

Consultation Document

Fee Rate Proposal

2016



Guernsey Financial
Services Commission

Summary

In 2012 the Chairman of the Guernsey Financial Services Commission (“the Commission”) made a commitment to industry to limit the yearly increase in licence fees to under 2% overall for three years - 2013, 2014 and 2015. This commitment has been delivered and now the Commission moves into another period, 2016 to 2018. This consultation document explains the Commission’s proposals for 2016 in detail and also how 2016 fees are part of an overall ongoing strategy.

The headline for 2016 is that, based upon the proposals contained in this document, the estimated fee income for 2016 is £12.91 million (2015: £12.7 million) *and this is an effective net increase of 1.6%*.

This document shows how the fee strategy is based upon the principle that fees should always be fair, proportionate and equitably aligned with the cost of supervision. An example of the application of this principle is the proposal to re-band the Fiduciary sector’s annual full fiduciary fees to ensure that they remain proportionate as a business grows, encourage new business into the market, dilute the historic bunching effect and reflect the higher level of engagement we undertake with larger licensees as a result of PRISM (risk based supervision).

Significantly, for the first time in the Commission’s history, Discretionary Financial Penalties imposed, received and netted from extraordinary enforcement costs relating to two specific cases, have resulted in a net gain and this gain will be returned to industry. Therefore, in 2016 the estimated fee income is net of the Discretionary Financial Penalties rebates of £50,000 - *that will be returned to two industry sectors*.

Following a six year period of no increase, it is proposed that Administrative Penalties are increased by £25 for each incidence and then from 2017 onwards are increased in line with movements in the RPI.

The Sentinel Transformation Programme began in 2013 and should be completed in 2015. We expect the full effect of the Probability, Risk and Impact System (PRISM) to be realised in 2016 as data is received and information grows in the database. The Programme is

changing the way the Commission achieves its objectives and it is at the core of our continued drive to become a more efficient organisation.

International and local developments lead to increasing demands being made on the Commission. As we have demonstrated over the last three years, we have been, and remain committed to, working sensibly to deliver high quality regulation in a cost-conscious manner in a much changed environment.

Consultation and Timeline

The aim of this document is to detail the proposals for licence fees for 2016 and to solicit comments and feedback from industry. The consultation period will be from 5 August until 17 September 2015. Once the consultation period is complete, any amendment to the fees will be agreed by both the Commissioners and the States of Guernsey Policy Council. The new agreed fees will come into force on 1 January 2016.

The Commission issues this consultation document in accordance with section 8(2) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended (the Law), under which the Commission “*may, in connection with the carrying out of its general functions ...consult and seek the advice of such persons or bodies as it considers appropriate.*” The provisions in this document affect all licensees, collective investment schemes, registered businesses and individuals, and applicants for licences or registration, in accordance with applicable laws and regulations.

Fee Strategy 2016 – 2018

The Commission is at the end of a period where it has evolved rapidly. For the last three years (2013, 2014, and 2015) the Commission has delivered on a promise to keep fee increases below 2% in aggregate per annum. To achieve this we tightly controlled expenditure, salary and headcount and we looked to streamline and re-map our internal structures and processes based around the Sentinel Transformation Programme and the new risk based approach to supervision.

Although many of the hard cost saving initiatives of the past three years were one-off gains brought about through careful rebalancing and prioritisation, we aim to keep the momentum

of the current initiatives going by continuing to manage and to control expenditure closely while abiding by the principle that fees should be reasonably aligned with the cost of risk based supervision. Nevertheless, should we be asked to undertake new activities, or should we identify regulatory gaps that clearly require an increase in current activity levels, we may need to adjust fee levels in future years. We believe that there are negligible further efficiency savings to be realised without adversely impacting the operational capacity to act.

Discretionary Financial Penalties

The Enforcement Division works closely with all Commission functional areas to ensure appropriate action is taken against those who breach financial regulations and damage the Bailiwick's reputation. The Commission takes all breaches seriously and is supported by industry and government in this. Once enforcement activity has been initiated and evidence has been presented to justify an action, the Commission's Enforcement Division and General Counsel will pursue a case to its conclusion. Those firms that work with the Commission and settle early generally receive discounted financial penalties for early settlement in line with international regulatory norms.

We are rebating the surpluses that arise to the relevant industry sector. We should stress that enforcement, taken as a whole, operates at a considerable loss and there is not necessarily a legal requirement under section 11D(4) of the Law for us to rebate surpluses on a case by case basis. However, by adopting this rebate policy, we seek to make clear that as our financial penalty income rises, we are not seeking to use financial penalty revenue to subsidise other aspects of the Commission's work.

Discretionary Financial Penalties will continue to be set on the basis of the severity of the misconduct, not on the basis of the Commission's desire to develop an additional revenue source. On a polluter pays principle, the financial penalties paid by firms guilty of misconduct should, where practical, subsidise the fees of firms not subject to enforcement action.

To align with the timetable for fee consultation, Discretionary Financial Penalties received during a yearly period from 1 April to 31 March will be included. So, in considering the fee rate proposals for 2016, financial penalties received and netted of costs from 1 April 2014

until 31 March 2015 are included. Following receipt of financial penalties of £70,000 during this period in the Banking sector, the sector has seen its fees reduce by £35,000. Similarly, in the Fiduciary sector, following the receipt of £30,000 in financial penalties, the sector fees have been reduced by £15,000.

Controlling Costs

The Commission remains committed to the application of strong financial controls and cost conscious management of resources at all levels. In front line regulation, the Sentinel Transformation Programme has created a risk based supervisory methodology supported by a dedicated online management system (PRISM). Back office functions have been re-structured overall and across all operational areas efficiency gains are being delivered.

PRISM allows us to align our limited resources to the supervisory activities where the failure of a firm should present the most financial or reputational damage to the Bailiwick. We are aiming to create a situation where the actual process of communication and data transfer is quicker and more efficient which will, in turn, allow us to use more of our limited resources to analyse and supervise, rather than merely process, data.

Of further future benefit, as data and information grows in the PRISM database, we expect the full effect of PRISM to begin to be realised throughout 2016. This will be due to the data collected through online submissions and online applications building up and allowing us to develop our capability to analyse peer group and market specific trends. In response to this new way of working, internal divisions and work flows have been reorganised. The Authorisations Unit now deals with *all* authorisations across *all* regulatory areas, the Enforcement Division allows us to delineate clearly between supervisory and enforcement activity, while the Risk Unit allows us to manage the use of PRISM and produce detailed management information.

Proposals

A gross blended rate of increase of 2% is proposed for 2016. However, the rebate to the Banking and Fiduciary sectors of specific Discretionary Financial Penalties levied during 2014, as described above, reduces the effective net increase to 1.6%.

The forecast for 2015 fee income is £12.70 million and based upon current assumptions for 2016 it will be £12.91 million. This total is net of the financial penalty rebates of £50,000.

- Excluding anomalies, fees will rise for most sectors by 2%. This will effectively increase the income by approximately £110,000, which includes the impact of a reducing licensee base, compared to the forecasted income for 2015.
- The anomalies fee income (addressing areas where material anomalies in fee structures exist, see below) should be, in aggregate, a total of £148,000 in 2016.
- The net planned increase in income, compared to the forecast for 2015 and after applying the rebates, is c.£210,000.

Details of the proposed licence fees for all sectors are contained in the appendices. For clarity, the proposed fees for 2016, including rebates where applicable, are set out alongside the current fees.

Anomalies

The Commission has identified areas within the Fiduciary and Insurance sectors where material anomalies in fee structures exist; These areas are covered below. We are not proposing any alterations in the Banking, Investment, Non-Regulated Financial Services Businesses (NRFBS) and Prescribed Business sectors in 2016.

Fiduciary

Full fiduciary licence annual fees have evolved over time. The new Fiduciary Supervisory management team took the opportunity, provided by the 2016 fee consultation round, to undertake a fundamental review of annual fees.

The review identified several issues. The most notable was a 'bunching' of fees. For instance, there is a c.£10,000 jump between fees for licensees with a turnover of £999,999 and those with a turnover of £1,000,000. However, there is only a c.£4,000 rise between fees for licensees with a turnover of £1,999,999 and those with a turnover of £6,999,999.

The review also identified that there is insufficient proportionality between the increase in turnover and progression through fee bands. As the size of firms is one of the factors that drives the level of supervisory engagement, this appears unfair to smaller licensees.

Our proposal for 2016 is to re-band annual full fiduciary fees. The revised model will reduce barriers to entry in order to encourage new business into the market, be more proportionate to the growth of licensees' businesses, reflect the higher level of supervisory engagement with larger licensees and correct the historic bunching effect.

We propose a linear model for turnover bands: 0 to £250,000 (band 1); £250,000 to £500,000 (band 2); £500,000 to £1m (band 3); and so on. Such a change inevitably leads to winners and losers, however there will be a greater number of full fiduciary licensees who will pay *less* as a result of the proposed changes.

In recognition of the importance of reducing barriers to entry, and the number of Protection Of Investors (POI) licensees who may hold a Fiduciary licence for ancillary business, we are proposing to reduce the lowest fee band from £6,030 to £5,000.

To reflect a more equitable correlation between fees, turnover and higher Commission engagement for larger licensees, we are proposing to introduce an 8th fee band for licensees with fiduciary turnover of £16m or more. This new band also aims to 'future-proof' our fees to some extent, as we are conscious that the trend of consolidation continues within the sector.

With fairness and proportionality as our guiding principles, we are proposing fees of £5,000, £10,000, £15,000, £20,000, £25,000, £30,000, £40,000 and £50,000. While we believe strongly that these proposals will result in fairer annual fees, we are mindful of the impact these changes will have on licensees. We therefore plan to adopt a phased approach for three annual turnover bands:

- Band 3: Licensees in band 3 to have an annual fee of £12,500 rising to £15,000 for 2017.

- Band 7 and band 8: For our largest licensees we propose to have annual fees of £35,000 rising to £40,000 in 2017 (band 7) and £40,000 rising to £50,000 in 2017 (band 8).

Cognisant of feedback to the Revision of Laws consultation process and the forthcoming AML/CFT Handbook reviews, we are not proposing any change to the Personal Fiduciary Licensees (PFL) annual fee for 2016. This will be reviewed next year.

In recognition of the early stages of the NRFSB review and the notable changes made to these fees in 2015, the Commission is not proposing any changes to the NRFSB annual fee for 2016. Again, this will be reviewed next year.

The Commission has centralised its authorisations function and will develop standardised forms. For the purposes of this 2016 fee round there is only one proposed change in respect of Full Fiduciary application fees, to bring them in line explicitly with a POI law licence application fee (an application of a comparable nature) - a proposed increase of £5.

Insurance

The Commission proposes a new upper fee band for long term insurers with net policyholder liabilities greater than £2bn. This reflects the increased complexity of such companies, the increased supervisory focus and the need to call upon external actuarial advice. The new upper fee is proposed to be £80,000.

The Commission proposes to increase the fee charged for applications in respect of long term business transfers under section 44 of the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended (IBL). The current fee of £1,036 does not adequately reflect the work required in reviewing and assessing such applications, that involves extensive legal and actuarial documentation and liaison with other regulatory authorities. The number of such transfers has increased in recent years as insurance groups consolidate their legal entities prior to the introduction of Solvency II.

The majority of transfers that the Commission is asked to consider do not relate to entities licensed in the Bailiwick. This is because IBL requires that, where any policy has been issued

to a Bailiwick resident, the sanction of the court is required to transfer the business, regardless of where the insurer is based. In carrying out this work at a low fee, the cost for off-island firms is effectively being subsidised by those that are licensed by the Commission. It is therefore proposed to increase the fee to £5,000.

It is also proposed to increase the cell application fee to align it with the annual fee, in order to go some way towards reflecting the level of work involved; this will be consistent with the position for companies for which the application fee and annual fees are aligned. It is therefore proposed that the cell application fee should increase from £1,474 to £1,742.

Application Fees

It is proposed that application fees will rise by 2% in 2016 for most applications. Some exceptions have been outlined above that would apply to certain Insurance and Fiduciary licensees. Based upon current forecasts, such increases would raise an additional fee income of approximately £27,000. Income from application fees overall is about 6% of total fee income; therefore any percentage increase has limited impact. Application fees have been included in the overall fee income estimate.

Licence Surrenders

The Commission does not charge for licence surrenders.

Administrative Penalty Fees

Administrative penalties have not been increased since they were introduced in 2010. The current fees are £100 for the first month, £200 for the second month and £300 for the third and any subsequent month. It is proposed that, due to the continued administrative burden in dealing with late submissions, these fees are increased by £25 for each incidence and then from 2017 onwards are increased in line with general fee RPI increases. These charges have been included in the overall fee estimate but this category comprises less than 0.4% of the total.

Comments

The Commission invites comments on this consultation document. Comments should reach the Commission by 17 September 2015. Responses should either be emailed to the Chief Operating Officer at feeconsultationresponses@gfsc.gg, or be marked for his attention and sent to:

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Appendix A

List of bodies who have been sent this consultation document:

- States of Guernsey Policy Council
- States of Guernsey Commerce and Employment Department
- States of Alderney Policy and Finance Committee
- Chief Pleas of Sark Policy and Performance Committee
- Guernsey Finance
- Guernsey International Business Association
- Association of Guernsey Banks
- Guernsey Investment Fund Association
- Guernsey Investment Managers and Stockbrokers Association
- Guernsey International Insurance Association
- Bailiwick Insurance Intermediary Association
- Guernsey Association of Trustees
- Institute of Directors
- NED forum

Appendix B – Regulatory Fee Proposed Changes

Regulatory Fee – Banking Sector

	Current fee 2015	Proposed fee 2016	Proposed fee after rebate
Application fees:			
Bank application	£34,440	£35,130	n/a
Amalgamation and Migration fee	£2,073	£2,114	n/a
Annual licence fees:			
Assets band:			
Total assets below £500 million	£34,440	£35,130	£34,130
Total assets below £500 million plus 25% as a retail branch or subsidiary bank	£43,050	£43,915	£42,660
Total assets of £500 million or more but below £1,000 million			
2015 - in range between £34,440 and £52,250	variable price		
2016 (after rebate) in range between £34,130 and £52,300		variable price	variable price
Total assets of £1,000 million and above	£52,250	£53,300	£52,300
<u>Premiums added to all annual licence fees:</u>			
plus 25% premium for a Guernsey subsidiary bank	£13,065	£13,325	£13,075
Or			
plus 25% premium for a retail branch bank (if both characteristics apply, only one applies)	£13,065	£13,325	£13,075
Branches outside the Bailiwick	£13,065	£13,325	£13,075

Regulatory Fee – Insurance Sector

	Current fee 2015	Proposed fee for 2016
Application fees:		
Insurance Manager	£4,860	£4,955
Insurance Manager – Lloyd’s	£2,670	£2,725
Insurer/Reinsurer/Captive	£5,222	£5,326
Protected/Incorporated Cell Company	£5,222	£5,326
Cell of a PCC/ICC	£1,474	£1,742
Domestic Insurer	£2,942	£3,000
Intermediary	£4,915	£5,015
(addition of licence categories)	£176 to £1,687	£179 to £1,721
Member of association for travel insurance	£1,345	£1,372
Amalgamation and Migration fee	£2,073	£2,114
Annual fees:		
Insurance Managers – pure	£4,613	£4,705
Insurance Managers – commercial	£7,722	£7,875
Insurance Manager – Lloyd’s	£2,672	£2,724
Insurer/Reinsurer/Captive	£5,222	£5,326
Protected or Incorporated Cell Company	£5,222	£5,326
Cell of a PCC or ICC	£1,708	£1,742
Transformer cell	£777	£793
Dormant cell	£137	£140
Life Insurer (from/to)	£5,222 to £40,000	£5,326 to £80,000
Domestic Insurer (turnover < £12,000)	£437	£445
Domestic Insurer (turnover £12,000+)	£2,942 to £15,000	£3,000 to £15,300
Intermediary (base fee)	£2,372	£2,420
Intermediary (licence type)	£176 to £1,687	£179 to £1,710
Intermediary (turnover level)	£1,677 to £6,737	£1,710 to £6,871
Member of association for travel insurance	£1,345	£1,372
Other fees:		
Conversion of a company to a regulated PCC or ICC	£986	£1,005
Conversion of a regulated PCC to a regulated ICC	£986	£1,005
Conversion of a PCC or ICC to a regulated non-cellular company	£986	£1,005
Application for consent to a scheme for the transfer of long term business	£1,036	£5,000

Regulatory Fee – Fiduciary Sector

	Current fee 2015	Proposed fee for 2016
Application fees:		
Personal licence	£970	£970
Full licence Joint applicant	£537	£537
Full licence	£2,205	£2,210
Personal discretionary exemption	£446	£455
Company/partnership discretionary exemption	£1,000	£1,020
Consent to use a name	£1,697	£1,730
Amalgamation and Migration fee	£2,073	£2,114
Annual licence fees:		
Personal fiduciary licence	£1,006	£995 (after rebate)

The current tariff relating to full fiduciary licences is set out below:

Full fiduciary licence 2015

Turnover band (annual):

1. Under £250,000	£6,030
2. £250,000 to £999,999	£10,040
3. £1,000,000 to £1,999,999	£20,445
4. £2,000,000 to £3,999,999	£22,590
5. £4,000,000 to £6,999,999	£24,785
6. £7,000,000 to £9,999,999	£30,000
7. Over £10,000,000	£35,000

The new proposed tariff relating to full fiduciary licences is phased over two years as set out below:

Full fiduciary licence	2016 proposed	2016 fee after rebate	2017 proposed baseline
<i>Turnover band (annual):</i>			
1. Under £250,000	£5,000	£4,920	
2. £250,000 to £499,999	£10,000	£9,920	
3. £500,000 to £999,999	£12,500	£12,420	£15,000
4. £1,000,000 to £1,999,999	£20,000	£19,920	
5. £2,000,000 to £3,999,999	£25,000	£24,920	
6. £4,000,000 to £7,999,999	£30,000	£29,920	
7. £8,000,000 to £15,999,999	£35,000	£34,920	£40,000
8. £16,000,000 and above	£40,000	£39,920	£50,000

Regulatory Fee – Investment Sector

	Current fee for 2015	Proposed fee for 2016
Application fees:		
Open-ended collective investment schemes:		
Schemes*	£3,205	£3,269
New classes of existing schemes*	£674	£687
Non-Guernsey schemes		
Designated Territories scheme notification (EX) (Jersey schemes remain at nil)	£1,034	£1,055
Closed-ended collective investment schemes*		
Licensees	£2,170	£2,210
Amalgamation and migration fee	£2,073	£2,114
Annual fees:		
Open-ended collective investment schemes:		
Schemes*	£3,205	£3,269
Additional classes*	£207	£211
Non-Guernsey schemes		
Designated Territories scheme (EX)	£517	£527
Closed-ended collective investment schemes*	£3,205	£3,269
Licensees		
Designated Persons of open-ended schemes	£3,100	£3,162
Principal Managers of open-ended schemes	£1,550	£1,581
Designated Managers of closed-ended schemes	£3,100	£3,162
Managers of closed-ended schemes	£1,550	£1,581
Investment exchanges	£60,800	£62,000
Other Licensees	£3,100	£3,162

* *Authorised and Registered*

Fee – Non-Regulated Financial Services Businesses

	Current fee 2015	Proposed fee for 2016
Application fee	£3,675	£3,750
Annual fee	£1,225	£1,225

Fee – Prescribed Businesses

The fee for Prescribed Businesses is detailed below:

Number of full time or full time equivalent staff	Current fee	Proposed fee for 2016
1-5	£612	£624
6	£705	£719
7	£798	£814
8	£891	£909
9	£984	£1,004
10	£1,077	£1,099
11	£1,170	£1,194
12	£1,263	£1,289
13	£1,356	£1,384
14	£1,449	£1,479
15	£1,542	£1,574
16	£1,635	£1,669
17	£1,728	£1,764
18	£1,821	£1,859
19	£1,914	£1,954
20	£2,007	£2,049
21	£2,100	£2,144
22	£2,193	£2,239
23	£2,286	£2,334
24	£2,379	£2,429
25 or more	£2,472	£2,524