Guernsey Financial Services Commission

Feedback on the Commission's Consultation Paper on 2022 Fees

Issued 12th November 2021

Contents

Background

On the 16th July 2021 the Commission published a consultation paper on its 2022 fees, issued under:

- The Protection of Investors (Bailiwick of Guernsey) Law, 2020;
- The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020;
- The Banking Supervision (Bailiwick of Guernsey) Law, 2020;
- The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020;
- The Limited Liability Partnerships (Guernsey) Law, 2013;
- The Companies (Guernsey) Law, 2008;
- The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008;
- The Insurance Business (Bailiwick of Guernsey) Law, 2002;
- The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002;
- The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 as amended; and
- The Limited Partnership (Guernsey) Law, 1995.

The Consultation period ran for 8 weeks until 10th September 2021.

There was a higher level of response to this fee consultation, which saw 24 responses, compared to our standard consultations. This included licensees from all sectors and three industry bodies.

The 2022 fee consultation focused on four main proposals:

- An overall fee increase of 10.1% for all sectors;
- A restructuring of fees for the investment sector;
- Changes to fees arising from the update to relevant sector laws following the Revision of Laws project; and
- Creating a cap for pension scheme fees.

The original fees consultation document can be found on our Consultation Hub.

Consultation Hub – 2022 Fees Consultation

Overall Increase in Fees

What was the general message in the feedback?

All respondents provided views on the question "*Do you have any comments on the overall fee increase?*", however there were less frequent comments on the other questions within the fee consultation as these were not relevant to all licensees.

From the 24 responses we saw a wide range of views with seven respondents saying that due to the past actions of the Commission and the current market they understood and accepted the fee increase and felt it was required to protect our industry and maintain our global reputation. Indeed, one respondent suggested that the Commission should increase fees by more than 10.1%. These seven respondents came from across all sectors and included one major bank, investment firm and fiduciary.

The remaining two-thirds stated that they felt a fee increase, especially of this size, at this time was inappropriate for several reasons including the increase in costs in other areas of their business, the Commission's existing reserves and the fact that the Commission has been clear that its investments in technology have brought efficiencies to its regulatory process.

What is the Commission going to do next?

The Commission's view is that regulation should not be subservient to increases in other costs such as audit and insurance, and that not having adequate resources to carry out its statutory duties to a reasonable standard would threaten the viability of the Bailiwick as an International Finance Centre.

The investment in the Commission's technology, leading to efficiencies in supervision and other processes, has simply enabled it to hold steady against international regulatory expectations but with the forthcoming review by MoneyVal, against FATF standards, we need to demonstrate materially increased on-the-ground supervision, and this can only be achieved with additional staff. Part of the fee increase is also focused on continuing to improve our systems and processes with an aim to ensure the data the Commission holds is utilised effectively.

There were several comments on the level of reserves which are held by the Commission currently. As the Commission follows Financial Reporting Standard 102 for its accounts these reserves do not simply represent cash but include assets which are gradually being depreciated by the Commission over time. Therefore, a significant proportion of these reserves represent the investment the Commission has already made into its technology and assets and therefore do not represent funds which the Commission can utilise to pay staff or make further investments.

Furthermore, as the Commission has stated in its annual reports for many years, the vast bulk of the Commission's reserves are not available for use in everyday circumstances, any more than a bank or insurer's regulatory capital is available for deployment in everyday circumstances. Our core reserves are designed to help us deal with unexpected costs and to keep us going for a reasonable period if something unexpected disables a portion of the Bailiwick's economy. They are also necessary so it is clear to international observers that we are able to fulfil our statutory duties without fear, favour or improper influence impacting the course of action the Commission deems appropriate when dealing with malfeasance in our large financial services sector. If our core reserves were significantly reduced, we would need to consider another fee increase in future years; an approach we note the Jersey Financial Services Commission has taken this year when considering how much it needs to increase its fees [1].

The Commission recognises the issues highlighted by industry, but it has been operating with below inflation and below costs increases, for the last eight years. Without a material increase in fees we will be unable to continue to effectively authorise new entities, supervise current ones, improve our systems, or prepare for forthcoming international assessments such as MoneyVal. On this basis, the Commission intends to proceed with a material fee increase.

To offset this, however, and considering industry feedback the Commission will implement a lower overall fee increase than originally proposed in the consultation paper. Given the significantly higher than expected level of authorisations so far this year, the Commission's forecast income for 2021 means that a lower fee increase is required for the Commission to reach a balanced budget position by 2024.

We appreciate that putting up fees is never going to be popular but hope that fee payers will appreciate that we have listened to feedback and, on the basis of sharing the proceeds of the growth which we are all seeing in the financial services sector, reduced our proposed fee increase for 2022. Considering our history of strong fee control we note, that even with this reduced fee increase, our overall fees will have increased by less than compound inflation over the last eight years.

The Commission, with the formal agreement of the Policy and Resources Committee, therefore intends to implement an overall fee increase of 7.6%. This will come into force on 1st January 2022. All fees that will come into effect are detailed in Appendix 1.

Specific feedback

Please find below comments and responses in relation to some of the specific feedback that we received.

1. Peer comparison

   Some respondents commented on the proposed fee increase, suggesting that the Commission should undertake a granular-level analysis of fees charged for various products directly against comparator jurisdictions.

   A. The Commission acknowledges this suggestion, and within the consultation document noted fee changes in other jurisdictions, however a direct comparison of the fees outlined in the consultation paper is not possible due to the different legal structures in place within each jurisdiction.

[1] Consultation Paper No. 3 2021 – Consultation on proposal to change the fee rates for the funds sector.

2. Future increases

Several respondents indicated that a material fee increase, higher than inflation, would be less painful to bear if licensees could be certain that future increases would be closer to inflation.

A. The Commission acknowledges this point and aims, in the future, to have a steady and stable approach over the long-term to any fee increases. Our largest expenditure is our staff costs however, and we need to pay salaries that reflect the skill and knowledge we are looking to recruit and retain. Given this, it is likely that our fee increases going forwards will be strongly influenced by both the retail price index and industry wage inflation within the Bailiwick, though we note that regulatory inflation often runs higher than both of these measures.

3. Not for Profit and Charitable Organisations

One respondent referenced the charging of fees to Not for Profit and Charitable Organisations.

A. The Commission considers this to be a misunderstanding, given that the proposed fee increases are not applicable to these entities, rather only to those regulated fiduciary licensees that provide services to them.

4. Lower fees for specific industry sectors

Several respondents asked us to lower fees for one part of an industry sector to help make the Bailiwick more competitive internationally.

A. Our fees are required to keep the regulator operating and a reduction in one sector means subsidy from others. If one part of industry believes it requires a subsidy in order to grow, we think that is a decision for elected Deputies, who have the mandate to decide whether an economic activity is worth a subsidy because of the broader economic or societal benefits which may occur.

5. Land for afforestation

A few respondents noted the Commission's recent investment in land, to be afforested, to offset the impact our activities are thought to have on the climate. They questioned this investment considering our request for fee increases.

A. We thoroughly considered this before agreeing the purchase of the land in 2019. Our view was that it was much better for us to have an appreciating asset on our balance sheet which would offset our carbon emissions for the foreseeable future rather than paying for carbon offsetting each year. We believe that becoming carbon neutral is necessary for all organisations which wish to remain internationally reputable. We have chosen a way which we believe provides the best financial position for the Commission and reflects an immaterial amount of Commission funds. We are currently cultivating our land and look forward to planting it in 2022 with a view to reaching carbon neutrality over the next few years.

Investment Sector Fee Restructuring

What was the general message in the feedback?

In response to the question "*Do you have any comments on the proposed restructuring of our investment sector fees?*", there were eight responses of which three were supportive.

There was a view that the ratio of costs for smaller firms versus the largest was unfair in terms of overall income and that an alternative income figure, one that the Commission doesn't yet collect, should be used to calculate the fee banding.

What is the Commission going to do next?

Both issues were ones that the Commission sought to address through the consultation paper, and we believe that we have made a start in addressing the ratio imbalance by materially increasing the costs on the largest firms, a change from the current position where they pay the same fee as any small firm, and we will continue to monitor this ratio imbalance.

We understand that total income is not the perfect measure for the fee calculation, but it is a figure that is audited and already submitted to the Commission. The Commission will continue to listen to any well-informed representations from industry on what is the right figure to collect for fee bandings over the next year but note that this fee banding covers a wide range of business models meaning there will be strengths and weaknesses to any measure which is used. For reliability and fairness, we will aim for any measure used to be audited and reported to the Commission on a regular basis.

On this basis, the Commission intends to restructure the fee bandings for the investment sector, as outlined in the consultation paper. This will come into force on 1st January 2022.

Specific feedback

Please find below comments and responses in relation to some of the specific feedback that we received.

1. <u>Entities with more than one licence</u>

   Some respondents commented on the proposed fee bandings, suggesting that the Commission should consider entities which hold more than one licence as part of the restructuring.

   A. Licenced banks that are captured by investment sector fees because they have authorised financial advisors currently pay a flat fee. We acknowledged within the consultation that, as we were using total annual income, it would be disproportionate to utilise the proposed bandings given that they are doing limited POI activities. Nevertheless, for other dual authorised entities, where they are a designated person or broker, they are carrying out significant POI activities and therefore it is appropriate that the banding applies. The level of fee charged represents less than 0.2% of total annual income for the largest entities.

Revision of Laws

What was the general message in the feedback?

In response to the question "*Do you have any comments on the proposed amendment to fees from the update to our regulatory laws?*", there were four responses. All of these were purely asking for clarification on which circumstances fees would be charged or understanding if the change to fiduciary licensees would mean increasing fees, which it doesn't.

What is the Commission going to do next?

The Commission intends to go ahead with fee amendments as proposed in the consultation paper. These will come into effect on 1st January 2022, with the updated laws having come into force on 1st November 2021.

Specific feedback

Please find below comments and responses in relation to some of the specific feedback that we received.

1. Change of Controller

   One respondent sought clarification as to whether the Change of Controller fee would be payable for each review, irrespective of the number of sectors an entity was licensed in.

   A. With any change of control, a fee would be payable for each new Controller involved irrespective of the number of entities or laws the entity was licensed under. This reflects the resources the Commission uses to assess any new Controller of a regulated entity in the Bailiwick.

2. De-PIFing a manager or a fund

   One respondent queried an additional fee for a Fund Manager to de-PIF a fund when there was an application fee associated with the de-PIFing and de-QIFing process.

   A. The Commission seeks to clarify this point, there is no application fee charged when a Fund Manager looks to either de-PIF or de-QIF a fund.

3. Notification of activity in respect of Ancillary Vehicles

   One respondent questioned the need to charge a minimal fee relating to the notification to the Commission of activity in respect of Ancillary Vehicles.

   A. The Commission is currently reviewing the responses to its separate consultation on Ancillary Vehicles and formulating the final policy in this area. On this basis, the Commission is not proposing to impose any charge relating to Ancillary Vehicles for 2022.

4. Primary and Secondary Licences

One respondent enquired as to whether the introduction of primary and secondary licence categories, replacing the ‘lead’ and ‘joint’ licence descriptions respectively, would result in increased fees being charged.

A. The Commission seeks to clarify this point, there will be no additional fees from the changes brought about by the new primary and secondary licence categories.

Pension Scheme Fees

What was the general message in the feedback?

In response to the question "*Do you have any comments on the proposal to create a cap for pension scheme members fees?*", there were five responses, all of which were supportive of the introduction of the cap but four of which believed the cap, at 7,500 members, was too high. No one, however, thought that the base fee for pensions providers should be increased further and one response suggested that any decrease in fees should be absorbed by the Commission from the increasing numbers of members in pension schemes.

What is the Commission going to do next?

On introducing the cap, the Commission balanced the level to ensure that we did not, overall, reduce nor increase our fees for the sector. The increase in members in pension schemes is partially driven by the fact that this sector is now regulated but this comes at a cost which we believe should not be subsidised by the other financial services sectors, as would be the case if the Commission absorbed the cost.

The Commission intends to go ahead with the proposal to place an upper cap on the level of fees charged per member in a pension scheme to 7,500 members. We will be happy to listen to any further representations on the matter but must, again, make the point that regulation is not a free good. We do not believe it would be right for us to agree to consciously subsidise one sector using money from another. This cap will come into effect on 1st January 2022.

Specific feedback

Given the highly homogenous nature of the industry responses, which have been addressed above, there was very little specific feedback that could be addressed other than to reiterate the points previously stated.

Future considerations

What was the general message in the feedback?

In response to the question "*Do you have any comments on these fee areas which you feel should be part of our future considerations of fees?*", there were nine responses with most expressing an interest in understanding how future increases in fees would be treated by the Commission.

What is the Commission going to do next?

As outlined in the 'Overall Increase in Fees' section of this paper, in future, the Commission will aim to have a steady and stable approach over the long-term to any increase in fees.

Several respondents supported the notion of a 'fast track' fee, outside of the ones already in place, for the processing of applications that are considered by the Commission in a shorter timeframe than would normally be the case. We will continue to monitor the position in this regard.

Outside of the specific responses detailed above we have noted all the responses received from this consultation and will take them into account when considering future fee consultations.

Appendix I

Regulatory Fee – Banking Sector

	Current fee for 2021	Proposed fee for 2022
Application fees:		
Bank application	£37,680	£40,545
Amalgamation and Migration fee	£2,267	£2,440
Change of Controller fee	N/A	£2,195
Annual licence fees:		
Assets band:		
Total assets below £500 million	£37,680	£40,545
Total assets of £500 million or more but below £1,000 million:		
2021 - total assets multiplied by 0.000057171 with a minimum of £37,680	variable price	
2022 - total assets multiplied by 0.000061516 with a minimum of £40,545		variable price
Total assets of £1,000 million and above	£57,171	£61,515
Premiums added to all annual licence fees, where applicable:		
Premium on annual licence fee for a Guernsey subsidiary bank	25%	25%
Subject to a maximum	£14,289	£15,379
and		
Premium for a retail subsidiary bank or retail branch bank (retail branch bank only)	50%	50%
Subject to a maximum	£28,583	£30,758
and		
Premium for an additional trading name for a bank	50%	50%
effectively operating two separate businesses under one licence subject to a maximum	£28,583	£30,758
and		
Branches outside the Bailiwick	£14,289	£15,379

Regulatory Fee – Insurance Sector

Note: All references below to 'category' are as defined in the Insurance Business (Solvency) Rules 2015	**Current fee for 2021**	**Proposed fee for 2022**
Application fees:		
Insurance Manager	£5,315	£5,720
Insurance Manager – Lloyd's	£2,923	£3,145
Insurer / Reinsurer – category 1, 2, 5, 6	£5,714	£6,150
Commercial Insurer/Reinsurer (including business in PCC core / ICC) – category 3, 4	£8,570	£9,220
PCC/ICC – no business written (category 3,4) or category 1, 2, 5, 6	£5,714	£6,150
Cell of PCC/ICC – category 1, 2, 5, 6 (non SPI)	£1,868	£2,010
Cell of PCC – commercial insurance/reinsurance – category 3, 4	£2,803	£3,015
Cell of ICC – commercial insurance/reinsurance – category 3, 4	£2,803	£3,015
Cell of PCC/ICC – category 6 SPI – new controller of SPI cell or SPI cell transaction	£859	£925
Domestic Insurer; Mutual, Friendly or Provident Society	£3,218	£3,465
Intermediary (base fee)	£5,379	£5,790
(addition of Intermediary licence categories)	£191 to £1,834	£205 to £1,975
Change of Controller fee (Insurance Manager, Intermediary, Insurer / Reinsurer, PCC, ICC, or IC)	£2,042	£2,195
Amalgamation and Migration Out fee	£2,267	£2,440
Application for an extension of a licence (Insurance Managers and Insurers / Reinsurers)	N/A	£1,245
Application for a direction as to whether they are acting as an Insurance Manager or Intermediary	N/A	£1,245

Annual fees:

Insurance Managers – pure	£5,047	£5,430
Insurance Managers – commercial	£8,446	£9,090
Insurance Manager – Lloyd's	£2,923	£3,145
Life Insurer (including PCC / ICC) – category 1, 2	£5,714 to £85,810	£6,150 to £92,330
Commercial Insurer/Reinsurer (including non-retail business in PCC core/ ICC) – category 3, 4	£8,570	£9,220
Insurer/Reinsurer – category 5, 6	£5,714	£6,150
PCC/ICC – no business written (category 3, 4) or category 5, 6	£5,714	£6,150
Cell of PCC/ ICC – category 1, 2, 5, 6 (non SPI)	£1,868	£2,010
Cell of PCC – commercial insurance/reinsurance – category 3, 4	£2,803	£3,015
Cell of ICC – commercial insurance/reinsurance – category 3, 4	£2,803	£3,015
Cell of PCC/ICC – category 6 (SPI) – cell transaction / continuation	£859	£925
Life policy cell	£112	£120
Transformer cell	£859	£925
Dormant cell	£149	£160
Domestic Insurer (turnover ≤ £12,000)	£477	£515
Domestic Insurer (turnover > £12,000)	£3,218 to £16,411	£3,465 to £17,660
Mutual, Provident or Friendly Society – Non-commercial	£477	£515
Mutual, Provident or Friendly Society – Commercial[3]	£3,218	£3,465
Intermediary (base fee)	£2,596	£2,795
Intermediary (licence type)	£191 to £1,834	£205 to £1,975
Intermediary (turnover level)	£1,834 to £7,372	£1,975 to £7,930
Member of association for travel insurance	£1,472	£1,585

Other fees:

Conversion / transfer / subsumption of regulated entities under Part V of The Companies (Guernsey) Law, 2008	£1,078	£1,160
Application for consent to a scheme for the transfer of long-term business	£5,363	£5,770

Regulatory Fee – Fiduciary Sector

	Current fee for 2021	Proposed fee for 2022
Application fees:		
Personal fiduciary licence	£1,040	£1,120
Primary fiduciary licence	£2,371	£2,550
Secondary fiduciary licence	£576	£620
Personal discretionary exemption	£488	£525
Company/partnership discretionary exemption	£1,093	£1,175
Consent to use a name	£1,856	£1,995
Change of Controller fee	N/A	£2,195
Amalgamation and migration fee	£2,267	£2,440
Notification of ancillary vehicles	N/A	£600

Annual licence fees:		
Personal Fiduciary licence	£1,079	£1,160
Primary licence and, where applicable, related Secondary Fiduciary licences Turnover band (annual):		
Under £250,000	£5,258	£5,660
£250,000 to £499,999	£10,516	£11,315
£500,000 to £999,999	£15,774	£16,975
£1,000,000 to £1,999,999	£21,033	£22,630
£2,000,000 to £3,999,999	£26,291	£28,290
£4,000,000 to £7,999,999	£31,549	£33,945
£8,000,000 to £15,999,999	£42,065	£45,260
£16,000,000 and above	£52,582	£56,580

Pension regulation annual fees		
(licensees engaged in pension business)		
Fixed fee	£408	£515
Fee per scheme member	£1	£1
Subject to a £7,500 cap per scheme		

Regulatory Fee – Investment Sector

	Current fee for 2021	Proposed fee for 2022
Application fees:		
Open-ended collective investment schemes:		
Authorised Schemes	£3,507	£3,500
Authorised Schemes (Fast Track additional £500)*	£4,007	£4,000
Registered Schemes (Fast Track additional £500)*	£4,007	£4,000
New classes of existing schemes*	£736	£790
"De-QIFing" (QIF = Qualified Investor Fund)	£2,629	£2,830
"De-PIFing" (PIF – Private Investment Fund)	N/A	£2,830
Non-Guernsey schemes	£1,131	N/A
Designated Territories scheme notification (EX) (Jersey schemes remain at nil)	£1,131	£1,215
Closed-ended collective investment schemes:		
Authorised Schemes	£3,507	£3,500
Authorised Schemes (Fast Track additional £500)*	£4,007	£4,000
Registered Schemes (Fast Track additional £500)*	£4,007	£4,000
Licensees	£2,371	£2,550
Amalgamation and migration fee	£2,267	£2,440
Change of Controller fee	£2,042	£2,195
Application for an extension of a licence	N/A	£1,245
Consent for removal from the register	£2,114	£2,275
Annual fees:		
Open-ended collective investment schemes:		
Schemes*	£3,507	£3,500
Additional classes*	£226	£245
Non-Guernsey schemes	£565	N/A
Designated Territories scheme (EX)	£565	£610
Closed-ended collective investment schemes*	£3,507	£3,500

Licensees:		
Designated Persons;	£3,392	see below
Brokers; and	£3,392	see below
Licensees with an authorised financial advisor[2]	£3,392	see below
Turnover band (annual):		
Under £1,500,000	N/A	£3,650
£1,500,000 to £2,999,999	N/A	£5,750
£3,000,000 to £5,999,999	N/A	£7,750
£6,000,000 to £11,999,999	N/A	£10,000
£12,000,000 and above	N/A	£12,500
Manager of overseas collective investment scheme	£3,392	£3,650
Principal Managers of open-ended schemes	£1,696	£1,825
Managers of closed-ended schemes	£1,696	£1,825
Investment exchanges	£66,508	£71,565
Insurance intermediary with POI licence[3]	£1,133	£1,220
Other Licensees	£3,392	£3,650

* Including Private Investment Funds (PIFs) registered under the POI Law

[2] Excluding bank licensees
[3] Single Premium (POI element): Fee payable where licensed under the POI Law for either or both of the restricted activities of promotion and advising, and no other restricted activities in respect of "Category 1: Collective Investment Schemes."

Fee – Non-Regulated Financial Services Businesses

	Current fee for 2021	Proposed fee for 2022
Application fee	£4,023	£4,330
Annual fee	£1,315	£1,415

Fee – Prescribed Businesses

The registration fee and, following this, the annual fee for Prescribed Businesses is detailed below:

Number of full time or full time equivalent staff	Current fee for 2021	Proposed fee for 2022
1-5	£669	£720
6	£771	£831
7	£873	£941
8	£975	£1,051
9	£1,077	£1,161
10	£1,179	£1,271
11	£1,281	£1,381
12	£1,383	£1,491
13	£1,485	£1,601
14	£1,587	£1,711
15	£1,689	£1,821
16	£1,791	£1,931
17	£1,893	£2,041
18	£1,995	£2,151
19	£2,097	£2,261
20	£2,199	£2,371
21	£2,301	£2,481
22	£2,403	£2,591
23	£2,505	£2,701
24	£2,607	£2,811
25 or more	£2,709	£2,915