

**Industry Seminar – 18 November 2015**

**Fiduciary Supervision Policy and Innovations Division Presentation:  
Productivity, Prosperity & Panorama**

**Gillian Browning, Director  
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Good afternoon and welcome.

Eamonn & I were delighted to be asked to be the closing act again and we hope that you find the next 40 minutes a valuable use of your time.

**Slide: Presentation Overview**

You may have heard from William yesterday that the theme for this years Industry Presentation is Productivity and Prosperity.

Applying this theme to our own presentation we wish to spend some time:

- Under Productivity - sharing with you what the Fiduciary and Innovations division has been doing during the year, including an overview of our Thematic Review.
- Under Prosperity – taking a look at key trends in the sector and how these compare to last year and
- finally under Panorama – a look at what you can expect from us for 2016

The main key message we would like you to take away is that we need to work together; we are reliant on a strong finance sector and the jurisdiction benefits from a robust, credible regulator.

**Slide: Productivity – How?**

Like you we are resource constrained and have invested a considerable amount of time and energy in the past year continuing to build our Fiduciary and Innovations division. We expect all our supervisors to understand your business model, to appreciate how it makes its money, what makes it tick, to really get to the heart of the key risks at a firm; and therefore we need supervisors to be proactive, curious and pragmatic.

We are mindful that there may be interest in understanding the full range of touch points our division has with licensees, as it is unlikely that you will have experienced all of the above in the past 12 months.

PRISM – as a reminder we undertake four main types of visits:

- Full risk assessments (a rolling programme driven by the firms impact rating) – typically a 4 or 5 day visit
- One day engagement visits (again a rolling programme mainly driven by the firms impact rating, but also potentially as a result of a trigger event)
- Thematic visits (this year we spent a day with each firm; they were specifically chosen to reflect a range of ownership models, turnover, PRISM impact ratings and type of assets managed)
- Financial crime visits - led by our colleagues in the Financial Crime division, impact neutral, based on Financial Crime risk and trigger events. On occasion these will be joint visits between the FC and Fids divisions.

We analyse a range of intelligence – whether this be through complaints, whistleblowers or overseas intelligence – for example liaison with other regulators or law enforcement agencies,

Clearly we value the annual fiduciary return, financial statements and other data submissions.

- The online submissions portal has just gone live (and thank you to all those who were involved with its testing). We have built a number of KRI's into the system which will ensure we are efficient and targeted with our resources.

We believe that there is no substitute to meeting and talking to licensees. The culture of a firm can rarely be picked up in a return.

- We have introduced Fiduciary open breakfasts this year – all licensees divided alphabetically into 4 groups, we have held two, with a further one planned before Christmas.
- These are rolling events, based in an informal setting, and provide a great opportunity to share news and views.
- We have also held a joint session with Financial Crime for Personal Fiduciary Licensees – **it has been great to see so many of you come along to these sessions.**

Getting out of the office extends beyond Guernsey, we frequently engage with other regulators, notably the JFSC and I have recently returned from the Group of International Finance Centre Supervisors meeting – where I made the most of the opportunity to engage with regulators from around the world regarding fiduciary trends and challenges.

Our collaboration theme continues with the consultation documents the Commission as a whole has issued this year (for example revision of laws, using technology for CDD purposes and RATs) and our relationship with Industry bodies.

### **Slide: Productivity – External Perspective**

We have a positive relationship with GAT and asked Mark Pattimore, the chairman of GAT, to

say a few words about our interaction from his perspective.

[Video]

Thank you to Mark for highlighting the mutual value gained by of our ongoing dialogue, engagement and constructive working together.

### **Slide: Productivity – NRFSB**

Turning to the Innovation part of the division’s responsibilities.

- At the turn of the year we undertook a survey of all NRFSB firms.
- As a reminder, the non regulated financial services business (NRFSB) Law has been typically used for ‘innovative’ applications, but importantly the key is in the name – Non regulated –registered only – and historically we had no ongoing data or touch points with them.
- This survey gave us for the first time firm foundations, detailed intelligence about the population of firms at a snap point in time.
- Shining a torch on these firms highlighted that there were a number of firms who didn’t still require registration, or decided that they did not want to operate within a regime that asked questions. As a result from the 58 firms who received a questionnaire, 22 de registered. 36 of the original cohort are still registered and a further 6 new firms have been registered this year giving a current total of 42.
- Following analysis and consideration.. We have prioritised four main workstreams:
  - 1) Analysing the risks posed by the currently registered firms, and the appropriateness of the existing legislation for these firms.
  - 2) Explore ‘credit’ legislation. The headline message from the questionnaire was that the vast bulk of firms were undertaking ‘lending’ as an activity.
  - 3) Develop a clear, consistent and transparent process for considering all innovative applications. It is important to highlight that to date all applications received have been able to be fully considered within current legislation – we have therefore focused attention on developing tools and signposting for potential applicants – for example FAQs and the decision tree which is now live on our website following testing by industry.
  - 4) Invest in stakeholder engagement, whether that be coffees with innovative businesses, attendance at Fintech related events or representing the regulator on local and international stages.

You may be aware that in July PWC produced ‘A Strategic Vision for Fintech’ report on behalf of Commerce and Employment. We commend the report to you if you haven't already seen it, it is well worth a read.

Implementation of actions is underway and we have been delighted to be part of this process. In our humble opinion having the regulator at the table when discussing ‘what is possible in Guernsey’ benefits our position as a jurisdiction.

In summary, the Commission remains open and engaged in innovation and committed to ensuring that we continue to strengthen the Bailiwick’s position in respect of innovative business and consumer protection.

### **Slide: Productivity – 2015 Recap**

This slide is from last year’s Industry Presentation – so how did we do?

Risk based supervision has remained at the heart of what we do and is fully supported by the PRISM methodology.

The world of innovations has continued at pace, with notable enthusiasm and media coverage.

We consider online submissions to be way of the future, from January all PQs are now submitted via our online portal (rather than in paper form), and from 30 October online submissions (for example returns and notifications) went live

As Philip Nicol-Gent covered yesterday, the Commission has been working hard to ensure we meet International standards and progress policy development:

- Crucially, the Revision of Laws Report was discussed at the October States Meeting;
- and following the launch of the Trust and Corporate Service Provider standard last year, we have been working with other members of the Group of International Finance Centre supervisors to develop a self-assessment questionnaire.
- As a reminder the TCSP standard is seeking to introduce internationally agreed and applied benchmark for TCSP regulators.
- It seeks to ensure that the **customers of TCSPs should receive a degree of protection** equivalent to that afforded to the customers of other financial institutions AND that **TCSPs should be subject to a similar regulatory regime** as other financial institutions.

It is agreed that in order to be effective, the Standard should be applied internationally.

The Commission undertook a GAP analysis of our compliance with the standard in 2014, and as you would hope from a leading jurisdiction in this space, our gaps were small and are being addressed as part of the Revision of Laws project.

As expected Financial Crime visits continued throughout the year as a significant engagement task across all sectors.

We conducted our thematic on Fiduciary decision making regarding assets under trust & we will

start planning next year's thematic imminently – but more on that later.

The big question is if our predictions for 2016 will be as accurate?

**Slide: The Public Trustee**

Guernsey is a stable and well respected location for Trust companies. We have had a Public Trustee since 2002, but she is rarely called upon because she is trustee of last resort.

From meetings we have had this year it has become apparent that there are some miss conceptions regarding the role of the public trustee and therefore we wanted to spend a moment highlighting what the public trustee is – and importantly is not.

She is somebody who can only be appointed in the following circumstances:

Where the proper law of the trust is Guernsey Law

- Where the minimum number of trustees is not satisfied or no other trustee is lawfully able to act;
- Where the beneficiaries of the trust cannot be identified;
- it is in the interests of the beneficiaries of the trust
- or for the reputation of the Bailiwick.

The Public Trustee cannot accept an appointment where:

- there has been a breakdown in communications between the service provider and his client;
- the service provider and his client cannot agree terms and conditions;
- there has been a failure to settle outstanding debts due to the service provider;
- the trust assets may be considered too small to be economically viable by the service provider;
- a company is in liquidation (voluntary or otherwise) and some or all of the shareholders either cannot be located or do not wish to accept distributions from the liquidators.

The circumstances noted above tend to be the most common misconceptions with regard to the role of the Public Trustee. In these cases the service provider would, if necessary need to consider applying to the Royal Court for directions in order to establish the correct course of action to be followed.

I'll now handover to Eamonn to provide an update on key trends in the Sector together with an overview of the recent thematic review.

### **Slide: Productivity – Fiduciary Staff Employed**

Thank you Gillian and good afternoon ladies and gentlemen & continuing with the theme of productivity

We thought it would be useful to share some key trends and statistics which we receive from a combination of the 2015 Annual Returns and your aggregated financial statements.

This slide shows both the number of people employed in the sector and the black line shows the trend for fiduciary turnover, which is up 4% over the past two years.

So to set the scene – from government statistics there are currently 31,353 people employed in Guernsey.

Of this some 3,469 work in the Fiduciary sector – which at just over 10% of the islands workforce is an impressive number. Resources in the Division are a select 12 which reinforces the need for us to take a Risk Based Approach to our supervisory activity.

### **Slide: Productivity – Turnover and appointments**

This data has been included in the Commissions Annual Report and Financial Statements for the past few years.

The black line highlights the steady growth in turnover but this time over the past decade, while the green and red lines indicate a reduction in the number of directorships and trusteeships held locally for the same period.

This confirms the trends reported by licensees towards fewer, yet more complex/high value appointments.

This slide fully supports our key message from last year's industry presentation – that the Fiduciary sector remains alive and well.

### **Slide: Productivity – Total Fiduciary Licensees**

This slide highlights the moderate growth in terms of total numbers of fiduciary licensees in recent years – however broadly the theme is one of stability. From our perspective consolidation continues, but generally speaking the shape of the population has not changed materially.

You will note a minor decrease in the number of full fiduciary firms owned by Lawyers and accountants, and this is off set by the small growth (approximately 10%) of firms owned by both international financial groups and privately owned overseas businesses.

### **Slide: Productivity – Distribution of assets**

This graph further illustrates the trends from the previous slide in respect of the stability of the assets held by the privately owned local firms, and the not insignificant growth of assets held by both the overseas and international groups. This also supports what we have been hearing anecdotally during our ongoing discussions with licensees.

A note of caution in respect of this slide - we are aware inconsistencies exist in the valuation of property related assets. Some licensees value assets at market rate, others at purchase price and some value a property on equity having deducted related debt.

That said the overall trend is clearly a positive one.

### **Slide: Productivity – Location of new business**

Turning to new sources of business. This slide relates to the number of new client relationships generated in the past year – and is taken from the Annual Return.

No discernable change in the trend regarding sources of new business when compared with 2014's data.

We would highlight that our guidance note for this section of the Annual Return encourages a best estimate, common-sense approach. We recognise that Global wealth poses challenges to the completion of multiple choice returns.

Finally business from China, Russia and the Middle East we continue to hear as a focus for new business development attention & particularly in respect of new wealth generated in the Asian market.

### **Slide: Prosperity – Thematic**

Turning to the Recent Thematic Review entitled “Fiduciary decision making in respect of assets under trust”

So what was our rationale behind choosing this specific topic?:

Well firstly it forms a key part of the trustees' roles and responsibilities.

And secondly it is an area where we are notified of a number of complaints.

The thematic review enables us to gauge how well decision making is executed, and documented, by local firms and assists us in trying to establish both good practice in the area and to further understand real challenges faced by the industry.

The Questionnaire, which was sent to all 155 full fiduciary licensees, focussed on fiduciary decision making during a portfolio lifecycle, including setting the initial portfolio strategy and periodic performance reviews thereafter.

It specifically didn't focus solely on investment portfolios; but rather looked at a range of trust assets and how they are managed, which also included property and lifestyle assets.

It was certainly a challenge to produce a questionnaire which could be sent to the huge variety and diversity of firms which make up the local fiduciary sector.

Having issued the questionnaire we subsequently conducted one day onsite visits to 8 licensees - who were chosen to provide a cross section of the sector as the firms selected represented differing: PRISM Impact Ratings/firm sizes/ Type of assets under trust and with differing ownership structures. And a thank you to all those firms which we visited.

As mentioned the aim of a thematic is to share good practice across the sector and to identify areas for improvement – so lets take a look.

**Slide: Prosperity – Thematic (continued)**

So areas of good practice which we saw

A number of firms have a clear, well designed investment review process which is entirely appropriate for the assets they hold under trusteeship.

Where a third party's investment review information is used, it is important that the trustee can adequately challenge the information and subsequently implements such information in a way which is beneficial for the objectives of the trust.

Areas for improvement include the following:

In some cases, fees and retrocessions are not clearly communicated to the beneficiary. It is becoming less common for a trustee to accept retrocessions, however in instances where they are accepted, it is important that the trustee is fully transparent and specific in communicating this. Equally, it is important that fee notes are clear and that there is an agreement between both the trustee and the related parties regarding frequency and nature of fee reporting. Such proactivity mitigates the risk of any future fee disputes. It is also important to make the point that the trust deed must permit trustees to receive retrocessions otherwise they may be acting in breach of trust.

Our site visits highlighted that some trustees' minutes do not provide enough detail, especially in relation to the rationale behind decisions. Having clear, unequivocal minutes, ensures that a trustee can refer to such records in explaining why a certain decision was made and what was considered as part of the decision making process. This level of detail can also reduce litigation risk into the future.

In order to review performance, the trust must have measurable objectives on which to base decisions. We frequently saw well developed objectives for investment portfolios, however it was less common for other asset classes, for example in relation to property.

To reiterate the point made yesterday by Simon Gaudion, our Director of Enforcement, if the investment process does not look and feel right, to you as fiduciary professionals, then you have a responsibility to challenge and question it.

We are still analysing our findings from the thematic and aim to issue the final report later this year.

Now I'll hand back to Gillian but please know you haven't see the last of me today – so brace yourselves!

**Slide: Prosperity – Role play**

Hand over to Gillian.



Throughout the year, Eamonn and I have been asked for case studies reflecting what we see onsite. We have pre-recorded a fictitious role play which includes real examples.

As you listen you may want to take note of the key messages; there will be an opportunity for recap afterwards.

### **Slide: Prosperity – Summary of themes**

Why do these themes matter?

We have raised them because they are live issues at licensees that we have discussed in Board rooms across the Island this year and they apply to all firms.

Hopefully this clip illustrated alignment of objectives between the regulator and industry. Neither of us would want disempowered local boards or undue risks being run and not mitigated.

If you haven't had a visit from us yet, this gives you an insight into typical dialogue – which, linking back to my opening remarks on the team, is only effective if your supervisors understand your business model and can provide constructive challenge.

### **Slide: Prosperity – RMP actions since go live**

This is a summary of all Risk Mitigation Programmes (RMPs) actions the Commission has issued since the inception of PRISM

As a reminder, following identification of a risk, usually from an onsite visit, an RMP action or actions may be issued. It is important to note, as I'm scene setting, that not all visits result in RMPs.

This slide relates to the entire finance sector and not purely fiduciary – you will note the most common actions are in the areas of :

- FC
- Governance
- Operational
- Conduct and
- Strategy/ business model risk

This also represents a fair reflection of risks in the fiduciary sector....and drilling down RMP's for the Fiduciary sector from this year have included:

- Limited Board Challenge
- Historic Outdated Policies and Procedures – often “off the shelf” rather than specifically written for the business
- Group Strategy driven outside the Bailiwick
- Lack of oversight on outsourced relationships
- Inadequate Insurance cover
- Inappropriate Investment Decisions
- Missing KYC/CDD

### **Slide: Panorama – Potential Thematic Reviews**

As you may be aware a key part of PRISM is an annual thematic review per sector.

Last year we highlighted a number of potential topics. The two completed thematic are now shaded gray – leaving you with 6 potential themes for next year.

A note of caution – not all thematic's will follow the same process. This year we sent a questionnaire to all full fiduciaries, and visited 8 firms – next years may look and feel different – but they always improve our understanding of risks in a certain area and facility identification and understanding of emerging risks.

### **Slide: Panorama – 2016 expectations**

Finally, what can you expect for next year?

Our primary objective remains the same, to execute high quality risk based prudential, financial crime and conduct regulation which we do through PRISM – for example Thematic, FRA, Engagement visits – therefore you can effectively expect more of the same.

Continuing with the evolution theme, you will have all observed the introduction of electronic PQs at the start of this year, and the recent launch of online submissions, which represents a significant investment for the Commission and something which will become a key part of our interaction with you in the months ahead. We are looking forward to making the most of the automated KRIs which we have developed over the past year.

As highlight earlier we will continue to advance our 4 pronged strategy for Innovation, this will include implementation of PwC report recommendations, analysing the risks posed by the current population, developing appropriate future looking legislation, developing a healthy infrastructure for potential applicants and Continued stakeholder engagement. Ultimately we are focused on capitalising on the Bailiwicks strength, including the short commute for a conversation with prospective applicants.

You may be aware that we have created a centralised authorisations function, represented by John Dunford (on your left), Deputy Director Authorisations. He & his team are responsible for all new licence applications, although clearly still liaise closely with the regulatory divisions. The key responsibility of the Authorisations team is to ensure that they act as a robust gatekeeper—in our experience it is far more effective & cost efficient to keep a questionable firm out than to approve & then later embark on costly enforcement action. We have already declined a full fiduciary application this year, & will maintain the same high standards next year.

Whilst on the subject of applications I have a plea to you - on behalf of our colleagues in John's team - to allow the Commission realistic timescales for turning your approaches around. For example Discretionary Exemptions have a 14 day turnaround timeline but we are frequently being pushed for a shorter period which is difficult, sometimes because we are waiting for information from outside of the Bailiwick.

We will continue to progress our Revision of Laws, including next year drafting and implementation secondary legislation.

In order to ensure GSY is regarded as a credible contributor to international regulatory policy, in the TCSP space, we have been leading the way with the TCSP Standard. As mentioned earlier we are currently moving towards initial jurisdiction assessment, and hope to expand this to peer evaluation over time.

Now, Eamonn and I have stood here today, but it is important to credit and thank the team that supports us; notable thanks to Jeremy, Annie and Sarah for their starring roles. Without them the progress we have outlined would not be possible.

So to conclude, I repeat the key message we would like you to take away from today: we need to work together - we are reliant on a strong finance sector and consider that the jurisdiction benefits from a robust and credible regulator.