improvements required by the letter sent by the Commission to licensees following those earlier visits. Of these, several licensees were referred to the Enforcement Division for further investigation.

While a number of the issues identified by the 2012 visits were found to have been have been addressed in the 2013 visits, our findings indicated that further work was required across the sector, by every licensee.

A report on these visits, summarising the Commission's findings and explaining our expectations going forward, was published on Commission's website in quarter 2 and I will include a link to this in the copy of today's presentation when it too is published. If you haven't already done so, I would encourage you to read this report and ask yourself if your business has succumbed to any of the poor practices that we identified and then take steps to address any such issues.

<http://www.gfsc.gg/The-Commission/News/Pages/Investment-and-Long-term-Sales-Practice---A-Thematic-Report.aspx>

### **Slide: Other supervisory and policy work**

The Conduct Unit has continued to liaise on the establishment of the Channel Islands Financial Services Ombudsman Scheme.

You may be aware that the Economic Development Department in Jersey and the Commerce & Employment Department have jointly issued a consultation paper on the funding of this scheme. This consultation period closed last Friday. Meanwhile the memorandum of understanding between the Commission and the Ombudsman is to be developed and assistance is being given in preparing secondary legislation in relation to the scheme.

At the end of June, the Conduct Unit gained another member in the team who brought with her the responsibility for the supervision of the retail banks. This has given the Conduct Unit a better overall picture in relation to matters of conduct and their impact on the retail consumer. The Ombudsman is predicting, based on experience in other jurisdictions, that complaints against banks will form half of the complaints they receive and thus through retail bank supervision now falling under the auspices of the Conduct Unit, a clearer understanding of matters of concern regarding conduct should arise through the supervision of these banks and the memorandum of understanding with the Ombudsman.

We have continued to build our relationship with the Citizens Advice Bureau to increase our understanding of the issues arising from financial services business that cause referral to the bureau. This has highlighted certain areas such as the unavailability of a basic bank account for certain applicants, how to make a PPI claim for both UK and Guernsey based companies, difficulties in getting insurance - particularly for travel to the UK, advice on the claims process, disputes over liability, difficulties in cashing in life insurance and complaints about insurance companies especially in respect of the claims process. We will use this information to help formulate the content of our thematic and other supervisory work.

In July we held 2 seminars for insurance intermediaries. We were delighted by the attendance at these events which were run as interactive workshops and engaged active participation from all attendees. The first seminar dealt with long term insurance business whilst the second concentrated on general insurance. Each seminar focused on fundamental regulatory requirements and current trends and included a refresher on an intermediary's duty to their clients.

The seminar for long term insurance intermediaries provided examples of both good and poor practices that the Commission had identified during its thematic visits on sales practices. Suggestions were also made on effective ways for advisers to gather information from their clients and to assess the suitability of the products being recommended. During the seminar for general insurance intermediaries, attention was drawn to several recent court cases which highlighted the requirement for an intermediary professional to exercise his or her duties to a standard of good and reasonable skill and care. Issues around professional indemnity risk management and general insurance were also addressed.

I hope that all who attended found the seminars useful and that they will help to improve the service provided to consumers who seek advice from local insurance intermediaries. From feedback it was clear that the seminars were well received and people who attended both seminars have mentioned that attendance by all at both would have been beneficial. We have been asked to organise similar events again and I am delighted to say that we intend to host one next summer. If anyone has any particular requests for subjects they would like us to cover, please let me know.

### **Slide: Plans for 2015**

Finally, I will touch on the Conduct Unit's plans for 2015.

We will continue the implementation GFAS, liaising with industry and other interested parties.

We will continue to develop the consumer pages of the Commission's website - I had hoped to tell you that these pages are live but hopefully they will be available shortly.

We will continue to develop the relationship with the Ombudsman.

We will continue to hold seminars with insurance intermediaries and, where applicable, to other licensees, to address matters of conduct within a sector that have come to the attention of the Conduct Unit.

We will continue with our thematic work and in 2015 will focus on general insurance and policy "add-ons".

As I mentioned last year, we will listen to what you have to say. We will work with you to enhance the regulatory framework underpinning your business, to facilitate you being able to meet consumer expectations that the financial services and products they receive, from you, meet their needs and, that these financial services and products have been provided by financial advisers and firms they can trust. It was by listening to your representations and working with your industry bodies that we were able to refine our GFAS proposals prior to their implementation. We are grateful to you and I look forward to your continued support in the future.

Thank you for listening.