



Guernsey Financial  
Services Commission

# **IMPLEMENTATION OF GUERNSEY FINANCIAL ADVICE STANDARDS**

**A CONSULTATION PAPER ISSUED BY  
THE GUERNSEY FINANCIAL  
SERVICES COMMISSION  
23 September 2013**



The Guernsey Financial Services Commission invites comments on this consultation paper, preferably by email, by no later than Friday 8 November 2013.

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## Glossary of Terms

<b>AIR</b>	Authorised Insurance Representative
<b>AIR Code</b>	Code of Conduct for Authorised Insurance Representatives
<b>C&amp;E</b>	Commerce and Employment Department
<b>CPD</b>	Continuing Professional Development
<b>FCA</b>	Financial Conduct Authority (formerly Financial Services Authority)
<b>FCA level 4</b>	Relevant qualifications at level 4 on the Qualifications and Credits Framework published by Ofqual in the UK
<b>GIC</b>	Guernsey Insurance Certificate
<b>GFAS</b>	Guernsey Financial Advice Standards
<b>IMIL</b>	The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended
<b>IMIL COBR</b>	The Licensees (Conduct of Business) Rules, 2009 issued under the IMIL
<b>Licensee</b>	Any business which holds or is deemed to hold a licence under The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended or The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended
<b>New Staff</b>	Staff that have not previously worked for an investment licensee or a licensed insurance intermediary that are employed after the implementation of GFAS and do not hold a relevant level 4 qualification.
<b>POI Law</b>	The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended.
<b>POI COBR</b>	The Licensees (Conduct of Business) Rules, 2009 issued under the POI Law
<b>Relevant level 4 qualification</b>	A qualification deemed acceptable by the Commission as complying with FCA level 4
<b>RDR</b>	Retail Distribution Review conducted by the UK Financial Services Authority
<b>SPS</b>	Statement of Professional Standing

# 1: Executive Summary

## 1.1 Overview

This paper contains full details of the steps considered necessary by the Commission to implement Guernsey Financial Advice Standards (“GFAS”) following the request from the Commerce and Employment Department (“C&E”) to this effect, consequent to the response from industry and the public to the consultation paper issued by C&E.

C&E identified that their proposals for GFAS will contain the following key areas:

- 1.1. Educational requirements: Licensed financial services businesses which offer financial advice to retail clients should be compliant with FSA (now the Financial Conduct Authority (“FCA”)) level 4.
- 1.2. Remuneration for providers: Both commissions (but requiring full disclosure) and fees will be allowed.
- 1.3. Definition of financial advice and capital requirements: It is proposed that some categorisation of advice should be introduced and the actual categories should be a matter for the Commission to determine in conjunction with industry.

The C&E Department has proposed that GFAS will take effect from 1 January 2015.

## 1.2 What is proposed?

This paper sets out the steps that have been identified by the Commission, together with the Commission’s proposals for changes to rules and codes, to implement C&E’s requirements for GFAS.

The proposed changes will require amendments to the following rules:

- the Licensees (Conduct of Business) Rules, 2009 (“the POI COBR”) issued under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended (“the POI Law”)
- the Conduct of Business Rules (“the IMIIL COBR”) and the Code of Conduct for Authorised Insurance Representatives (“the AIR Code”) issued under The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended (“the IMIIL”).

The proposals will also require the Commission to issue:

- a list of approved qualifications for relevant advisers
- sample format for disclosure of charges

## 1.3 Rationale for change

C&E has identified that the introduction of GFAS would protect and enhance Guernsey’s reputation as a leading International Financial Centre, provide better value service from more professional advisers and a more transparent fee structure - all of which should benefit consumers.

The implementation of GFAS is intended to increase professional standards, make adviser charging more transparent and reduce potential conflicts of interest. This will contribute to the protection of the public against financial loss due to potential dishonesty, incompetence or malpractice by persons carrying on finance business.

## 1.4 Who would be affected?

Businesses licensed under the POI Law whose controlled investment business includes *advising* retail clients in respect of controlled investments.

Insurance intermediaries licensed under the IMIIL, and their AIRs, advising on or arranging *long term single premium\** and *long term regular premium products\** but not *long term pure protection products\**.

Insurance intermediaries licensed under the IMIIL, and their AIRs, in respect of the disclosure of the basis of, or the amount of, charges for services provided, in all cases of long term business including *long term pure protection products\** and non-retail clients.

\* *Terms to be defined in the new rules.*

## 2: Consultation

### 2.1 Basis for the consultation

The Commission has issued this consultation paper in accordance with:

S13(1) of The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended which requires that *“Before making any rules under this Part of this Law [the Commission] shall, unless it considers that the delay involved would be prejudicial to the interests of investors, publish proposals for the rules in such manner as [the Commission] considers best calculated to bring them to the attention of persons likely to be affected by the rules [and the public in general], and shall [consider] any representations made to [the Commission] concerning those proposals.”* and

S18AB(1) of The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended, under which the Commission, which requires that *“Before making any Conduct of Business Rules the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of clients or policyholders or potential clients or policyholders, publish proposals for the Rules in such manner as the Commission considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, and shall consider any representations made to the Commission concerning those proposals.”*

### 2.2 Responding to the consultation

The Commission invites comments from interested parties on the questions and proposals included in this consultation paper. Questions and paragraphs in relation to the proposed changes are numbered so wherever possible respondents should quote the question and/or paragraph reference to which their comments relate.

Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.

Respondents are asked to be as specific as possible and, where costs are referred to, to quantify those costs.

The Commission would encourage anyone wishing to discuss a specific scenario to get in touch during the consultation period.

### 2.3 Next steps

Please respond to this consultation paper, preferably by email to [conduct@gfsc.gg](mailto:conduct@gfsc.gg) by no later than 5.00pm on Friday 8 November 2013.

The Commission will take all responses into account before publishing the finalised details of the implementation of GFAS which is intended will be effective from 1 January 2015.

It is the Commission's intention that GFAS will be implemented through the amendment of the existing rules in the POI COBR, the IMIIL COBR and the AIR Code, and, in respect of disclosure of remuneration, sample disclosure formats.



### 3: The Commission

The Guernsey Financial Services Commission is the regulatory body for the finance sector in the Bailiwick of Guernsey. The Commission's primary objective is to regulate and supervise financial services in Guernsey, with integrity and efficiency, and in so doing, help to uphold the international reputation of Guernsey as a finance centre.

The Commission's general functions are prescribed in The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as follows:

- To take such steps as the Commission considers appropriate or expedient for the effective supervision of finance business in the Bailiwick.
- To provide the States of Guernsey, the States of Alderney or the Chief Pleas of Sark with reports, advice and assistance with any matter connected with finance business.
- To prepare and submit to the States of Guernsey, the States of Alderney or the Chief Pleas of Sark with reports, recommendations and schemes for the statutory regulation of finance business and generally for the revision of legislation appertaining to companies and other forms of business undertakings.
- The countering of financial crime and the financing of terrorism.
- To take such steps as the Commission considers necessary or expedient for
  - maintaining confidence in the Bailiwick's financial services sector, and
  - the safety, soundness and integrity of that part of the Bailiwick's financial services sector for which it has supervisory responsibility.
- All such other functions as the States of Guernsey may assign.

## **4: Background**

### **Considerations driving the proposals**

The FSA introduced RDR to be implemented in the UK from 1 January 2013 as a response in the UK to long-standing problems in the intermediary sector, especially around mis-selling.

C&E issued a consultation paper in 2012 which summarised the changes proposed in the RDR and invited comments on whether the changes proposed in the RDR should be considered for Guernsey. The summary of Industry and Public Consultation Responses issued by C&E in March 2013 is included in this paper at Appendix 3.

In addition, in 2012, the Commission carried out a thematic review of sales practices within long term insurance intermediaries to establish whether they complied with the AIR Code. This identified common areas of non-compliance. In particular, there were a number of instances identified where the product recommended to a client may not have been suitable. In other instances it was not possible to establish whether the product recommended was suitable because of poor documentation.

Despite the findings of the Commission's thematic review, the Commission receives few complaints regarding long term insurance intermediaries or investment licensees. However, this could be due to the fact that there is currently no ombudsman service in Guernsey and the Commission cannot adjudicate on complaints. However, the C&E Department is intending to put a proposal to the States for the establishment of a Financial Services Ombudsman in the Bailiwick of Guernsey.

Following consideration of the responses to the consultation paper, the C&E Department agreed that GFAS should become effective in 2015 and instructed the Commission to take appropriate steps to implement GFAS accordingly. The Commission subsequently issued a discussion paper to an industry working group and held two meetings with the working group to gather their feedback. The discussion paper and feedback from the working group has formed the basis for this consultation paper.

## 5 Current legislation and requirements

### 5.1 Definition of *Long Term Business*

Schedule 1 to The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended provides descriptions of Long Term Business which include:

***“Linked long term***

*Effecting or carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to –*

- (a) the value of, or the income from, property of any description (whether or not specified in the contracts), or*
- (b) fluctuations in, or an index of, the value of property of any description (whether or not so specified).”*

***“Capital redemption***

*Effecting or carrying out capital redemption contracts.”*

### 5.2 Definition of *Client*

**The Licensees (Conduct of Business) Rules, 2009 issued under The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended (“POI COBR”)**

The POI COBR contains the following definitions of the terms shown in bold:

*“A **retail client** is a client who is not a professional client or an eligible counterparty.”*

*“A per se professional client or an elective professional client is a **professional client**.”*

*“Each of the following is a **per se professional client** unless and to the extent it is an eligible counterparty or is given different categorisation under Rule 7:*

- (a) Not a member of the public; or*
- (b) A large undertaking and/or a Professional Investor”*

*“**large undertaking** means a large undertaking meeting two of the following size requirements on a company basis:*

- (a) Balance sheet total of £13,000,000*
- (b) Net turnover of £26,000,000*
- (c) Own funds of £1,300,000”*

A licensee may treat a client as an elective professional client if the licensee undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own

investment decisions and understanding the risks involved. If the client is an entity, the assessment should be performed in relation to the person authorised to carry out transactions on its behalf.

*“A per se eligible counterparty or an elective eligible counterparty is an **eligible counterparty**.”*

**A per se eligible counterparty** is:

- (a) *“Any entity licensed for dealing, managing or advising under the Law;*
- (b) *An approved bank*
- (c) *An insurance company*
- (d) *A collective investment scheme*
- (e) *A pension scheme or its management company*
- (f) *A national government or its corresponding office, including a public body that deals with public debt*
- (g) *A central bank*
- (h) *A supranational organisation*
- (i) *Any other entity that is:*
  - (i) *incorporated outside the Bailiwick; and*
  - (ii) *is suitably licensed, authorised or qualified by primary or secondary legislation in its home jurisdiction.”*

*“A licensee may treat a client as an **elective eligible counterparty** if:*

- (a) *the client is an undertaking;*
- (b) *a per se professional client; and*
- (c) *he requests such categorisation and the licensee undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved; and*
- (d) *the licensee has obtained express confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty.”*

**The Licensees (Conduct of Business) Rules, 2009 issued under The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended (“IMIIL COBR”)**

The IMIIL COBR does not include definitions of the above terms, defined in the POI COBR.

### **5.3 Definition of Advising and Advice**

#### **The POI Law**

The POI Law defines *advising*, in connection with a controlled investment, as –

*“that is to say giving advice as to the purchase, sale, subscription for or underwriting of particular investments, or advice as to the exercise of rights conferred by particular investments.”*

#### **The IMIIL**

The IMIIL defines *advice* as –

*“in relation to an insurance intermediary means advice about a client’s insurance requirements which includes the merits of buying, selling, lapsing, switching, cancelling, altering or converting a policy of insurance.”*

## **5.4 Type of Financial Advice**

There are currently no requirements for investment licensees or insurance intermediaries to disclose to the client the type of advice given.

## **5.5 Educational requirements**

### **Investment licensees**

There are currently no mandatory minimum qualification requirements for investment licensees. However, the minimum criteria for licensing set out in Schedule 4 of the POI Law requires the Commission to have regard to an individual's educational and professional qualifications in considering whether a person is fit and proper to hold certain positions. It is understood, from discussions with industry, that the majority of relevant investment employees have a level 4 qualification.

### **Insurance intermediaries**

The IMIIL COBR contains a rule requiring AIRs to hold such qualifications to the minimum standard as determined by the Commission.

AIRs of licensed insurance intermediaries advising on long term insurance products are currently required to hold the Certificate in Financial Planning from the Chartered Insurance Institute and the Guernsey Insurance Certificate ("GIC"). These are level 3 qualifications. The GIC is designed to ensure the holder has an appropriate awareness of the Bailiwick's legal and administrative infrastructure.

## **5.6 Remuneration for Providers**

Principle 7 of The Code of Corporate Governance sets out the standard expected of the board of a licensee to ensure that remuneration arrangements are structured fairly and responsibly. Furthermore, where appropriate, the board should review and set company remuneration policies avoiding the creation of incentives that encourage excessive risk taking.

### **Investment licensees**

The POI COBR require investment licensees to disclose to a client, in writing, the basis of, or the amount, of its charges for its services.

### **Insurance intermediaries**

The IMIIL COBR require an AIR to explain charges in respect of long term business, including commission, to a client and provide the information required without delay. The IMIIL COBR do not require this explanation to be in writing.

The AIR Code requires the AIR to explain to the client the amount or percentage of commission the intermediary will receive in relation to single premium contracts, traded endowment plans or any contract involving "gearing/leveraging" or in respect of any other policy, when requested. The AIR Code also requires the explanation of any charges (including bid-offer spread charges) that will or may be incurred. The AIR Code does not require these explanations to be in writing.

The AIR Code requires the disclosure, in writing, of the amount of any fee and the purpose of the related services or work before any work involving a fee is undertaken or an agreement to carry out business is

made. This must explain whether this is in addition to that required to secure the insurance, and if the amount is not known then the basis on which it will be calculated should be disclosed.

The AIR Code also requires the AIR to explain in the case of long term insurance policies, where applicable, that deductions are made to cover the cost of life cover, commission, expenses, surrender penalties and other charges. The AIR Code does not require this explanation to be in writing.

## 6 The Proposals and Questions for Respondents

The Commission has considered the existing legislation and requirements in conjunction with the key areas identified by C&E together with the Summary of Industry and Public Consultation Responses issued by C&E.

The Commission intends to specify the products and services that will be covered by the new rules and codes ensuring, wherever possible, that common definitions for the both investment and insurance sectors are introduced to increase clarity and transparency for the retail consumer.

The new rules and codes are proposed to apply to businesses licensed under the POI Law *advising retail clients* and *advice* to the *retail clients* of insurance intermediaries licensed under IMIIL in respect of long term insurance products which are not *long term pure protection products*. The new rules and code will also apply to insurance intermediaries in relation to disclosure of remuneration in all cases of long term business, including in relation to *long term pure protection products* and *non-retail clients*.

The Commission intends to extend the definition of client from the POI COBR to the IMIIL COBR so that the definition of a retail client is identical under both sets of rules.

The Commission intends to introduce a requirement for a better description of the advice service provided and to disallow the use of the term “independent”.

The Commission also intends to specify an enhanced standard for professional qualifications required by those providing advice and the requirement for continuing education.

The Commission intends to introduce enhanced disclosure of fees and commission charges which will also apply to insurance intermediaries in relation to long term pure protection products and non-retail clients.

These proposals are dealt with in detail below.

### 6.1 Definition of *long term single premium products*, *long term regular premium products* and *long term pure protection products*

The Commission intends that the insurance products to which the new rules and code will apply are clearly identified as being *long term single premium products* and *long term regular premium products*.

6.1.1 The Commission proposes that the following definitions are included in the IMIIL COBR with reference to the definitions in Schedule 1 to the IMIIL.

“*Long term single premium products* (where the premium is paid in one single lump sum) – linked long term business; and capital redemption contracts (each as defined in Schedule 1 to the IMIIL).”

“*Long term regular premium products* (where the premium is paid in regular instalments (for example monthly or quarterly) – linked long term business; and capital redemption contracts (each as defined in Schedule 1 to the IMIIL).”

“*Long term pure protection products* (formerly long term life products) – long term business (as defined in Schedule 1 to the IMIIL) where the benefits are not determined by reference to -

- a) the value of, or the income from, property of any description, or,
- b) fluctuations in, or an index of, the value of property of any description.”

6.1.2 The Commission intends that the new rules and codes will not apply to advice in respect of *Long term pure protection products*.

**Questions for respondents:**

- 1 **Do you envisage any practical difficulties in applying these definitions? If so, please provide examples to illustrate your comments.**
- 2 **Is there anything in the proposals that is unclear? If so, please provide examples.**

## **6.2 Definition of *Client***

6.2.1 The Commission intends that the definitions included in the POI COBR, as set out in 5.2 above, are included in the IMIIL COBR.

**Questions for respondents:**

- 3 **Do you envisage any practical difficulties in applying the enhanced definitions of client? If so, please provide examples to illustrate your comments.**
- 4 **Is there anything in the proposals that is unclear? If so, please provide examples.**

## **6.3 Definition of *Advising and Advice***

6.3.1 The Commission intends to retain the definition of *advising* in the POI Law.

6.3.2 The Commission also intends to retain the definition of *advice* in the IMIIL.

**Questions for respondents:**

- 5 **Is there anything in the proposals that is unclear? If so, please provide examples.**

## **6.4 Financial Advice**

The FCA is prescriptive in how licensees describe their services, as either “restricted” or “independent”.

Restricted advice applies to those licensees selling a restricted selection of products or products from a restricted selection of providers. Licensees also have to describe why their advice is restricted.

Independent advice requires a licensee to:

- Consider a broader range of products;

- Provide unbiased and unrestricted advice based on a comprehensive and fair analysis of the relevant market; and



Inform its clients before providing advice, that it provides independent advice.

The Commission recognises that the majority of Guernsey licensees would provide restricted advice under the FCA's definitions. As such, it would appear that there is little benefit to clients of prescriptive definitions of the type of financial advice since the majority of licensees will fall within only one category.

The Commission also recognises that retail clients would benefit from licensees better describing the type of advice services they provide.

6.4.1 The Commission intends to introduce a requirement in the POI COBR and the AIR Code requiring disclosure, in writing, to the client regarding the extent of products from which recommendations are made, for example in the written advice.

6.4.2 The Commission intends to introduce a requirement in the POI COBR and the AIR Code requiring disclosure, in writing, to the client regarding whether the licensee is able to recommend products from a single provider, a limited range of providers or from the whole market.

6.4.3 The Commission intends to introduce a requirement in the POI COBR and the AIR Code requiring disclosure of a description of the services provided by the licensee.

6.4.4 The Commission intends to introduce a requirement in the POI COBR and the AIR Code disallowing the use of the term "independent" as the use of this term is confusing and unhelpful to retail clients.

#### **Questions for respondents:**

**6 Do you envisage any practical difficulties in applying enhanced disclosure of:**

- a) products; and**
- b) services?**

**If so, please provide examples to illustrate your comments.**

**7 Do you envisage any practical difficulties through the disallowance of the use of the term "independent"?**

**8 Is there anything in the proposals that is unclear? If so, please provide examples.**

## **6.5 Educational requirements and transitional arrangements**

FCA Level 4 refers to relevant qualifications, for relevant staff advising on retail investment products which are not broker funds, at level 4 on the Qualifications and Credits Framework published by Ofqual in the UK. The FCA publishes a list of these qualifications in its Handbook.

Professional bodies, such as the Chartered Institute for Securities and Investment or the Chartered Insurance Institute, require their members who have attained a level 4 qualification to maintain Continuing Professional Development ("CPD"). The FCA requires a licensee to obtain (either directly or via the staff member) a Statement of Professional Standing ("SPS") from the relevant professional body for each of their relevant staff in order to confirm that their relevant staff are maintaining adequate CPD.

The majority of staff, in particular in the insurance intermediary sector, do not currently hold a level 4 qualification. In order for the licensee to comply with GFAS, licensee staff will be required to up-skill to level 4.

The Commission has previously estimated that a person currently holding a level 3 qualification would take around one year to obtain a relevant level 4 qualification.

6.5.1 The Commission intends to introduce a requirement in the POI COBR requiring those staff employed by investment licensees, *advising a retail client*, to hold such qualifications to the minimum standard as determined by the Commission.

6.5.2 The Commission intends to issue a list of qualifications compliant with FCA level 4 which will be the minimum standard of qualification to be held by relevant staff of investment licensees and AIRs. The proposed list of relevant level 4 qualifications is set out in Appendix 1. Should other qualifications be deemed acceptable at FCA level 4 this list will be extended.

6.5.3 The Commission intends to retain the mandatory requirement for all relevant AIRs to hold the GIC.

#### 6.5.4 *Transitional arrangements*

The Commission intends to allow a transitional period of 1 year after the implementation date (currently proposed to be 1 January 2015) of the new rules by which all current staff must have obtained a qualification as listed by the Commission.

This provides relevant staff over 2 years from now to pass the relevant exams and provides an allowance for possible re-takes. Grandfathering is not to be permitted. No discretion to the Commission will be allowed.

This will create two tiers of staff for a short specified period of time i.e. those that had a relevant level 4 qualification prior to the implementation date and those who do not and are subject to the transitional arrangement. At the end of the transitional period, all current relevant staff will be required to hold relevant level 4 qualifications.

#### 6.5.5 *Educational requirements for New Staff*

The Commission intends to amend the POI COBR and the IMIIL COBR to allow New Staff to provide advice to retail clients, subject to the following:

1. The staff member must have completed the regulatory module of a qualification listed by the Commission; and
2. The staff member is supervised at all times by another staff member who holds a relevant level 4 qualification; and
3. The staff member must have obtained the relevant level 4 qualification within 30 months of their appointment as an AIR.

In calculating the 30 month period, a licensee must aggregate periods of time spent during different periods of relevant employment (ie a person cannot spend 30 months employed as an AIR by one licensee, fail to obtain the relevant level 4 qualification and then move to another licensee and the 30 months start again).

If the staff member does not obtain a relevant level 4 qualification within 30 months they must cease providing advice to retail clients until the relevant level 4 qualification is obtained.

#### 6.5.6 *Continuing Professional Development (“CPD”)*

The Commission proposes to amend the POI COBR and the IMIIL COBR to include a requirement for CPD mirroring that currently required by the FCA in respect of retail investments advisers. The FCA’s current

requirements are to complete a minimum of 35 hours' compulsory CPD each year (of which at least 21 hours must be structured CPD).

#### 6.5.7

The Commission intends to amend the POI COBR and the IMIIL COBR to include a requirement for licensees to obtain a Statement of Professional Standing (“SPS”) for relevant staff on an annual basis by 31 March.

#### Questions for respondents:

- 9 Do you agree with the content of the list of acceptable qualifications set out in Appendix 1? If not, please provide details to illustrate your comments.**
- 10 Do you envisage any practical difficulties, for existing staff, in achieving the required qualification by 1 January 2016? If so, please provide examples to illustrate your comments.**
- 11 Do you envisage any practical difficulties for new staff in respect of:**
  - a) supervision;**
  - b) qualification period;**
  - c) having to cease to provide advice to retail clients if that person has failed to obtain a relevant level 4 qualification within 30 months of their appointment?****If so, please provide examples to illustrate your comments.**
- 12 Do you envisage any practical difficulties in undertaking CPD and obtaining a SPS? If so, please provide examples to illustrate your comments.**
- 13 Do you envisage any practical difficulties with the timescale licensees to receive a SPS from a relevant staff member?**
- 14 Is there anything in the proposals that is unclear? If so, please provide examples.**

## 6.6 Remuneration for Providers

The Commission understands that a prescriptive model of commission disclosure may not fit every product sold. However, the Commission will issue guidance on its expectations with the rule, for example, that charges for commission should be disclosed, in writing, in such a manner that it is easily understood by the client.

6.6.1 The Commission intends to retain the current requirements under the POI COBR to disclose to a client, in writing, the basis of, or the amount, of its charges for its services.

6.6.2 The Commission intends to amend the AIR Code to require disclosure in writing of the basis of, or the amount of, charges for services provided, in all cases of long term business, including in relation to long term pure protection products and non-retail clients.

6.6.3 The Commission intends to retain the current requirements under the AIR Code to explain that deductions are made by the product provider to cover the cost of life cover, commission, expenses, surrender penalties and other charges. However the Commission intends to change the AIR Code so that this explanation is in writing.

6.6.4 The Commission does not intend to be prescriptive in its disclosure requirements. However, to help the industry, please find attached, at Appendix 2, an example of disclosure that adheres to the general principles of fairness, clarity and transparency.

**Questions for respondents:**

- 15 Do you envisage any practical difficulties in the written disclosure of remuneration?**
- 16 Do you agree that the example should be issued by the Commission? If yes, do you have any comments on the example provided? If no, please provide examples to illustrate your comments.**
- 17 Is there anything in the proposals that is unclear? If so, please provide examples.**

# Appendix 1

## Proposed List of Relevant Level 4 Qualifications

Blackburn College – University Centre	Foundation Degree Award in Financial Services
Calibrand / Scottish Qualifications Authority	Diploma in Professional Financial Advice
	Diploma in Professional Financial Advice (NMBA - Alternative Assessment method)
CFA Society of UK (Formerly the UK Society of Investment Professionals/ Institute of Investment Management and Research (IIMR))	Investment Management Certificate (Level 4) plus other qualifications that meet specialist standards for advising on packaged products
Chartered Institute of Bankers in Scotland	Diploma in Investment Planning (Existing Adviser) Post 2010 examination standards
	Diploma in Investment Planning (New Adviser) Post 2010 examination standards
	Diploma in Investment Planning (Retail Banking) (Existing Adviser) Post 2010 examination standards
	Diploma in Investment Planning (Retail Banking) (New Adviser) Post 2010 examination standards
	Diploma in investment planning (work based assessment)
Chartered Institute for Securities and Investment (CISI) - (Formerly the Securities and Investment Institute (SII); formerly The Securities Association)	Investment Advice Diploma (where candidate holds 3 modules including the private client advice module)
Chartered Insurance Institute	Diploma in Regulated Financial Planning
	Diploma in Regulated Financial Planning (attained through a CII alternative assessment day)
IFS School of Finance (formerly the Chartered Institute of Bankers)	Diploma for Financial Advisers (post 2010 examination standards)
	Professional Certificate in Banking (PCertB) (where candidate has passed the Practice of Financial Advice module)
Manchester Metropolitan University	BA (Hons) Financial Services, Planning and Management
Pensions Management Institute	Diploma in Regulated Retirement Advice

## Appendix 2

### Example - Disclosure of Charges

Description		Basis	£	£
A) GROSS INVESTMENT				100,000
B) Commission <sup>1</sup>		7% of the gross investment	7,000	
C) Rebated Commission <sup>2</sup>		3% of the gross investment	<u>3,000</u>	
D) Initial Commission <sup>3</sup>	B - C	4% of the gross investment		<u>(4,000)</u>
E) Initial investment	A – (B + C)			96,000
F) Trail Commission <sup>4</sup>		0.5% of the gross investment		<u>(500)</u>
G) NET INVESTMENT	E - F	Gross investment less initial commission and less trail commission		<u>£ 95,500</u>

<sup>1</sup> We also offer you the opportunity to pay us a fee for our services as an alternative to having our commission and trail commission deducted from your investment. If you choose this method we will be pleased to provide you with a quotation.

<sup>2</sup> Rebated commission is the amount of commission we receive from the product provider that we waive in your favour in making your investment.

<sup>3</sup> Initial Commission is the sum of money deducted from your investment by the product provider and paid to us at the outset.

<sup>4</sup> Trail Commission is deducted from your investment by the product provider and paid to us each month of the investment period of 10 years 5 months at the rate of £4 per month.

In addition to the commission paid to us, the product provider may make deductions for other charges from the value of your investment. Product provider deductions may be made to cover the cost of life cover, commission, expenses, surrender penalties and other charges. These charges are as explained to you and identified in the key facts document for this product which has been provided to you.

## **Appendix 3**

### **Summary of Industry and Public Consultation Responses issued by Commerce and Employment Department**

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## **Guernsey's Financial Advice Standards (GFAS) – in response to UK's Retail Distribution Review (RDR)**

### **Summary of Industry and Public Consultation Responses**

March 2013

#### **Summary of Consultation Details**

A consultation document was released about the United Kingdom's Financial Services Authority's (FSA) Retail Distribution Review (RDR); its principles and proposals; how it may affect Guernsey and whether Guernsey should adopt a similar regime. The consultation was aimed at all interested stakeholders, financial services businesses, customers, consumers and other users of Guernsey's financial services industry.

The document was available on the States of Guernsey website, in paper form and was covered in the local media. The closing date was 2<sup>nd</sup> January 2013 and 14 responses to the consultation were received from the public, individuals, companies, trade bodies or organisations within the local finance industry.

#### **Summary of responses**

It was clear from the responses that the vast majority felt that Guernsey should adopt some form of RDR locally. Only one respondent suggested a more prudent approach for Guernsey of assessing the affect of the UK's RDR implementation before concluding on any options locally.

The highest number of responses were from companies within the local financial services industry (6 responses), including one Independent Financial Advisor (IFA) and a professional services firm. The rest of respondents were consumers (4); trade bodies responding on behalf of members (3) with another response from an independent compliance officer.

The responses to the specific questions are summarised later, however, not all respondents answered the specific questions posed in the consultation document but commented more generally about aspects of RDR.

#### **Overall Summary**

1. Most believed that a "lighter" version of RDR, which took the best of the UK's RDR, should be introduced locally on the grounds of:
    - a. Protecting and enhancing Guernsey's reputation.
    - b. Better value service for consumers, as advisers such as IFAs would be better educated and more professional with more transparent charging structures.
    - c. Protecting local business which, if RDR were not implemented, may go to other jurisdictions which have a form of RDR – e.g. other Crown Dependencies.
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- d. If RDR was not implemented Guernsey based investment managers / stockbrokers with UK clients may be prohibited from advising UK clients. If the UK client is an IFA network then RDR is needed or the IFA may not be able to appoint Guernsey Investment Manager.
- 2. Only one response favoured a “wait and see” approach rather than immediate implementation.
- 3. A possible disadvantage of RDR banning commissions was highlighted by many, whereby customers may not use IFAs as they could be put off by up-front fees rather than the current perception of “free” advice which is spread out over many years – but which is actually paid for by commissions.
- 4. A small minority thought it best to distinguish within the finance industry and introduce RDR for some areas and not others – e.g. retail only and not for professional clients.
- 5. Most thought it best to introduce a similar RDR regime to other CDs to ensure consistency for group companies operating in Guernsey and other CDs and so that the CDs would be on a level playing field.
- 6. Some larger operations, especially if they have UK clients or are part of a UK or CD group, are already implementing RDR compliant systems so the affect of local RDR is likely to be minimal to them.

**Summary of consultation conclusions and the proposed implementation options for Guernsey – in light of consultation and other CD’s position on RDR**

**Introducing Guernsey’s Financial Advice Standards (GFAS)**

Overall

- 1. C&E is proposing that “Guernsey’s Financial Advice Standards” (GFAS) be introduced in a response to UK’s RDR.
- 2. Implement the proposed changes in 2015.
- 3. Changes should only require rule changes by the GFSC, there should be no need for primary legislation.
- 4. The Commerce & Employment Board will write to the GFSC requesting that they implement the proposals and work with industry.

Increased professional standards:

- 1. General consensus was that minimal educational standards should be set to increase service levels to customers – standards should follow FSA and other CDs approach of FSA level 4. The Department agrees with this approach.
- 2. .
- 3. There was some inconsistency in responses in that some believed (as Jersey are proposing) that minimal educational requirements should be for retail customer businesses only (and not businesses that service more professional customers), but on balance it seems appropriate to require broadly equivalent to level 4 for all Guernsey businesses with retail clients.

### Remuneration for investment advice

5. It was felt that abolishing commissions may mean less affluent investors will be disadvantaged as the market will not service them as they cannot afford upfront fees and IFAs may only focus on High Net Worth Individuals (HNWI). It may also lead to social exclusion by preventing less affluent individuals from having access to financial advice.
6. Some inconsistency in responses as some want commissions to be banned (Jersey approach) and others want firms to have the option of (1) full disclosure of commission but they can still receive commissions or (2) charge fees if the Advisor wants to (IOM approach). On balance the Department felt that allowing both commissions (but requiring full disclosure) and fees seems preferable as:
  - a. It is an improvement to the current system as it requires full disclosure of commissions.
  - b. It should be appropriate for both the domestic (more reliant on commissions) and international market and therefore should still allow potentially lower wealth clients to receive advice if they prefer to pay commissions.
  - c. Reduces the unnecessarily complicated need for a two tier approach of having RDR for domestic, but not international business.
7. Allowing disclosed commissions and fees is appropriate for all as some UK product providers will not now pay commissions thus all Guernsey entities will need a fee structure anyway.

### Independent and restricted advice

1. Many concluded FSA definitions are not useful or suitable for the CDs – e.g. advice which is “whole of market” or “fully independent” is not possible for CD.
2. Thus it may be better to consider additional disclosure requirements to ensure clients are aware of limitations offered but consider adopting other terms (such as “tied” or “not-tied” or “whole of available market”).
3. The Department concluded that some categorisation of advice should be introduced and the actual categories should be a matter for the GSFC to determine in conjunction with industry.

### Other – capital requirements

1. It was generally felt that FSA RDR requirements of £20k or 3 months reserves were unlikely to achieve the aim of ensuring a business has adequate resources to continue to service clients.
2. It would seem better to require each individual business to have appropriate Professional Indemnity Insurance (PII) in place.
3. Any PII requirements should not just be related to fee income / revenue but should be related to the risks of the business.

4. On balance the Department concluded that there should be no change to existing capital requirements.

### **Specific consultation questions**

As identified earlier not all respondents answered the specific questions posed in the consultation document but commented more generally about aspects of RDR and included answers to questions in a more general response. The summary below focuses on those who did respond to the specific questions and also those who covered the main points in their general response.

### **General Comments on RDR in Guernsey**

**Question posed in the Consultation is in bold**, followed by a summary of the response.

- 1. Question - General comments are invited on the overall view of a similar regime to RDR being adopted in Guernsey and whether it would be positive or not for Guernsey's financial services sector.**

Summary of response – A significant majority were in favour of some form of RDR as respondents felt that it would strengthen Guernsey's reputation, improve consumer protection and confidence. Only one preferred a "wait and see" approach.

- 2. Does your particular business need to meet UK RDR standards in order to be able to continue to serve UK clients?**

Not all respondents to the questions were from a business. However, most of the businesses that did answer this question, and particularly those who had UK clients and connections, felt that some form of RDR compliance would be beneficial in reaching this market.

- 3. Does your particular business intend to implement RDR compliant systems regardless of whether Guernsey chooses to implement RDR?**

Of those businesses that responded to this question many of the larger businesses which were part of group operations with a presence in other jurisdictions were already implementing RDR compliant systems, particularly in relation to educational requirements.

- 4. What are your views on the relative costs and benefits of RDR (or similar) in Guernsey?**

Again not all responses were from industry but those that were indicated that the benefits were likely to outweigh the inevitable (but many saw as manageable) costs which were seen by some as being worth the investment in an attempt to enhance the reputation of financial services.

Others saw that there were greater costs (and risk) of Guernsey not adopting RDR as business may shift from a potentially non-RDR compliant Guernsey to other competitor jurisdictions which adopt some form of RDR.

**5. Does industry want RDR (or similar) to be adopted in Guernsey?**

Most respondents were not speaking as general representatives of the finance industry, but from their individual (or business) point of view could see the potential positives outweighing the negatives. The industry representative groups felt that most of their industry did want some form of RDR adopting in Guernsey.

**6. Do consumers of financial services want RDR (or similar) to be adopted in Guernsey?**

The consumers who answered this question all wanted some form of RDR in Guernsey for the reasons already stated.

The business community believed that some form of RDR was positive for many of their consumers.

**7. What do you think would be the impact on Guernsey if it was decided to do nothing in relation to RDR?**

The message was repeated from earlier answers whereby it was felt that if Guernsey chose to do nothing in relation to RDR there would be reputational damage and Guernsey would be at a competitive disadvantage as the risk would be that international business in particular may move to a competitor RDR compliant jurisdiction.

**8. Are there any elements of RDR which should / should not be adopted in Guernsey?**

Many of the consumers who responded felt all parts of RDR should be adopted but did not go into the detail of any potential impacts on this. There seemed to be particularly strong views from the consumers in relation to raising educational standards, (reducing fees from IFAs – which is not part of RDR proposals but which gained some comment anyway) and banning commissions.

Industry was slightly more selective in its answering and the approach it suggested in relation to the main proposals under RDR with a minority advocating that all of RDR should be adopted and this view seemed to gravitate more from larger banking groups.

There was also a minority view that a two-tier system should be considered with retail business covered under RDR and professional business not covered.

A summary of the responses to each specific proposal under RDR is as follows:

- a) Almost total agreement on raising the educational standards (and where people commented on the specific level there was a consensus to raise it to FSA level 4).
- b) Slightly less agreement in relation to fees and commissions but the majority did favour some change with more in favour of allowing commissions but requiring them to be transparent through full disclosure while allowing and encouraging the charging of fees.
- c) Little agreement on the classification of advice with most believing that there should not be a classification of advice but if this topic was considered further then different categories of advice to those suggested under UK RDR would be more appropriate for Guernsey. Respondents suggested that having classification of advice were unduly complicated, misleading and unnecessary; very few firms could, in reality, ever genuinely offer whole of market, unrestricted or extensive independent advice.
- d) Some agreement in relation to capital requirements with the consensus being that capital requirements do not necessarily achieve what they intend to (which is to protect consumers) and if this topic was considered further a risk based approach with some requirements for adequate and minimal levels of Professional Indemnity Insurance (PII) (linked to risk and not turnover) seemed to be a better approach.

### **RDR Proposal - Increased Professional Standards for Investment Employees**

#### **9. Do you think it is appropriate for Guernsey to seek to raise the standards of qualification requirements for investment employees?**

See 8 and 8 a) above.

#### **10. If yes, what level should standards be raised to?**

See 8 a) above

#### **11. Do you have any other proposals which Guernsey could adopt which could address this issue?**

There was some comment on this with a minority of industry responses suggesting that there could be a two-tier system whereby industry with retail clients should adhere to minimum educational standards and those with professional clients should not. However, most did not adhere to adopting this distinction.

### **RDR proposal – Remuneration for Investment Advice**

#### **12. Do you consider the RDR proposals to be reasonable in relation to changes regarding remuneration?**

See 8 and 8 b) above

**13. What alternatives would you suggest are more appropriate for Guernsey?**

See 8 and 8 b) above

**RDR proposal – Independent and Restricted Advice**

**14. Do you consider the two categories of advice and suggested ways that they are communicated to be appropriate for use in Guernsey?**

See 8 and 8 c).

**15. If not what classifications could be adopted in Guernsey?**

See 8 c)

**Other RDR proposals**

**16. Do you consider there is a need to require minimum financial requirements in Guernsey?**

See 8 and 8 d)

**17. If yes, what levels would you propose?**

See 8 and 8 d)

**Commerce and Employment Department's response to the industry Consultation on RDR**

The Board of the Commerce and Employment Department are grateful to those who have taken the time to consider the proposals regarding RDR and send in their comments. The introduction of some form of RDR compliant regime in Guernsey was met with support from industry and consumers with most responding that a "lighter" version of RDR, which took the best of UK's RDR, should be introduced locally.

Most respondents felt that this approach would protect and enhance Guernsey's reputation; provide better value service from more professional advisers and a more transparent fee structure – all of which would benefit consumers. If RDR was not implemented it was generally felt that the greater risk is that some international and local business may go to other jurisdictions which have a form of RDR.

The Commerce & Employment Department will request that the GFSC take steps to implement the proposals which should only require rule changes and not primary or secondary legislation. If primary or secondary legislation is required then the Department will take steps to introduce such legislation. It is proposed that the introduction of Guernsey's regime should be effective from 2015.

The main proposals Commerce and Employment are making in light of the consultation are that Guernsey should introduce some changes shown below in order to ensure that Guernsey's financial services sector offers the very best service to consumers of financial products in Guernsey and to protect and enhance Guernsey's reputation as a leading International Financial Centre. The main proposals which the Department requests the GFSC to introduce are proposed to be:

1. Educational requirements: licensed financial services businesses which offer financial advice to retail clients should be broadly equivalent with FSA level 4.
2. Remuneration for providers: both commissions (but requiring full disclosure) and fees will be allowed.
3. Definition of financial advice and capital requirements: It is proposed that some categorisation of advice should be introduced and the actual categories should be a matter for the GSFC to determine in conjunction with industry

### **List of Respondents**

There were a total of 14 respondents. The list of respondents has been not been published because not all respondents indicated if their identity could be disclosed.