

**Industry Seminar – 18 November 2015**

**Conduct Unit Presentation**

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Before I hand over to Rose, I would like to take a few minutes considering the issue of ‘Conduct’ and then summarising the development of the Commission conduct agenda this year.

The Commission is a unitary authority. What this means is that it has responsibility for both conduct and prudential supervision. We see these two approaches as complementary. On the one hand a firm needs to be appropriately capitalised – for banks this means shareholder capital whilst for intermediaries it means PII and client accounts separation. On the other hand, a firm needs to serve its customers properly whilst of course still being remunerated for this service. Both approaches safeguard the customer and provide a sort of double lock.

In this context, my locus today is the Commission’s Conduct Unit. However, whilst the Unit operates as a centre of excellence within the Commission, all of the Commission’s regulatory divisions are active on this theme and the Unit is only one component of the greater whole across the Commission generally.

Nevertheless, the brief today is to talk specifically about the Conduct Unit.

Back in 2014, and at the behest of the government, the Commission was primarily occupied to the detailed implementation of the Guernsey Financial Advice Standards (GFAS). Along with our colleagues in investment, this took a lot of work for the Unit in 2014. However, the GFAS is now largely embedded and constitutes a material advance in consumer protection in Guernsey, not least in bringing standards up to international norms. GFAS is also a good example where government, industry and the Commission worked together to produce the required result.

However our work on GFAS took a little longer than we had originally thought, and forestalled the launch of our consumer website by the Conduct Unit. But this year we launched the site.

The site consists of an explanation in plain terms of financial concepts and acronyms. It has something in common with websites of similar bodies outside Guernsey and includes several hyper-links to these bodies for the sake of efficiency. Nevertheless, the website is tailored to the Guernsey environment. Since its launch we have continued to develop the site. Again the development of the website has benefited from material contributions from key stakeholders and is another example of working together for the common good.

I think we would all agree that consumer financial literacy is in everybody’s interest but that we in Guernsey – and indeed globally – have some way to go on this. Nevertheless, the Commission’s website helps in this area.

Whilst on the theme of local co-operation, this year for the first time we were able to team up with the Guernsey police and other bodies to post a leaflet to all Guernsey households warning about scams. We will continue to alert consumers on this issue.

The Conduct Unit has been active in preparing the Commission for interaction with the Channel Islands Ombudsman, whose creation we see as a material step forward in local consumer protection.

The Conduct Unit continues to be in dialogue with several local parties on issues as diverse as financial exclusion and bank accounts for prisoners. The Unit has also been in contact with UK issuers on the status of pre-RATs Guernsey pension arrangements.

In the middle of the year, we held our routine one day seminar for intermediaries. This year we assembled an outside group of speakers. On a scale of 1 to 6 – with 6 being the highest – the speakers scored an average of 5. This sets quite a challenge for the 2016 seminar!

With regard to insurance intermediaries, in 2015 we completed our post-visit work around the sales of life policies. As a result of this work – which started in 2013- several firms have left this sector and some practitioners have undergone enforcement action. The latter work has been led by our enforcement division but, again, we have all worked together to secure the right result. As a consequence, this sector is now serving Guernsey better than previously, though continued adherence to GFAS remains key.

At the beginning of the year, the Commission wrote to all general intermediaries about the sale of add-ons, not least given the focus on this subject in the UK. The Conduct Unit is now considering its response to a series of October on-site visit to selected firms to assess compliance in this area. We will issue the results of our work in a thematic assessment in due course. This is the first time in recent years that we have conducted a deep dive into the general insurance intermediary sector so the results will be interesting.

Conduct issues are relevant not just to the local retail sector but also to the wider high-net worth clients who use Guernsey's banks. Along with our investment division, the Conduct Unit has become more involved in supporting line banking supervisors in this area and we see this as an area of continuing importance. This is because of poor or badly documented client sales advice and service constitute a material threats to banks in both the financial and reputation area.

Looking to 2016, the most important aspect of the Unit's business will be the development of the Commission's thinking around the prospective regulation of consumer lending in the Bailiwick. This is a largely new area for us but is important for residents of the Bailiwick.

To conclude, the Conduct Unit continues to develop the Commission to consumer protection. I would emphasise however that the Conduct Unit can only succeed in co-operation with other interested parties – government, consumer bodies, product issuers and local distributors. However together we have in recent years improved the deal for local clients in Guernsey and that is a success.

I will now hand over to Rose who will talk in more detail on my remarks.

### **Slide: Productivity and Prosperity for the Bailiwick**

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 second full year.

As you are aware, the theme of this year's presentations is Productivity and Prosperity and, as was mentioned yesterday afternoon, ultimately the Commission is committed to maintaining financial stability, protecting consumers and combatting financial crime. It is this second

commitment that I shall focus on in my presentation today.

Although the Conduct Unit is a small team – there are only 4 of us - we have a wide-ranging remit to look at all financial services consumer matters to help ensure that a Commission-wide approach is developed whilst being mindful of our goal of risk-based supervision. The Conduct Unit was established during the latter half of 2013 to take a Commission-wide lead on conduct supervision and policy, in particular the implementation of the Guernsey Financial Advice Standards “GFAS”.

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

In our session today I will talk more about GFAS and what we have been doing over the last year including the introduction of the new rules and codes affecting 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 and insurance managers and any authorised insurance representatives they may have.

I will then move on to talk about the conclusion of the findings from the thematic on-site visits that were carried out by the Conduct Unit in the final quarter of 2013 and tell you a little about the recent thematic on-site visits we have just undertaken together with some detail of other supervisory and policy work and, of equal importance, our consumer initiatives.

Finally I will focus on our plans for 2016 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**

It was some 4 years ago that the FSA’s Retail Distribution Review was first mentioned as a significant policy issue in the Commission’s annual industry presentations and, as part of the industry presentations in the last 2 years, I have given an update on consideration in the Bailiwick, progress made and expanded on the steps that still had to be taken. I shall take a similar approach this year. You may well be asking, why, if GFAS was to be effective in 2015, is the Commission still talking about further work to be done? Those of you who are Financial Advisers will hopefully already know the answer.

As you will recall, the Commerce and Employment Department identified in its proposals for GFAS, that these should address 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: GFAS - The rules and codes**

The rules and codes which implemented the Commerce & Employment Department’s requirements came into effect on 1 January 2015 with the simultaneous repeal of the previous rules and code. The respective sets of conduct of business rules had an impact on investment licensees, insurance intermediary licensees – including those who do general insurance business

- and insurance manager licensees and not just those who were directly affected by the qualification and disclosure requirements of GFAS.

In addition, the previous Code of Conduct for Authorised Insurance Representatives was repealed and replaced with two codes - a code which applies to all authorised insurance representatives who are not Financial Advisers and a separate code for those who are. Both of these codes came into effect on 1 January 2015.

Furthermore, insurance managers now have their own set of conduct of business rules as opposed to the ones they previously shared with the insurance intermediaries. We are not aware of any insurance managers that have authorised insurance representatives but if they do and these individuals fall into the definition of a Financial Adviser, they will need to comply with the Code of Conduct for Financial Advisers, otherwise the adviser will need to comply with the Code of Conduct for Authorised Insurance Representatives.

### **Slide: Qualification deadline for Financial Advisers**

The 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 qualifications are published by the Commission in the Table of Acceptable Qualifications and are at level 4 standard. The conduct of business rules are supplemented by a guidance note on Training & Competency Schemes which is published on the Commission's website and which we hope industry has found helpful.

Existing advisers at 31 December 2014, who became Financial Advisers on 1 January 2015, are required to achieve an acceptable qualification by the end of next month. If they fail to do so, they must be de-authorised as a Financial Adviser by their licensee and must no longer give advice to retail clients until they have obtained an acceptable level 4 qualification.

In due course, we will be asking relevant licensees to confirm that those authorised as Financial Advisers on 1 January 2015 have attained the required acceptable standard by 31 December 2015 or, failing that de-authorised.

There is also a continuing qualification requirement, at level 3, for authorised insurance representatives who only provide advice on long term pure protection insurance products.

### **Slide: Financial Advisers as at 1 January 2015**

At the end of last year in order to determine the number of Financial Advisers as at 1 January 2015, the commencement date for the new rules, we contacted every insurance intermediary, insurance manager and investment licensee and asked each of them to confirm whether they provide advice to retail clients, and, if so, we asked for the names of their Financial Advisers. We also asked for information on the qualification within the Table of Acceptable Qualifications that the Financial Adviser either held or was progressing towards and the name of the professional body to whom the Financial Adviser would apply in order to obtain a Guernsey Statement of Professional Standing.

From the information we received, as at 1 January 2015, 42 firms told us they provide advice to retail clients out of 567 investment licensees licensed for the activity of advising. Of these 42 firms, 15 were also licensed to provide advice on long term insurance business. In total, at 1 January 2015, there were 210 Financial Advisers of whom 50 were employed by firms with both an investment and insurance intermediary licence. 10 Financial Advisers (just under 5% of the

total) indicated that they would not be pursuing an acceptable level 4 qualification and as a consequence would cease to give advice to retail clients in 2016 and of those, 8 were employed by the 15 firms with both types of licences.

### **Slide: Financial Adviser Qualifications as at 1 January 2015**

We also identified that 67% of all Financial Advisers will have Chartered Institute of Securities and Investment qualifications at level 4 and above, 19% Chartered Insurance Institute, 8% Chartered Financial Analyst (CFA) and 6% Institute of Financial Services.

The conduct of business rules, subject to the requirements in the relevant laws, require licensees to notify the Commission of any changes in Financial Advisers and/or Authorised Insurance Representatives within 14 days of the fact together with a statement of the reasons for the change. As the notification requirement is new for investment licensees it may be that some licensees have overlooked this and I would ask that if you have not already done so, please could you ensure that all authorisation changes that have taken place in 2015 have been notified to the Commission. Please also use this form to notify of any future authorisation changes until otherwise requested. This will help to ensure that when future notifications are made through online submission, the information we hold will be up to date and so fewer queries will arise. In addition, this notification is a regulatory requirement and I wouldn't want failure to notify to have to be included in your breaches register.

### **Slide: Competence of Financial Advisers**

The conduct of business rules require Financial Advisers who give advice to retail clients to be assessed as competent prior to their appointment to this role. Earlier this year, together with one of the Deputy Directors of the Investment Supervision and Policy Division, I was invited to speak to the local branch of the Chartered Institute for Securities and Investment on GFAS and we selected as the title of our presentation GFAS – Qualified and Competent. A copy of this presentation is available on the Commission's website and I will include a link to it in the copy of today's presentation when it is published. If you haven't already done so, I would encourage you to read it as useful reference.

<http://www.gfsc.gg/The-Commission/Pages/Articles--Speeches.aspx>

### **Slide: Guernsey Statement of Professional Standing**

There is 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 however the professional bodies are issuing these in advance of that date. This statement will provide the Financial Adviser and his employer with formal confirmation that the required acceptable qualification has been met in advance of the deadline.

From the information we received regarding Financial Advisers at 1 January 2015 we were able to focus our engagement with those professional bodies who would receive applications for a Guernsey Statement of Professional Standing. Each of the professional bodies listed on the slide is now accepting applications and I would ask that you check with your Financial Advisers to ensure they are aware of this. I should also perhaps mention that the CISI and CII have contacted their Guernsey-based members to let them know that application for a Guernsey Statement of Professional Standing is now available.

The information we received also identified that no-one intended to apply to any of the following professional bodies:

The Institute of Financial Planning;

The Chartered Institute of Bankers in Scotland;

The Institute of Chartered Accountants in England and Wales; and

The Pensions Management Institute.

However, should anyone wish to apply to one of these, the door is still open as each of these bodies has agreed to issue a Guernsey Statement of Professional Standing, if requested in the future. So, do please let me know as a matter of priority if you are aware of any of your Financial Advisers wanting to go down this route. That said, it may also be possible for your Financial Adviser to obtain their Guernsey Statement of Professional Standing from one of the four professional bodies that have geared up to issue them.

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

Now, turning to on-site supervision, perhaps you will recall that, in the final quarter of 2013, the Conduct Unit carried out 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 code. Our visits focussed on whether the adviser acts, 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 and you may have seen the results of their investigations on our website. Three of the licensees we visited have surrendered their licence, to provide advice on long-term insurance business or controlled investments, with the Commission imposing financial penalties on these businesses.

As I mentioned last year, our thematic focus for 2015 would be on general insurance add-ons. In February, the Commission wrote to all Bailiwick-licensed general insurance intermediaries asking them to read two certain thematic reports published by the FCA which itemised poor practice around add-ons by UK general insurance intermediaries, firstly on motor legal expenses insurance and then on other sectors such as household insurance. These reports identified amongst other things that:

- consumers focus on the primary product rather than the add-ons, leading many consumers to buy add-on products that they do not need or understand;
- consumers' ability to assess options and make choices is hindered by the fact there is often insufficient information available about the quality and prices of add-ons. Information is often provided very late; and

- add-on insurance often presented poor value for money, and there was evidence that some standalone products were also poor value for money.

All in all, the reports identified numerous instances in which intermediaries in the UK failed to serve the interest of their clients.

The Commission's letter drew attention to our consideration of these reports and our own Code of Conduct for Authorised Insurance Representatives and the Principles of Conduct of Finance Business and asked all intermediaries to review their policies and procedures to ensure general insurance add-ons are sold in a manner which is compliant with the Code and, if not, to instigate a remedial action programme. The Commission indicated that it would be undertaking its own thematic review to assess compliance with the Code and the Principles and judge whether the general approach taken by the licensee is fair and appropriate.

As part of this review, the Conduct Unit looked at the websites of all general insurance intermediary licences to identify those which facilitate the purchase of policies online and the extent to which add-ons are mentioned. In addition, thematic onsite visits have been carried out to four licensees. We are currently assessing the results of our work and will be releasing a thematic report detailing our feedback shortly.

### **Slide: Other supervisory work**

Looking at our other supervisory work, in June we held a full day seminar on Conduct Risk – Cha[ll]enges for your Firm. On this occasion we invited all insurance intermediary licensees and those investment licensees that told us they provide advice on controlled investments to retail clients. We were delighted to have a full house. The day took the form of an interactive workshop with active participation from all attendees. We were equally delighted with the calibre of the speakers and this was born out by the feedback we received. I would like to thank all who attended and especially those who provided comment – both helpful suggestions and constructive criticism. We will be taking these views forward to next year to ensure that they are incorporated into our plans.

We recently invited insurance intermediary firms to discuss any concerns they may have on the proposed new Retirement Annuity Trust Scheme Rules. This meeting garnered some lively debate and contradictory views following which representations were received by the Commission. These representations have now been considered and the new rules are likely to be approved in the near future with due notice being given prior to the rules coming into force.

The Conduct Unit also assists and supports other areas within the Commission on conduct issues, including guidance and accompanying the supervisory team on onsite visits. Also, when a significant conduct risk is identified on a licensee's Full Risk Assessment, a Conduct Unit representative may be asked to be part of the Risk Governance Panel that quality assures the work of the supervisory team.

### **Slide: Other policy work**

Turning to our other policy work, the Conduct Unit has continued to liaise on the establishment of the Channel Islands Financial Ombudsman and you may be aware that the Ombudsman's office officially opened this Monday.

The law establishing the Ombudsman sets out details of restricted information and when it is permitted to disclose such information. The law also requires the Commission and the Ombudsman to take such steps as are considered appropriate to co-operate with the other in the exercise of its functions. A Memorandum of Understanding will be in place between the Commission and the Ombudsman which sets out the basis of the working relationship between the two bodies. For example, the Ombudsman will be letting us know if particular licensees appear to generate a concerning number complaints as this may indicate poor licensee conduct.

I hope that those among you who have had the opportunity to meet or hear from the Principal Ombudsman and Chief Executive have done so. What came across from a talk he gave to Commission staff is the difference between legislation, regulation and fairness and how the proponents of each may have a totally different perspective on the same event. It is an important message for you as licensees to get across, both to your staff and to anyone that makes a complaint against you as a licensee, that the Ombudsman is a totally independent body – including independent of the Commission.

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. We have developed our relationship with Trading Standards, which currently sits under the Commerce and Employment Department. I shall mention more about each of these when I tell you more about our Consumer initiatives.

Our policy work has looked at financial exclusion and the problems being faced in the rehabilitation of prisoners by being unable to open bank accounts. This isn't an area where the Commission can produce a solution itself but we are aware of the problem and working with others to take this forward.

The Commission, in conjunction with the Commerce and Employment Department and Trading Standards has begun to look further into consumer credit legislation. As you may be aware, lenders in Guernsey, unless they already have a banking or other regulatory licence, are required to apply to the Commission for registration as a non-regulated financial services business. Out of a population of 42 such businesses, 31 are lenders. The others carry out an amalgam of different activities including those that fall into the Fintech and/or innovation arena.

There is a consensus that the non-regulated financial services businesses law does not enable the Commission to adequately address the risks presented by some of the business models of firms looking to enter this space.

Although this is still in its early stages, consideration is being given to how this should be addressed and future-proofed, including the possible introduction of consumer credit legislation which will provide the consumer with a degree of protection that is currently missing, an appropriate framework for the innovation and/or Fintech community and still provide suitable measures to counter financial crime and terrorist financing.

This will take some time to evolve and the Commission will look for industry's assistance in taking this forward. At the Commission, the Conduct Unit is working on this together with the Fiduciary Supervision Policy and Innovations Division but, as I have said, it's early days, there is much work to do and I wanted to give you a flavour of the challenges we face. The Fiduciary Supervision Policy and Innovations Division will be speaking more on this project in their presentation to the Fiduciary Sector this afternoon.



## **Slide: Consumer initiatives**

I have come to describe the role of the Conduct Unit as narrowing the gap between the provider of financial products and services and the consumer who acquires them. We are working with industry to ensure that consumers are treated fairly and that they are sold products and services from firms they can trust. We are also trying to improve the information that is readily available to consumers, either directly or through those that have a face to face relationship with them. This in turn should lead to consumers having increased knowledge, a better understanding and being more able to make an informed decision. Financial literacy is key.

In my previous annual presentations I mentioned that the Conduct Unit would be publishing, on its website, pages specifically dedicated to consumers. Well I am pleased to say that this went live in March. The pages were created with the aim of providing easily accessible and clear information concerning financial products and services within the Bailiwick in the hope that through being more informed, the consumer would feel more confident and empowered when making financial decisions.

We would also hope that you have found these pages useful too when dealing with your customers or even your employees as they are a readily available local reference source. We are always looking for useful non-branded information to add to our website and aim to keep the content up to date and relevant.

With the Conduct Unit being responsible for the continued supervision of the retail banks we have a much better overall picture in relation to matters of conduct and their impact on the retail consumer. A meeting with one of the banks early in the year resulted in another of our consumer initiatives – the Stop the Scam leaflet. This leaflet was a joint initiative of the Commission, Guernsey Police and the four retail banks and was the first time that such a joined-up approach has been taken. We were frustrated that regardless of all the media coverage – Guernsey Press, TV and radio - local people are still being scammed and were losing money. So together we produced this leaflet which was delivered to every household in Guernsey, Alderney, Sark and Herm and had the support of Trading Standards and Citizen's Advice. One of the crucial points of this leaflet is that it has 24/7 contact numbers that are relevant for Guernsey customers should they think their bank account has been targeted. I am certainly keeping hold of these numbers, just in case I should ever need them!

In July, again on the theme of scams, we provided support to Trading Standards in their Scams Awareness Month. The message that came out from these roadshows is the number of people who have fallen victim to scams or attempted scams and are too embarrassed to say. Also, the number that think they would never fall victim to a scam – I think that comment is tempting fate.

The Commission also publishes news items on its website for licensees if it becomes aware of threats that could have an impact on licensees – such as cyber-attacks, phishing emails or email hacking – and would encourage licensees to share the occurrence of any such incidents with the Police and/or the Commission as appropriate so that the message can be disseminated to industry as a whole. The more we can protect businesses in the Bailiwick, the more we protect and enhance Guernsey's reputation as a finance sector.

## **Slide: Plans for 2016 and beyond**

Finally, I will touch on the Conduct Unit's plans for 2016 and beyond.

We will follow through the implementation of GFAS, liaising with industry, the accredited professional bodies and other relevant stakeholders. This time next year I would hope to be able to present the final instalment on the implementation and start to demonstrate its benefits. As with all rules and codes, please let us know if you experience difficulty in practice over matters that were not identified during the consultation process.

We, as the Commission, will be working with industry and the Commerce and Employment Department to address the idiosyncrasies of the non-regulated financial services businesses law and explore consumer credit legislation.

We will enhance and expand the consumer pages of the Commission's website and would appreciate assistance on identifying subjects that, from a consumer's perspective, are relevant for inclusion.

We will continue to develop the Commission's working relationship with the Ombudsman in line with the requirements set out by law and the MOU between us.

We will continue to hold seminars with insurance intermediaries and, where applicable, for other licensees, to address relevant matters fed back to us after the seminar held in the summer or identified by, or to, the Conduct Unit.

We will continue with our thematic work and would welcome your suggestion of areas in which we should focus our efforts and which will result in enhanced treatment of consumers by financial services providers.

As I have mentioned before, 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. We are grateful to you and I look forward to your continued support in the future.

Thank you for listening.