

Report of the independent review of authorisations at the Jersey Financial Services Commission

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1 Executive summary

- 1.1** Authorisations plays a vital, yet often underappreciated role in the regulatory cycle because its primary focus is as a preventative tool aimed at protecting consumers and proactively preventing harm to consumers and markets. It acts as the gateway for both businesses and individuals to operate within Jersey's financial services industry. Central to authorisations is determining whether applicants meet required standards and can continue to do so for as long as they are authorised.
- 1.2** The Jersey Financial Services Commission's ("the JFSC") current authorisation assessment process has evolved over a period of time. It is not as clearly defined as it should be, and places heavy reliance on staff to use their professional judgement in determining a case. An important element of this judgement, and a theme running through all the cases reviewed is the appropriate degree of scrutiny when assessing each application in the context of the relatively high level, principles-driven articulation of regulatory requirements. This is consistent with the Licensing Policy's aim that every application is considered on its own merits.
- 1.3** Whilst many good practices were observed during the independent case reviews, the approach described above leads to two important consequences. Firstly, it is the nature of such decision-making that different decision-makers may apply principles which achieve different results in similar cases, and can lead to complaints of inconsistency. Secondly, it becomes difficult to demonstrate efficient and effective allocation of resource. A defined risk-based framework for considering applications is a necessary pre-requisite to enhancing consistency of case decisions and evidencing how resources are deployed efficiently and effectively. Therefore, the creation of a more clearly articulated top down risk-based framework and associated interpretative guidance for staff form the cornerstone recommendations of this independent review. Many of the other recommendations in this report naturally flow from, or form part of implementing a more defined risk-based approach.

2 Background, scope, and approach

2.1 The current approach to authorisations has been in place for a number of years without any substantive level of review. Therefore, as part of the JFSC's four year strategic roadmap, consideration needed to be given to the effectiveness of the regime in ensuring a robust perimeter whereby those businesses and individuals seeking authorisation meet the standards expected of them on joining the regulated community, whilst not inhibiting competition or innovation in the market.

2.2 This review is set within a wider context of:

- The authorisation of an applicant in 2015, where the entity authorised subsequently failed in 2016 ("the 2015 Case").
- Ongoing developments to the JFSC's Supervisory approach including the new risk model.
- The receipt of increasingly innovative applications for authorisation in terms of business models, products, and technology.
- The potential widening of the JFSC's future remit to include, for example, consumer lending, pensions, and family offices.

2.3 The JFSC determined the core purpose of the independent review to be identifying key lessons to be learned from a variety of authorisation cases to inform and enhance the JFSC's approach to authorisations for the future. Importantly, the scope was **not** intended to reach any conclusions as to whether an authorisation decision was 'correct' with the benefit of hindsight, nor was it an exercise in attaching individual responsibility or accountability for any apparent mistakes or misjudgments in individual cases. Rather it was aimed at gathering an informed view of how the authorisation process works in practice and how it could be enhanced whilst maintaining Jersey's competitive position as a leading international financial centre.

2.4 The JFSC asked for the 2015 Case to be included in the independent review. A further ten applications from businesses across a wide variety of sectors including Banking, Insurance, Fund Services Business, Trust Company Business, Investment Business, General Insurance Mediation, and Schedule 2² were chosen by the independent reviewer. Of these ten, half were selected after consultation with the Central Authorisations Unit of the JFSC ("the CAU") and the management of the Supervision Division of the JFSC ("Supervision") because they had either given rise to unusual issues during the authorisation assessment or had become the subject of increased scrutiny by supervisors' subsequently. The remaining five cases were selected entirely independently by the reviewer from a full list of applications assessed during the period January 2018 to end-June 2020³.

2.5 The methodology involved reviewing the relevant authorisation case files and interviewing a number of existing staff with a view to:

- Identifying areas of relative strength and weakness within the existing authorisation process;
- Identifying how the authorisations process might need to adapt to keep pace with internal developments in the supervisory approach as well as external innovation within industry;
- Understanding the legislative requirements and interpretative guidance available (external and internal); and
- Understanding how the wider internal context (e.g. current organisational structure, culture) impacts the delivery of high quality authorisation decisions.

2.6 In addition to preparing this report, the independent reviewer has engaged directly with the CAU and Supervision to provide advice on next steps to implement the recommendations contained in this report.

¹ Many of the details of the authorisation process for this case were related in evidence before the Jersey Royal Court in a case against an individual involved centrally in the management of that regulated entity, who was convicted of fraud. The relevant Royal Court reference is [https://www.jerseylaw.je/judgments/unreported/Pages/\[2018\]JRC221.aspx](https://www.jerseylaw.je/judgments/unreported/Pages/[2018]JRC221.aspx). While practices have changed since 2015, this report focuses on the procedural and risk management practices reflected in that example to ensure that all useful lessons for future practices are learnt.

² Schedule 2 applicants are those that require separate authorisation under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 1998, these are Designated Non Financial Businesses and Professions (DNFBP).

³ The period since January 2018 was selected as it was the point at which authorisations case work was brought together into one team – the CAU, and provided a reasonable time period over which to judge the effectiveness of the current authorisations process.

3 The JFSC's regulatory approach

3.1 The JFSC's aim is to deliver balanced, progressive, risk-based financial regulation, built on insight, integrity and expertise. It does so by adhering to the guiding principles of:

- a) Reducing risk to the public of financial loss due to dishonesty, incompetence, malpractice or the financial unsoundness of financial service providers;
- b) Protecting and enhancing the reputation and integrity of Jersey in commercial and financial matters;
- c) Safeguarding the best economic interests of Jersey; and
- d) Countering financial crime both in Jersey and elsewhere.

3.2 The JFSC's statutory responsibilities are set out in the Financial Services Commission (Jersey) Law 1998 (the "JFSC Law") and include authorising, supervising, overseeing and developing financial services in Jersey, administering the JFSC Law and related statutory instruments, and operating the Companies Registry.

3.3 The Board of Commissioners have previously agreed in 2016 that the JFSC should not aim to regulate a zero-failure regime, rather resources should be balanced according to a risk-based approach. The implications of this regulatory approach to Authorisations specifically is that, on the one hand, the authorisation process should constitute a substantial protection against badly designed or managed entities achieving regulated status. On the other hand, there will be occasions where newly authorised entities choose to engage in inappropriate business despite having been through proportionate checks applied at the gateway. This is, in the opinion of the independent reviewer, reasonable and consistent with the non-zero failure approach adopted in most other jurisdictions. As such, this report focuses on the key features of good authorisation practices to achieve proportionate, risk-based outcomes in an efficient and effective manner.

4 The JFSC's existing approach to authorisation

4.1 Poor decisions at the point of authorisation can, on the one hand, enable unsuitable applicants to do business thus harming consumers and ultimately undermining confidence in Jersey's wider financial services industry. On the other, poor decisions in terms of unjustified refusals can stifle competition and innovation by preventing entry to the financial services market, potentially making Jersey a less attractive place to do business. Avoiding both of these scenarios whilst appropriately managing the risks is the fundamental balancing act facing all financial services regulators across the world; it is not a challenge unique to Jersey.

4.2 Authorisation requirements are laid down in various Laws, Regulations and Orders, which are interpreted at a more granular level across several publicly available documents such as the Licensing Policy, Codes of Practice, and Anti-Money Laundering and Countering the Financing of Terrorism Handbooks ("AML Handbooks"). In common with many regulatory regimes around the world Jersey's authorisation requirements are relatively high level, principles-driven documents as opposed to detailed rules or guidance. This means that there is a significant element of judgement, skill and market knowledge required in applying those requirements to the vetting of applications from a wide variety of financial services businesses.

4.3 A business or individual applying for a licence must complete the relevant Application Form (the contents of which are determined by the JFSC) and this is the base information from which each case is considered on its own merits. The CAU, as is good practice, regularly engages with applicants to supplement the information received in the Application Form. This can be done orally or in writing and can often be the source of the critical details which allow a well-balanced judgement to be made. The process is also complicated by the fact that the options open to staff are not merely to accept or reject the proposal. More often, an iterative engagement can lead to a somewhat altered proposal being approved or to an approval with conditions. These complexities in the potential outcomes of an authorisation process are important to take into account in assessing the effectiveness of the current approach.

4.4 This authorisation assessment is conducted using a range of other information sources (including but not limited to market research and intelligence, input from overseas regulators, complaints data and financial analysis) to determine whether businesses or individuals meet the regulatory standards. This assessment process necessarily requires a range of experience in both technical and process related disciplines to reach a high quality decision. Some judgements can be relatively simple to make, others are much more difficult. Those judgements should be both well aligned with the risk-based approach of the regulator and be conducted in an efficient and effective way. Gaps in the articulation of the current top down risk-based approach are described in Section 5.1. Observations regarding the efficiency and effectiveness of the authorisation assessment process are discussed in further detail in Section 5.2.

4.5 There are four potential outcomes to any application from a business:

- a) Refusal
- b) Approval with conditions
- c) Approval without conditions
- d) Withdrawal by the applicant

4.6 In the event of b) or c) above then the business is handed over to Supervision for ongoing monitoring. The interaction between the CAU and Supervision is, therefore, an important consideration. In the event of refusal the business can appeal the decision to the Royal Court or amend its application according to the JFSC's feedback and reapply. Appeals in Jersey are understood to be very rare and this is consistent with the pattern observed in other countries. The applicant has the ability to withdraw its application at any stage in the process.

4.7 Similarly, there are three potential outcomes for any application from an individual who wishes to be authorised to fulfil a regulated role within a regulated business:

- a) 'Objection'
- b) 'No-objection'
- c) Withdrawal by the applicant

4.8 In the event of b) above then the individual becomes an integral part of the regulated business, which is subject to ongoing monitoring by Supervision. In the event of 'objection' the individual can make an appeal to the Royal Court. An individual has the ability to withdraw their application at any stage in the process.

4.9 In practice applicants rarely reach the formal refusal or 'objection' stage. This is because prior to making any formal decision to refuse the JFSC transparently provides an explanation to the applicant of their intended recommendation and reasons to the JFSC's Board (or in the case of an individual to an executive review committee), usually as part of an iterative and interactive engagement. Once that point has been reached, approval remains an outcome, but the business will, at that point, be on notice that a different information set is likely to be needed to secure approval. This "minded to" communication typically results in either an amendment to an application or, very occasionally, its withdrawal.

4.10 One element of this independent review has been to look at the legal framework within which the authorisation process is conducted. In Jersey, there have been relatively few changes to previously existing legislation in respect of the process for authorising businesses and individuals over the past 20 to 30 years. Where new legislation has been introduced, it has borrowed from existing laws, albeit that there are some differences in respect of authorisation between various statutes. There have been some changes in interpretation primarily via amendments to the Licensing Policy, Codes of Practice, etc. Observations regarding the current legislative requirements and their interpretative guidance are contained in Section 5.3.

4.11 Another element has been to look closely at the day to day practices of the authorisation assessment process. Since 2018 the majority of authorisations-related work has been undertaken by the CAU, which sits within the wider Supervision Division. Prior to 2018 authorisation applications were considered by supervisors in addition to their wider responsibilities overseeing existing regulated businesses i.e. Authorisation and Supervision functions operated on a combined basis. Organisational issues are discussed in further detail in Section 5.4.

5 The findings

5.1 Improving the top down risk-based approach to authorisations

5.1.1 The JFSC's current authorisation assessment process appears to have evolved over a period of time. The key overall conclusion of this independent review is that it is not as clearly defined as it should prudently be, and places too heavy a reliance on staff to use their professional judgement in determining a case. Whilst authorisation assessments have generally been conducted well, it is an approach that can undermine consistency and efficiency, and is therefore not optimal. A strong risk-based approach provides a nuanced framework which allows those important judgements to be well aligned with the approach the regulator has decided on and which allows the quality of those judgements to be challenged and checked as a matter of standard practice.

5.1.2 An important judgmental element, and a theme running through all the cases reviewed is the degree of validation, investigation, or interrogation undertaken when assessing each application for authorisation. For example, the case officer (often with input from their immediate line manager) will determine the extent to which information provided by the applicant is accepted, subjected to follow up, or rejected as being inadequate. Because staff make their own informed judgements about the amount of effort and resources to be applied in any particular case, they are left vulnerable to criticism if things go wrong subsequently. Notwithstanding that it occurred before the establishment of the CAU, the 2015 Case serves to underline this point.

5.1.3 A clearly defined risk-based framework for authorisation assessments is a necessary pre-requisite to enable the JFSC to evidence how it makes high quality consistent decisions with the resources it has allocated. From independent case reviews and discussions with a number of JFSC staff at various levels across the organisation, it is concluded that whilst a high-level top down risk appetite exists, there remains insufficient articulation of the organisation's expectations regarding the degree of scrutiny to be applied to different types of processes and cases. This is challenging because of the wide variety of applications which are typical in a complex financial centre like Jersey. But more can be done. For example, whilst an applicant is given a risk rating at the conclusion of the authorisation process (which informs the intensity of supervisory oversight), there is no consistent risk-based methodology applied prior to conducting the authorisation process itself. This means that the JFSC Board of Commissioners have limited assurance that CAU resources are being allocated appropriately between different applications under consideration.

5.1.4 It is recommended that the JFSC more clearly articulates the top down risk-based approach that it expects staff to apply across all authorisation processes e.g. entity authorisation, licence revocation, approval of key persons, etc. For each process this should:

- a) Describe the organisation's view of the relative risk posed to the JFSC's statutory objectives by different groups of applicants;
- b) Link with Supervision's evolving risk-based methodology;
- c) Be applied to the rating of applications at the beginning of the authorisation assessment process; and
- d) Be reviewed regularly in the light of feedback and experience.

5.2 Improving the efficiency and effectiveness of the authorisation process

5.2.1 There are many different guidance documents available to assist staff involved in assessing an application for authorisation, primarily templates and checklists. Yet very little articulation of the JFSC's expectations of how the application is to be scrutinised in practical terms. Developing agreed parameters for allocating resources between the perceived risks posed by each applicant for authorisation provides clarity for staff on fundamental issues such as the degree of evidence to demonstrate that core legal requirements have been met. For example, it was clear that a variety of approaches were deployed across relevant cases independently reviewed when concluding whether the Professional Indemnity Insurance (PII) cover was adequate. Notwithstanding variations in the relevant regulatory requirements, for example the level of cover required for certain classes of activity, approaches ranged from no evidence of assessment, accepting written assurances from an applicant that suitable PII would be in place prior to the commencement of business, through to challenge on specific deductibles within a draft PII policy provided by the applicant. While judging the adequacy of PII should not be a 'tick box' exercise in accordance with a pre-defined formula, there should be a greater level of consistency of approach than these cases evidence. Differences of approach were also noted in other important areas such as evidencing of adequate financial resources, and assessment of an applicant's controllers or wider ownership structure. While these approaches might have been appropriate in the context of each particular application, a clearer process that articulates parameters case officers are expected to work within as well as acknowledging the case officer's powers to require any necessary additional information would improve efficiency and effectiveness.

5.2.2 Similarly, when assessing an application it is helpful to have a shared view within the CAU, and between the CAU and senior executives on what type and level of mitigations are deemed acceptable in the face of key risks posed to the JFSC's statutory objectives. There should be a strong level of senior executive consensus around these matters so that they can oversee the application of the Board of Commissioner's risk appetite. All applicants will have risks inherent in their business model, and whilst all businesses are expected to have controls in place to mitigate these risks, their effectiveness, and therefore the net risk deemed acceptable to the JFSC in any particular circumstances is a matter of considerable judgement. In the absence of detailed guidance staff continue to adopt an approach based excessively on their own judgement and experience. Given the current organizational structure, experienced and diligent staff this has not necessarily led to bad decisions in recent years, but it can undermine consistency and efficiency.

5.2.3 Finally, it is noted that there is not a single documented process that case officers should follow when assessing all applications, for example in the form of a process map setting out the optimal sequencing of steps and the involvement of other departments such as Finance or Policy. This means it is likely that the authorisations process is not as efficient or effective as it could be - important steps could be missed or unnecessary additional steps undertaken.

5.2.4 In response to these observations **it is recommended that a consistent, structured process is developed that informs how a more clearly defined top down risk-based approach is expected to be deployed in practice whilst empowering staff to exercise their judgement in the context of any specific circumstances. This should include:**

- a) **Guidance for staff around the degree of scrutiny to be applied in assessing applications and the mitigations deemed acceptable in the face of key risks posed to the JFSC's statutory objectives;**
- b) **Documented process maps(s); and**
- c) **Training for staff.**

This risk-based authorisations process should also be supported by an enhanced governance process (such as process owners, maturity model, management information, and quality assurance) to ensure continuous process improvement in the light of feedback and experience.

5.2.5 The remainder of this chapter works through in detail the different factors which influence an effective authorisation process as follows:

- The framework for decision making (delegated powers and escalation process)
- Reliance placed on third parties information sources (in particular other regulators)
- The comprehensiveness of the initial information set used in the authorisation assessment (the Application Form)
- The structured recording of decision making (the 'ION' record)
- Record Keeping
- Handover from the CAU to frontline supervisors' risk assessment and management of the authorised business
- Assessing innovative applications for authorisation
- Determining subsequent licence changes
- Processing withdrawn applications
- Service standards
- Invoicing
- Application fees
- Opining on whether an applicant requires authorisation

Delegated Powers

5.2.6 Jersey law⁴ allows the Board of Commissioners to delegate its powers to an officer of the JFSC including many relating to authorisation processes. Each delegated power (such as approval, refusal, or revocation of a licence under the relevant statute) is assigned a delegation level which sets out who may exercise the power. Delegation levels are “minimum delegation levels” as decisions can always be taken at a higher level⁵. The purpose of delegation is to facilitate the efficient use of resources by enabling decisions to be taken where problematic judgements do not arise. Delegation policies should always be combined with an escalation policy, both of which should be regularly reviewed. An escalation policy can be particularly important when dealing with innovative proposals in order to ensure that these are dealt with speedily. The various delegation levels relevant to the CAU are explained and assigned in an internal document⁶ that is updated from time to time. The escalation policy is currently located separately.

5.2.7 It was evident from review of a range of applications for authorisation that the assignment of delegated levels is not as risk-based as it could be. For example, the minimum delegation level for the approval of a property manager seeking to conduct incidental general insurance business is the same as it is for an innovative fund services business. This means that resources are not necessarily being allocated to the cases posing the greatest risk to the JFSC’s objectives, leading to inefficiencies.

5.2.8 It is recommended that the assigned delegated powers relating to CAU-owned processes are revisited to ensure they are more appropriately risk-based and aligned with the more clearly defined top down risk-based approach. This should continue to include parameters for upward referral powers where a case is borderline between approval and refusal/objection.

⁴ Article 11 of the Financial Services Commission (Jersey) Law 1998

⁵ This is without prejudice to the right of the Board to make specific delegations in specific cases, or to take any matter into its own hands

⁶ The most recent Delegated Powers Schedule is dated 31 July 2018

Reliance on overseas regulators

5.2.9 The global nature of the financial services industry means that many businesses operating in Jersey are part of a wider group where another jurisdiction is either the “lead regulator” or has oversight of one or more Jersey-connected entities. Indeed, the majority of the cases independently reviewed, including the 2015 Case, exhibited this feature in one form or another. Whilst there are Memoranda of Understanding with specific overseas regulators alongside references to “equivalent” jurisdictions in Codes, Guides and Legislation (e.g. AML Handbooks), there is no list of countries where it is agreed that staff can or should place reliance on the relevant regulator when making an authorisation decision. This means staff have to make their own judgements, which could lead to inconsistencies, inefficiencies, and/or poor quality case decision making. Such a list might also indicate, based on experience, that certain regulators are better aligned with the JFSC risk-appetite, in terms of the judgements they make than other regulators. In order to facilitate open assessment of what is a sensitive matter, this list should always be kept strictly confidential. **It is recommended that the JFSC develop and keep under regular review, guidance for CAU staff on the degree of reliance to be placed on overseas regulators in terms of communications from them with regard to authorisation applications. This guidance should be clearly related to the escalation policy.**

Application Forms

5.2.10 The format and content of the Application Forms for businesses and individuals are determined by the JFSC, and have been amended from time to time in line with changing legal and internal requirements. The structure of these Application Forms, while sometimes challenging for applicants, can be critical to the efficient conduct of the authorisation assessment. It is the common experience of regulators across the globe that low quality initial applications is a major driver of the length of time it takes to process applications. In addition, low quality applications can be indicative of the competence of the proposed management team for the firm seeking authorisation. However, low quality application forms can also result from insufficient guidance as to what information is needed.

5.2.11 The Application Forms used currently by the JFSC are generally fit for purpose. However, case reviews suggest that the Application Forms do not always obtain all the information required to complete the assessment at the outset. As a consequence, the CAU case officers are regularly having to make a further information request to the applicant before they can complete their assessment, which is not only inefficient but can be frustrating for the applicant. For example, the case officer is expected to ascertain the legitimacy of the funds provided by the ultimate beneficial owner(s) of the applicant. Yet, information regarding source of funds is not requested within the Application Form. Equally, it is worth reflecting on whether the Application Forms currently request information that is no longer necessary from a regulatory perspective. For example, case officers require a standard undertaking from the shareholder of the entity being authorised regarding such matters as provision of audited financial statements of the shareholder and pre-notification of any change in direct or indirect shareholding of the regulated entity. However, the matters being attested to are requirements enshrined within relevant law, so it would appear that such written undertakings are duplicative and potentially unnecessary.

5.2.12 In a similar vein, regarding applications from individuals via the Personal Questionnaire (PQ), it was noticeable just how many times a PQ is required to be withdrawn and re-submitted. Over the past year approximately 40% of all PQs were withdrawn and re-submitted due to errors/ misunderstandings on the part of the individual applicant, or simply due to incompleteness of all the relevant sections. This is inefficient and frustrating for individuals and case officers alike. It is understood that changes to the PQ Portal are currently being implemented which may substantially reduce this statistic, nevertheless it may be indicative of wider issues with the guidance material

5.2.13 It might seem obvious, but to undertake the authorisation assessment efficiently a case officer requires the contents of the application to be complete. One factor driving the completeness of the application is the content of the Application Form and the questions contained therein. Another driver is the quality of the guidance notes provided to support applicants. Review of the application guidance notes did not form part of the scope of the independent review, however, the scale of PQ withdrawals and resubmissions would suggest that applicant guidance notes might not be as helpful as they could be.

5.2.14 It is recommended that, with the benefit of consultation with industry professionals who are regularly engaged in facilitating the submission of applications, all the business and individual Application Forms are revisited to ensure that they:

- a) Request the information required to undertake an application assessment (no more and no less)
- b) Are aligned to the more clearly defined top down risk-based approach (e.g. for low risk application types it might be possible to shorten the application form); and
- c) The associated guidance notes support the applicant in completing the forms correctly.

This review should be conducted after the other recommendations contained in this report focused on the further development of the risk-based approach have been implemented to ensure that the best information set is collected.

Application Review Checklist

5.2.15 During the application assessment process case officers document their summary within the relevant Internal Operating Note (“the ION”). Essentially this is an application review checklist describing how the business is judged to meet the various regulatory requirements including the Licensing Policy, relevant Codes of Practice, etc. The ION is important not only as a guide structuring the work of the case officer, but is also important both as a formal record of judgements made and as a record facilitating subsequent quality assurance. The contents of the ION as currently structured can be difficult to navigate when undertaking the sign-off process because of the number of links to other documents. Moreover, the contents of this case summary template needs to vary depending on the applicable laws and requirements, but it is not always evident whether an applicant has in fact been assessed against all the relevant requirements. For example, in the case of a business applying for Investment Business (IB) activities the case officer is not prompted to evidence their assessment of whether product provider remuneration meets the expectations set out in para 4.8 of the IB Code of Practice. **It is recommended that all ION templates are reviewed to ensure they incorporate all the requirements relevant to the application being assessed and that it supports a sign-off process that is easy to navigate. The updated ION templates must also align with the relevant process maps and the more clearly defined top down risk-based approach.**

Record keeping

5.2.16 Record keeping in authorisation processes is critical both to facilitate appeals, to underpin effective performance management, and to support subsequent quality assurance.

5.2.17 In the 2015 Case there were limitations in the availability of the written rationale as to why a particular judgement had been reached or the extent to which an identified issue had been resolved/mitigated. Similarly there was limited available documentation as to how matters raised at the point of sign off by more senior staff were ultimately concluded prior to the licence being issued.

5.2.18 In contrast, the record keeping of the ten authorisation cases independently reviewed from the period since 2018 were more comprehensive with the rationale for decision making consistently articulated, and recorded, in every case. Moreover, the complex cases were accompanied by supplemental paperwork explaining for example, why a certain judgement had been made on a particularly technical aspect, who had been consulted, and the outcome of any mitigating actions requested of the applicant. Whilst a couple of failings were observed regarding the completion of more administrative elements of case handling e.g. invoicing and system updates post authorisation, these were not material in the context of evidencing the rationale for case decisions. These observations suggest that lessons regarding record keeping have been learned since the 2015 Case. Further, the current approach of electronic sign-off (via e-mail whereby any questions or issues are raised and concluded in writing) appears to have strengthened records management compared to the largely hard copy audit trail evident in the 2015 Case.

5.2.19 When reviewing the more complex cases the sheer volume of documentation made them difficult to follow. A root cause of this issue appears to be the limited number of sub-folders allowed within a specific folder on the JFSC’s system.

5.2.20 It is recommended that consideration is given to whether the current workflow management system can be adapted to facilitate agile, structured record keeping for higher volume authorisation processes. As an interim measure, the current policy in respect of the number of sub-folders that can be created against an entity could be revisited, with a view to enabling more effective records management of authorisation cases.

Handover to Supervision

5.2.21 An important function of the authorisation process is to probe, challenge, and positively influence an applicant such that the entity ultimately obtaining approval can meet the regulatory requirements on an ongoing basis. As the JFSC does not operate a zero failure regime, it must be accepted that not all risks and issues identified as part of the application process can be mitigated fully at the point of authorisation. One practical consequence of this is the need for an effective handover when the entity is passed to Supervision for ongoing oversight to ensure that any outstanding matters are followed through appropriately. There was a wealth of evidence pointing to close collaboration between CAU and Supervision during application assessments. Moreover there were several examples of comprehensive handover documentation being provided to Supervision by the CAU on their own initiative. However, there was no consistent approach to the handover process, rather it was left to the judgement of individual case officers to determine the form of any handover, or indeed whether it was necessary at all. It is recommended that the CAU and Supervision agree an approach to authorisation handover that is consistent, proportionate, and risk-based.

Assessing innovative applications for authorisation

5.2.22 Regulation is one of the barriers facing new entities wishing to enter any financial services market. The JFSC's position as the gateway to the sector in Jersey means it is important that regulatory requirements are not unnecessarily burdensome. It is essential that all new entrants meet base level standards that prevent undue risks to the financial system or to consumers; but regulators need to achieve this while making entry as straightforward as possible. This challenge is the same for financial services regulators around the world, not just the JFSC. It is particularly difficult to get this balance right when businesses seeking authorisation envisage reliance on new products or technologies to which either legal uncertainty or limited risk management options attach.

5.2.23 Two of the cases independently reviewed were of an innovative and precedent setting nature. In both cases sensible and pragmatic judgements were made in the context of specific circumstances to enable the applicant to demonstrate compliance with regulatory requirements in ways that had not been used previously. For example, one applicant agreed to conditions requiring it to operate on a restricted basis initially, thus facilitating development of operational and system related aspects on the journey to evidencing compliance as an unrestricted business. Like many regulators, the JFSC makes use of an innovation hub to facilitate additional engagement with prospective applicants. This innovation hub is currently located outside the CAU in the Policy & Risk Division of the JFSC. In addition it is understood that the JFSC has recently developed an enhanced process for escalation of challenging applications to senior management to support consistent and timely judgements.

5.2.24 There are a variety of approaches that could be adopted to support applicants at the gateway including pre-application meetings, provision of individual guidance, and modifications to the authorisation process itself. It is clear that some of these alternative approaches have been used to good effect already, and it is recommended that the JFSC develops internal guidance and/or closer operational ties to promote consistency in reducing barriers to entry at the gateway.

Assessing applications for additional licences from existing businesses

5.2.25 The financial services sector is constantly evolving. It is common for businesses in this sector to roll out their business plans over a number of years, securing their position in one line of business and then expanding to other linked lines of business. Equally, strategic reorientation is a common feature of the sector. Indeed, it is relatively rare for an authorised business to implement a multi-year business plan or strategy without significant revision. An important part of the work of an effective authorisation unit is to adjust to facilitate these kinds of evolutions. This work can – and in the case of the JFSC, does – constitute quite a high proportion of the total authorisation workload. While the resulting requirements for changes to licences does not amount to a completely new application, the resulting authorisation change request provides an important opportunity for a regulator to revisit the risk profile of an authorised firm and to monitor its changing business model. This work is done in the JFSC by the CAU, and provides a useful opportunity to check on the quality of its past approval work and for supervisors and the CAU to mutually challenge and engage on their respective perceptions of the risk profile of the business.

5.2.26 The sample of cases independently reviewed revealed a significant proportion of applications from existing Jersey-regulated businesses, for example seeking additional licences, establishment of new funds, or simply a new class of business within their current licence. The pattern of judgements in these cases suggest that staff take a pragmatic risk-based approach to assessing these applications e.g. choosing not to duplicate previous areas of review where there have been no changes. However, in the absence of a clearly defined approach there is a risk of inconsistency, which could ultimately impact the quality of decision making and lead to inefficient allocation of resource.

5.2.27 It is recommended that applications for the addition or removal of funds or additional classes of business are considered as a separate process with their own risk appetite

Withdrawn applications

5.2.28 As noted in Chapter 4 above, an applicant can withdraw its application at any time during the process. This can occur for a variety of reasons including a change in business strategy on the part of the applicant due to market conditions which extinguishes the need for authorisation, a lack of readiness on the part of the applicant who might return to the process at a later point, or as a consequence of challenge by the JFSC which leads the applicant to conclude they no longer wish to pursue it.

5.2.29 Withdrawals by applicants are understood to be relatively few and far between. However one of the cases independently reviewed did conclude in this manner. Whilst there were no concerns regarding the handling of this case in terms of the applicant's decision to withdraw, there were question marks regarding the correct procedures to be followed in these circumstances such as document retention, continuity of approach in any subsequent application(s) etc. The ION is not currently designed to facilitate this.

5.2.30 It is recommended that the JFSC documents its internal process regarding the handling of applicants that choose to withdraw, and reports internally on the number and high-level reasons for applicant withdrawals.

Service standards

5.2.31 It can be very important for businesses to have clarity around the response times they can expect from the JFSC. Such standards can never be cast in stone, particularly because the main determinants of response time are the quality of the applications and the quality of subsequent engagement by applicants. An additional, important factor is the risk profile of the application. Nevertheless, efficiency within an authorisation process can be a source of unnecessary delay.

5.2.32 The JFSC currently has what could be described as internal “service standards” that outline the JFSC’s expectation in terms of timeline for determining each type of authorisation application received. This assists staff in prioritising across the wider caseload within the CAU at any one time. Importantly, there was no evidence to suggest that the existence of service standards was driving unintended consequences; the clear focus is on making robust high quality decisions, which might take more or less time against the respective service standard depending on the quality and complexity of the particular application. Nevertheless, some service standards are quite challenging to achieve in certain circumstances e.g. where one is reliant on receiving input from an overseas regulator⁷. As a result there is a risk of creating unrealistic expectations and inefficiencies, for example where a fund application (which has a ten day expected turnaround time) is received and a case officer needs to deprioritise existing cases to accommodate it. Linked to this, there are no published service standards for authorisation processes except for fund products and fund service providers.

5.2.33 While applicants cannot reasonably expect a regulator to consider an application within a definite time period without that creating an unacceptable risk for the regulator, applicants can reasonably expect to have information about how long different types of applications tend to take. It is important that a regulator insist on taking the time necessary to work through an application given the position of trust that financial services providers are in once authorised.

5.2.34 It is recommended that the JFSC consider:

- a) The publication of statistics on average turnaround times by application type to increase publicly available information to assist the industry to plan appropriately when making an application; and
- b) Whether the existing indicative internal service standards remain appropriate.

⁷ For example, Category A insurance businesses require home regulator confirmation under Article 7 of the Insurance Business (Jersey) Law 1996, which can result in considerably extended timeframes in the assessment process.

Invoicing

5.2.35 Every application requires the payment of the relevant fee. Sometimes the fee is paid in advance of the application being considered, but this is not always possible at the outset such that the JFSC needs to raise an invoice post-determination. However, this invoicing process is relatively manual making it more vulnerable to human error. It is recommended that as part of the wider process improvement the invoicing sub-process is revisited to improve efficiency and remove at least some of the manual intervention (and therefore associated operational risks arising).

Application fees

5.2.36 The most complex authorisation cases require significant resources to be deployed, yet a relatively small application fee applies. In the light of this imbalance, the JFSC may wish to re-consider whether current authorisation fee levels are set at the most appropriate level, and under what circumstances (if any) it is reasonable or desirable to charge a special project fee.

Opining on whether an applicant requires authorisation

5.2.37 Regulators generally receive multiple requests for advice. Queries concerning whether authorisation is required involve a significant moral hazard and can also be a significant burden on resources. The most effective regulators seek to be helpful, whilst not providing formal or semi-formal confirmation regarding perimeter issues pertaining to a specific set of circumstances.

5.2.38 To illustrate the undesirability of this practice, in one case independently reviewed the business had previously sought clarification as to whether it needed to be authorised. Despite being in receipt of very limited information regarding the applicant’s activities at the time, Supervision informed them in 2016⁸ that it did not require a licence. However, following information received from a whistleblower and subsequent thematic visit in late 2018, Supervision concluded that Schedule 2, GIMB, and potentially TCB licences were required.

5.2.39 It is recommended that unless the JFSC is in receipt of an application requiring their decision that any potential applicants are advised to take their own legal advice regarding whether authorisation is required, this is made clear on the JFSC website and in application guidance material.

⁸ At this point Supervision and Authorisation operated on a combined basis from an organisational perspective.

5.3 The adequacy of the current legislative requirements and their interpretative guidance

5.3.1 The conditions for authorisation are laid down in the relevant legislation. They define the regulatory requirements that need to be met on an ongoing basis by businesses and individuals as well as articulating the JFSC's powers, such as the ability to refuse an application for authorisation, attach conditions, or revoke an existing licence. Therefore, the effectiveness of the JFSC's regulatory approach is dependent necessarily on not only the nature and extent of the legal powers they have been given, but also how they choose to interpret them. With this in mind there appears to be an opportunity to strengthen the JFSC's underlying legal powers as well as interpretation of these powers within various policy related documents (such as the Licensing Policy and Codes of Practice).

5.3.2 For example, it is observed that the AML Handbooks do not specifically prescribe requirements for 'other' activity businesses or individuals such as lenders. This seems counter to the JFSC's objectives around reducing the scope for money laundering or terrorist financing. It also has the potential to create an uneven playing field across the financial services sector. The JFSC should amend the AML Handbooks such that they explicitly apply to all 'other' businesses and individuals.

5.3.3 Another example is the differing fit and proper test applicable to Schedule 2 applicants compared to those regulated under the Financial Services (Jersey) Law 1998, and the seemingly limited grounds under which Schedule 2 applicants can be refused at the gateway. The JFSC should seek legislative amendments to create a consistent fit and proper test across all supervised businesses, and the necessary powers to refuse applications for authorisation.

5.3.4 Turning to the various Codes of Practice, it seems that there are variances across otherwise similar licence types, which appear not to be driven by differing legal requirements. The level playing field principle could be undermined as a result, plus applications are more resource intensive both for applicants to produce and for the JFSC to consider. The JFSC could review its existing policy related documents (Licensing Policy and Codes of Practice) to achieve greater consistency between them where possible.

5.3.5 Separately, but linked to the above, it seems questionable to an external observer that the JFSC makes the fullest and most appropriate use of all its existing powers. Two examples stand out in this regard. Firstly, the JFSC is required to give its 'no-objection' (as opposed to 'approval') to all applications from individuals based on their consideration of issues such as fitness and propriety. It does have the power to refuse an application from a 'new' individual. However there appear to be no examples where this has taken place, at least amongst the memories of existing CAU staff. Rather than using such power, where applicants fall short of the standard, the JFSC transparently provides an explanation to the applicant of their intended recommendation and reasons, usually as part of an iterative and interactive engagement. Once that point has been reached, approval remains an outcome, but the business will, at that point, be on notice that a different information set is likely to be needed to secure approval. This "minded to" communication typically results in either an amendment to an application or, very occasionally, its withdrawal. Secondly, whilst there was evidence of attaching conditions at the point of authorisation, does the JFSC utilise this power as often as might be considered appropriate, for example in relation to innovative businesses or those undertaking high-risk activities? It is recommended that the JFSC create internal guidance (e.g. based on previous case experience) that supports enhanced consistency when determining refusal, objection, or marginal authorisation cases without constraining the JFSC's ability to take holistic decisions based on the merits of each individual case.

5.4 Organisational issues

5.4.1 At the time of the 2015 Case, applications for authorisation were considered by the relevant sectoral supervision team i.e. in addition to their existing supervisory responsibilities. This does have the benefit of delivering close alignment with the supervisory approach and how applicants meet regulatory requirements in practice. However, there are a number of drawbacks, not least regarding consistency of approach, duplication of effort when considering multi-licence applications from the same entity, alongside the ever present challenge of managing differing work priorities. An organisational structure that demands staff deliver high quality judgements on two different processes is unlikely to be optimal: authorisations has a clear start and end; compared to supervision which is necessarily ongoing in nature. Importantly, the JFSC's organisational structure evolved at the start of 2018 with the establishment of the CAU whom do not have any day to day responsibility for ongoing supervision post-authorisation. This addressed the fundamental drawbacks described above.

5.4.2 Notwithstanding this change in organisational structure, a separate Authorisations function can lead to potential lack of collaboration with supervisory colleagues, particularly on the more complex or technical applications. Yet it was pleasing to observe the many examples of a strong ethos of team working and knowledge sharing between the CAU and Supervision across individual case reviews, which also stretched into other functions such as Policy and Legal where appropriate. This is a culture that can be so difficult to create and should be fostered moving forward.

5.4.3 During the course of the independent review it became apparent that there are a number of processes which currently reside in Supervision but which might be more appropriately located within the CAU. For example, change of control applications from existing regulated businesses are undertaken by the relevant supervisor, which is logical on the one hand given their insight into the applicant and its wider group. Yet, an alternative could be to pass ownership of this process to the CAU given their expertise in assessing a wide range of controllers. This could have added benefits of improved consistency and resource efficiency. **It is recommended that all relevant Supervision and CAU processes are identified and mapped to enable them to be allocated to the most appropriate teams or functions based on an agreed set of principles.**

6 List of graded recommendations

The Recommendations have been graded according to the following criteria:

HIGH: Addresses an issue that poses significant risks.

MEDIUM: Addresses an issue that is not considered significant, but has the potential to give rise to larger, or related issues if not remediated.

LOW: Addresses a minor issue including points of efficiency.

Recommendation 1 (HIGH)

It is recommended that the JFSC more clearly articulates the top down risk-based approach that it expects staff to apply across all authorisation processes e.g. entity authorisation, licence revocation, approval of key persons, etc. For each process this should:

- a) Describe the organisation's hierarchical view of the relative risk posed to the JFSC's statutory objectives by different groups of applicants;
- b) Link with Supervision's new evolving risk-based methodology; and
- c) Be applied to the rating of applications at the beginning of the authorisation assessment process; and
- d) Be reviewed regularly in the light of feedback and experience.

Recommendation 2 (HIGH)

A consistent, structured process is developed that informs how a more clearly defined top down risk-based approach is expected to be deployed in practice whilst empowering staff to exercise their judgement in the context of any specific circumstances. This should include:

- a) Guidance for staff around the degree of scrutiny to be applied in assessing applications and the mitigations deemed acceptable in the face of key risks posed to the JFSC's statutory objectives;
- b) Documented process maps(s); and
- c) Training for staff.

This risk-based authorisations process should also be supported by an enhanced governance process (such as process owners, maturity model, management information, and quality assurance) to ensure continuous process improvement in the light of feedback and experience.

Recommendation 3 (MEDIUM)

The assigned delegated powers relating to CAU-owned processes are revisited to ensure they are more appropriately risk-based and aligned with the more clearly defined top down risk-based approach. This should continue to include parameters for upward referral powers where a case is borderline between approval and refusal/objection.

Recommendation 4 (LOW)

The JFSC develop and keep under regular review, guidance for CAU staff on the degree of reliance which can be placed on overseas regulators in terms of communications from them with regard to authorisation applications. This guidance should be clearly related to the escalation policy.

Recommendation 5 (MEDIUM)

With the benefit of consultation with industry professionals who are regularly engaged in facilitating the submission of applications, all the business and individual Application Forms are revisited to ensure that they:

- a) Request the information required to undertake an application assessment (no more and no less)
- b) Are aligned to the more clearly defined top down risk-based approach (e.g. for low risk application types it might be possible to shorten the application form); and
- c) The associated guidance notes support the applicant in completing the forms correctly.

This review should be conducted after the other recommendations contained in this report focused on the further development of the risk-based approach have been implemented to ensure that the best information set is collected.

Recommendation 6 (MEDIUM)

All ION templates are reviewed to ensure they incorporate all the requirements relevant to the application being assessed and that it supports a sign-off process that is easy to navigate. The updated ION templates must also align with the relevant process maps and the more clearly defined top down risk-based approach.

Recommendation 7 (LOW)

Consideration is given to whether the current workflow management system can be adapted to facilitate agile, structured record keeping for higher volume authorisation processes. As an interim measure, the current policy in respect of the number of sub-folders that can be created against an entity could be revisited, with a view to enabling more effective records management of authorisation cases.

Recommendation 8 (MEDIUM)

The CAU and Supervision agree an approach to authorisation handover that is consistent, proportionate, and risk-based.

Recommendation 9 (LOW)

The JFSC develops internal guidance and/or closer operational ties to promote consistency in reducing barriers to entry at the gateway.

Recommendation 10 (LOW)

Applications for the addition or removal of funds or additional classes of business are considered as a separate process with their own risk appetite.
Recommendation 11 (LOW)

Recommendation 11 (LOW)

The JFSC documents its internal process regarding the handling of applicants that choose to withdraw, and reports internally on the number and high-level reasons for applicant withdrawals.

Recommendation 12 (LOW)

The JFSC consider:

- a) The publication of statistics on average turnaround times by application type to increase publicly available information to assist the industry to plan appropriately when making an application; and
- b) Whether the existing indicative internal service standards remain appropriate.

Recommendation 13 (LOW)

As part of the wider process improvement the invoicing sub-process is revisited to improve efficiency and remove at least some of the manual intervention (and therefore associated operational risks arising).

Recommendation 14 (LOW)

The JFSC may wish to re-consider whether current authorisation fee levels are set at the most appropriate level, and under what circumstances (if any) it is reasonable or desirable to charge a special project fee.

Recommendation 15 (MEDIUM)

Unless the JFSC is in receipt of an application requiring their decision that any potential applicants are advised to take their own legal advice regarding whether authorisation is required, this is made clear on the JFSC website and in application guidance material.

Recommendation 16 (HIGH)

The JFSC should amend the AML Handbooks such that they explicitly apply to all 'other' businesses and individuals.

Recommendation 17 (HIGH)

The JFSC should seek legislative amendments to create a consistent fit and proper test across all supervised businesses, and the necessary powers to refuse applications for authorisation.

Recommendation 18 (LOW)

The JFSC could review its existing policy related documents (Licensing Policy and Codes of Practice) to achieve greater consistency between them where possible.

Recommendation 19 (LOW)

The JFSC should create internal guidance (e.g. based on previous case experience) that supports enhanced consistency when determining refusal, objection, or marginal authorisation cases without constraining the JFSC's ability to take holistic decisions based on the merits of each individual case.

Recommendation 20 (LOW)

All relevant Supervision and CAU processes are identified and mapped to enable them to be allocated to the most appropriate teams or functions based on an agreed set of principles.