



Feedback Paper on Consultation Paper No. 9 2019

Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008: Fees for registered persons

A feedback paper relating to a consultation on proposals regarding fee rates and associated issues.

Consultation Feedback

This paper reports on responses received by the JFSC to the Consultation Paper No. 9 2019 published by the JFSC on 5 December 2019.

Glossary of Terms

Defined terms are indicated throughout this document as follows:

DNFBP/Schedule 2 firms	designated non-financial businesses and professions (a term used to refer to persons registered under the Law)
JFSC/Commission	Jersey Financial Services Commission
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
Supervisory Bodies Law	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008

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1 Executive Summary

1.1 Overview

- 1.1.1 On 5 December 2019 the JFSC issued Consultation Paper No. 9 2019, which sought views on proposals to increase fee rates.
- 1.1.2 The purpose of this paper is to provide feedback on the responses received to the CP.
- 1.1.3 In light of the feedback received, the JFSC will be changing the fee rates to the levels consulted on, effective 1 January 2020. The final form of the fees notices can be found in the Appendices and on our website.

1.2 Feedback received

- 1.2.1 Three respondents, one a representative body via Jersey Finance, provided written comments. In addition, several representatives from industry sectors attended meetings at the JFSC to discuss the proposals. A list of respondents is given in Appendix A.
- 1.2.2 Section 2 of this paper presents a summary of the substantive comments received and the JFSC's response.
- 1.2.3 Taking account of the feedback received, we are proceeding with the changes in fee rates with modification to the proposed increase in the fees cap.
- 1.2.4 The JFSC is grateful to respondents for taking the time to consider and comment on the proposals. Each respondent has been sent a copy of this paper.

1.3 Next Steps

- 1.3.1 The revised fees are effective from 1 January 2020.
- 1.3.2 Relevant firms will receive notification via the myJFSC portal that an invoice is ready for them or that they need to provide data for their fees to be calculated.
- 1.3.3 In accordance with the fees notices, the due date for payment of annual fees is 31 March (total fees of over £1,000 may be paid in instalments).
- 1.3.4 Late payment may incur fees as detailed in the fees notices.

2 Consultation feedback

2.1 Feedback received

- 2.1.1 This section summarises the substantive comments received in response to the CP. Whilst not every comment received is individually listed, this section contains summaries of the most commonly made comments in relation to each question posed and, as appropriate, the JFSC's response to those comments.
- 2.1.2 Where the specific comments of a respondent are summarised, the respondent will have been a registered person (or represented a group of registered persons).

2.2 Do you agree with the proposal to change DNFBP fee rates?

- 2.2.1 None of the respondents disagreed with the proposals to change DNFBP fees rates, excepting that one respondent disagreed with the quantum of the proposal to increase the fees cap.
- 2.2.2 A number of, concerns, comments and clarificatory requests were raised. Other comments are summarised at section 2.3.
- 2.2.3 The respondent, a trade body, who disagreed with the quantum of the increase in the fees cap gave the following reasons:
 - 2.2.3.1 "The impact of the exponential increase in the fee cap would be to capture more relevant employees; by way of example, the cap is currently reached where a law firm has 93 relevant employees. This number would be unchanged, as one would expect, with the application of a 21% increase in fee rates and the fee cap. However, increasing the fee cap to £25,000 would bring an additional 17 employees into scope, with the cap not reached until the firm has 110 relevant employees.
 - 2.2.3.2 I regret that, while we accept the rationale and basis for a 21% increase in fee rates and the fee cap, the legal profession does not support, under any construction, the proposed 42% increase in the fee cap from £17,590 to £25,000. For the avoidance of doubt, a fee cap of £21,285 would be supported."
- 2.2.4 Conversely, during discussions with industry representatives, some attendees considered that fee caps placed disproportionate burden on smaller firms.

JFSC response

- 2.2.1 The JFSC considers that the feedback in respect of fee caps is a valuable contribution to this consultation and the JFSC's ongoing dialogue with all industry sectors regarding fees.
- 2.2.2 The JFSC highlights that from 2016, the fees "cap" for the Funds and Trust Company Business sectors has been increased above the general rate of increases to fee rates. This approach has not yet been implemented for the DNFBP sector, however, this was intended as communicated in feedback to consultation paper No. 10 2015.
- 2.2.3 The approach in respect of the TCB sector is to apply a "regressive tail" to fees in respect of employee numbers (a lower annual amount per employee above given thresholds) where within the DNFBP fees notices there is a "hard" cap.

- 2.2.4 In light of the feedback received, the JFSC will be amending the fees cap to £22,000 (25%) reflecting a balance between the views expressed in response to the consultation and the JFSC's aim to remove fees caps over the course of time.
- 2.2.5 Further dialogue within industry during 2020 in respect of future funding will explore the issue of the cap in more depth with representation from all parts of industry.
- 2.2.6 In light of the feedback received, the JFSC will be implementing the revised fee rates (excepting the cap) as consulted on.

2.3 Other comments

- 2.3.1 Respondents expressed concern that the costs of regulation (not solely JFSC fees) continue to rise and the cost of doing business may become prohibitive as all expenses are passed onto clients.
- 2.3.2 One respondent, a trade body, asked for information about where money is being directed and in what proportions and suggested that the JFSC should provide more information about its budget while subjecting its budget to challenge "like other businesses".
- 2.3.3 The same respondent commented that the JFSC's change programme should have resulted in efficiencies such that fees ought not to increase and asked whether the objectives of the "change programme had been met and what efficiencies delivered?"
- 2.3.4 The same respondent considered that fee increases in recent years were to have already addressed the JFSC's work countering the financial crime threat.
- 2.3.5 The same respondent went on to ask whether Jersey ought to have "[t]he best regulator (who has everything) or a robust regulator able to regulate the Jersey financial services sector for the scale that it is."

JFSC response

- 2.3.1 The JFSC recognises the concerns of respondents in respect of increasing regulatory fees and that the costs of regulatory fees are ultimately a component of the fees paid by the clients and customers of businesses.
- 2.3.2 In order for the JFSC to fulfil its statutory functions, in accordance with the Supervisory Bodies Law, it is critical that the JFSC raise sufficient income to enable it to carry out its functions and provide a reserve of such amount as the JFSC considers necessary.
- 2.3.3 In this consultation, the JFSC outlined the drivers for the increase in fee rates, being:
 - 2.3.3.1 Jersey RPI;
 - 2.3.3.2 a contribution towards meeting the significantly higher costs of the Island project to enhance the JFSC's work in respect of countering financial crime;
 - 2.3.3.3 investment towards restoring the JFSC's reserves; and
 - 2.3.3.4 Investment towards successfully implementing the JFSC's strategy including enhanced data analytics and industry portals.

- 2.3.4 The JFSC provides information regarding its expenditure, including projects such as the change programme, within its annual report and audited financial statements which are publically available on the JFSC website.
- 2.3.5 In addition, the JFSC provides information through its business plans which are also publically available on the JFSC website.
- 2.3.6 In February 2020, the JFSC will be releasing its four-year strategic roadmap alongside its 2020 business plan in order to give all stakeholders (including fee payers) additional information about the activities of the JFSC.
- 2.3.7 With respect to the change programme and actions in respect of the 2015 MONEYVAL assessment, the JFSC highlights that significant activity has been undertaken in recent years to develop the JFSC's capabilities as a supervisor and implement the recommendations of international assessors.
- 2.3.8 This work continues through our four year strategy roadmap, however, with increasing complexity in global regulation and increasing sophistication in the threats that the financial services sector faces the JFSC must respond to these emerging threats.
- 2.3.9 Proposals to increase fee rates are always carefully budgeted for and kept at a level that provides sufficiency in respect of the requirements of the Supervisory Bodies Law and the JFSC's strategic priorities.
- 2.3.10 The JFSC considers that the sentiment illustrating a difference between the "best" and a "robust" regulator is reasonably intended to encourage dialogue. While some businesses may consider that the JFSC does, or wishes to, "have everything", the JFSC is confident that the fee rates that support its activities remain proportionate.
- 2.3.11 As such, in respect of budgeting and business planning, the JFSC always considers its Guiding principles, which require particular regard to:
- 2.3.11.1 the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
 - 2.3.11.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
 - 2.3.11.3 the best economic interests of Jersey; and
 - 2.3.11.4 the need to counter financial crime both in Jersey and elsewhere.
- 2.3.12 The JFSC considers that the best economic interests of Jersey are given due regard in the process of careful budgeting in balance with the JFSC's responsibility to have particular regard to all of its Guiding principles.
- 2.3.13 One respondent asked whether fee rate increases "significantly above the RPI inflation rate are to be expected going forward?"
- 2.3.14 Two respondents considered that future funding of the JFSC might be based on risk data collected through the supervisory data collection exercises and as part of the National Risk Assessment (**NRA**) process. It was suggested that higher-risk firms might be subject to higher fees with lower-risk firms subject to lower fees.

JFSC response

- 2.3.15 The JFSC anticipates that fee rates will not increase by the same magnitude over Jersey RPI in the next two years assuming the JFSC does not undertake new

functions. Nevertheless, Jersey RPI is not proving to be the most appropriate indicator of inflationary pressure on the JFSC's costs and there are important follow-on projects in 2021-23 to reap the benefits of our 2020 capital investments. Therefore, it is anticipated that fee rate increases are likely to be above RPI in order to enable the JFSC to achieve its objectives.

- 2.3.16 The JFSC will be consulting on future funding during 2020 across all industry sectors and suggestions regarding the development of fee rates and fee structures will be carried into this consultation process.

Appendix A – List of respondents to the CP

Name of Respondent	Type of Business
Anonymous via JFL	Representative Body
Jersey Law Society	Representative Body
Direct contribution	Non-DNFBP firm
Trade Body representatives (round-table discussions)	Registered Persons and Representative Bodies

Appendix B – Fees Notice under the Supervisory Bodies Law (for accountants and Lawyers)

Notice of Fees

Published in accordance with:	Article 21 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended
Payable by or in relation to:	Firms of accountants and firms of lawyers
Pursuant to:	Article 20 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended
Commencement date:	The fees set out in this notice and the attached schedule are effective for the period from 1 January – 31 December 2020

1 Interpretation

1.1 In this notice, unless the context otherwise requires –

a firm of accountants	means a person or persons (including but not limited to a sole trader) who carry on business alone or with others that falls within the scope of paragraph 2 of Part B of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999, as amended, and who are required to hold a Level 2 registration under the Supervisory Bodies Law;
a firm of lawyers	means a person or persons (including but not limited to a sole trader) who carry on business alone or with others that falls within the scope of paragraph 1 of Part B of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999, as amended, and who are required to hold a Level 2 registration under the Supervisory Bodies Law;
contract of employment, contract of service or partnership agreement	means an agreement between two or more parties whether express or implied and (if it is express) whether oral or in writing;
JFSC/Commission	means the Jersey Financial Services Commission
relevant date	means the last working day of the year immediately preceding the calendar year to which the fee relates;
relevant employee	<p>means an individual who:</p> <ul style="list-style-type: none"> (a) works under a contract of employment or any other contract of service; (b) practises alone or with others under the terms of a partnership agreement; or (c) is otherwise engaged within the business of a firm of accountants or lawyers, <p>in all cases where the individual undertakes to do or perform, directly or indirectly, any work or service within a firm of accountants or</p>

	lawyers, whether or not engaged directly by the firm of accountants or lawyers or through another entity forming part of the group of entities of which the firm of accountants or lawyers is a part, and the firm of accountants or lawyers is not by virtue of the contract a client or customer of the individual, and “relevant employee” shall be construed accordingly;
sole trader	means a person who is the sole proprietor of a firm of accountants or lawyers and who does not practise law or accountancy with any other person and who does not engage any relevant employee;
Supervisory Bodies Law	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended.

2 Calculation of number of relevant employees

2.1 For clarity, for the purposes of this notice “relevant employee” includes but is not limited to:

- (a) a partner practising law or accountancy whether alone or with others;
- (b) an individual classified as self-employed for tax or social security purposes but in all other respects meets the definition of relevant employee;
- (c) an individual based or working outside Jersey but engaged within the Jersey business of the firm of accountants or lawyers; and
- (d) an individual engaged by a firm of accountants or lawyers which is a Jersey entity wherever in the world that individual works or is based and whether or not that individual is engaged in the Jersey business of that firm of accountants or lawyers.

2.2 For individuals with fixed term contracts that do not span the full calendar year, the hours worked should be annualised and the bandings (see paragraph 2.3) applied when calculating the number of relevant employees.

2.3 The following bandings should be applied when calculating the number of total relevant employees:

- (a) up to and including 9 hours per week 0.25 of a person;
- (b) over 9 hours and up to and including 18 hours per week 0.50 of a person;
- (c) over 18 hours and up to and including 27 hours per week 0.75 of a person;
- (d) over 27 hours per week 1 person.

2.4 The calculation of the number of relevant employees should be undertaken as at the relevant date based upon the relevant employee’s engagement over the preceding 12 months. If, on the relevant date, there exists a post that is vacant but would normally be occupied by an individual who meets the definition of a relevant employee the calculation should include that position.

2.5 *Example 1: fixed term contract.* An individual who has a fixed term contract and is contracted to work full time (35 hours per week) for four months would equate to:

$$35 \text{ hours} \times 4 \text{ months} \div 12 \text{ months} = 11.67 \text{ hours per week}$$

The individual would therefore be equivalent to 0.5 of a person in calculating the number of relevant employees.

2.6 *Example 2: part time working.* An individual who is employed part time for the whole year at 25 hours per week would represent 0.75 of a person in the calculation of the number of relevant employees.

2.7 *Example 3: part time working + fixed term contract.* An individual who is employed part time on a fixed contract (20 hours per week for 6 months) would equate to:

$$20 \text{ hours} \times 6 \text{ months} \div 12 \text{ months} = 10 \text{ hours per week}$$

The individual would therefore be equivalent to 0.5 of a person in calculating the number of relevant employees NOT 0.75 of a person.

3 Annual fee

3.1 Firms of accountants and firms of lawyers shall pay an annual fee of an amount calculated in accordance with the table set out in the Schedule.

3.2 Payment of the annual fee should be made as follows:

- (a) in full, on or before 31 March 2020; or
- (b) where the annual fee due is at least £1,000, and firms of accountants and firms of lawyers indicate that they intend to pay the annual fee on an instalment basis, then the annual fee is payable in four equal instalments. Payments should be made on or before:
 - (i) 31 March 2020;
 - (ii) 30 June 2020;
 - (iii) 30 September 2020; and
 - (iv) 31 December 2020.

3.3 The annual fee is subject to a fee cap of £22,000.

4 Late payment of fees and/or late submission of fees information

4.1 If the annual fee (or an instalment payment, if relevant) is not received in full by the JFSC by the due date, an additional late payment fee of 5% of the unpaid principal amount will be applied on the day after the due date, and on the 1st day of each calendar month after that.

4.2 If the firm does not supply the required information to calculate its fee by 31 March 2020, an administration fee of £100 will be charged on 1 April 2020, and on the 1st day of each calendar month after that while the information is still outstanding. This is in addition to the late payment fee set out in paragraph 4.1 which will be calculated once the information has been submitted.

5 Application fee

5.1 An application fee of £100 shall be payable in respect of an application by a firm of accountants or a firm of lawyers wishing to be registered under the Supervisory Bodies Law.

5.2 The application fee is due at the time of application and is non-refundable.

6 Late filing fees

6.1 If a registered person fails to file or deliver any document to the JFSC under the provisions of the Supervisory Bodies Law or under any provisions of any Order issued in accordance with the Supervisory Bodies Law on or before the date that the document becomes due, the registered person shall be liable to pay a fee of £100 for each complete month or part thereof that the document remains un-filed or undelivered unless the registered person has given the JFSC prior written notice of the reasons for the late filing or delivery of a document and the JFSC

has agreed in writing that the filing may be late. Any such later agreed date shall become the due date for the purposes of the calculation and the payment of late filing fees.

Schedule

	Base Fee	Relevant employee element
Sole Trader	£425	Not applicable
All other firms	£1,700	Plus: £210 per relevant employee calculated in accordance with this notice (the total annual fee is capped at £22,000)

Appendix C – Fees Notice under the Supervisory Bodies Law (for specified Schedule 2 business, including estate agency services and lending)

Notice of Fees

Published in accordance with:	Article 21 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended
Payable by or in relation to:	Registered Persons (specified Schedule 2 business, including estate agency services and lending but excluding services provided by firms of accountants and firms of lawyers)
Pursuant to:	Article 20 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended
Commencement date:	The fees set out in this notice and the attached schedule are effective for the period from 1 January – 31 December 2020

1 Interpretation

1.1 In this notice, unless the context otherwise requires –

contract of employment, contract of service or partnership agreement	means an agreement between two or more parties whether express or implied and (if it is express) whether oral or in writing;
JFSC/Commission	means the Jersey Financial Services Commission
registered person	means a person or persons (including but not limited to a sole trader): (a) who carries on business alone or with others that falls within the scope of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999, as amended, EXCEPT business that is defined in paragraphs 1 and 2 (lawyers and accountants) of Part B of Schedule 2; <u>and</u> (b) who is required to hold either a Level 1 or Level 2 registration under the Supervisory Bodies Law;
relevant date	means the last working day of the year immediately preceding the calendar year to which the fee relates;
relevant employee	means an individual who: (d) works under a contract of employment or any other contract of service; (e) practises alone or with others under the terms of a partnership agreement; or (f) is otherwise engaged within the business of a registered person, in all cases where the individual undertakes to do or perform, directly or indirectly, any work or service within a registered person, whether

	or not engaged directly by the registered person or through another entity forming part of the group of entities of which the registered person is a part, and the registered person is not by virtue of the contract a client or customer of the individual, and “relevant employee” shall be construed accordingly;
sole trader	means a person who is the sole proprietor of a registered person and who does not practise Schedule 2 business with any other person and who does not engage any relevant employee;
Supervisory Bodies Law	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended.

2 Calculation of number of relevant employees

2.1 For clarity, for the purposes of this notice “relevant employee” includes but is not limited to:

- (e) a partner carrying on Schedule 2 business whether alone or with others;
- (f) an individual classified as self-employed for tax or social security purposes but in all other respects meets the definition of relevant employee;
- (g) an individual based or working outside Jersey but engaged within the Jersey business of the registered person; and
- (h) an individual engaged by a registered person which is a Jersey entity wherever in the world that individual works or is based and whether or not that individual is engaged in the Jersey business of that registered person.

2.2 For individuals with fixed term contracts that do not span the full calendar year, the hours worked should be annualised and the bandings (see paragraph 2.3) applied when calculating the number of relevant employees.

2.3 The following bandings should be applied when calculating the number of total relevant employees:

- (e) up to and including 9 hours per week 0.25 of a person;
- (f) over 9 hours and up to and including 18 hours per week 0.50 of a person;
- (g) over 18 hours and up to and including 27 hours per week 0.75 of a person;
- (h) over 27 hours per week 1 person.

2.4 The calculation of the number of relevant employees should be undertaken as at the relevant date based upon the relevant employee’s engagement over the preceding 12 months. If, on the relevant date, there exists a post that is vacant but would normally be occupied by an individual who meets the definition of a relevant employee the calculation should include that position.

2.5 *Example 1: fixed term contract.* An individual who has a fixed term contract and is contracted to work full time (35 hours per week) for four months would equate to:

$$35 \text{ hours} \times 4 \text{ months} \div 12 \text{ months} = 11.67 \text{ hours per week}$$

The individual would therefore be equivalent to 0.5 of a person in calculating the number of relevant employees.

2.6 *Example 2: part time working.* An individual who is employed part time for the whole year at 25 hours per week would represent 0.75 of a person in the calculation of the number of relevant employees.

2.7 *Example 3: part time working + fixed term contract.* An individual who is employed part time on a fixed contract (20 hours per week for 6 months) would equate to:

$$20 \text{ hours} \times 6 \text{ months} \div 12 \text{ months} = 10 \text{ hours per week}$$

The individual would therefore be equivalent to 0.5 of a person in calculating the number of relevant employees NOT 0.75 of a person.

3 Annual fee

3.1 Registered persons shall pay an annual fee of an amount calculated in accordance with the table set out in the Schedule.

3.2 Payment of the annual fee should be made as follows:

- (c) in full, on or before 31 March 2020; or
- (d) where the annual fee due is at least £1,000, and firms of accountants and firms of lawyers indicate that they intend to pay the annual fee on an instalment basis, then the annual fee is payable in four equal instalments. Payments should be made on or before:
 - (v) 31 March 2020;
 - (vi) 30 June 2020;
 - (vii) 30 September 2020; and
 - (viii) 31 December 2020.

3.3 The annual fee is subject to a fee cap of £22,000.

4 Late payment of fees and/or late submission of fees information

4.1 If the annual fee (or an instalment payment, if relevant) is not received in full by the JFSC by the due date, an additional late payment fee of 5% of the unpaid principal amount will be applied on the day after the due date, and on the 1st day of each calendar month after that.

4.2 If the firm does not supply the required information to calculate its fee by 31 March 2020, an administration fee of £100 will be charged on 1 April 2020, and on the 1st day of each calendar month after that while the information is still outstanding. This is in addition to the late payment fee set out in paragraph 4.1 which will be calculated once the information has been submitted.

5 Application fee

5.1 An application fee of £100 shall be payable in respect of an application by a person, or persons, intending to carry on business within the scope of this notice of fees.

5.2 The application fee is due at the time of application and is non-refundable.

6 Late filing fees

6.1 If a registered person fails to file or deliver any document to the JFSC under the provisions of the Supervisory Bodies Law or under any provisions of any Order issued in accordance with the Supervisory Bodies Law on or before the date that the document becomes due, the registered person shall be liable to pay a fee of £100 for each complete month or part thereof that the document remains un-filed or undelivered unless the registered person has given the JFSC prior written notice of the reasons for the late filing or delivery of a document and the JFSC

has agreed in writing that the filing may be late. Any such later agreed date shall become the due date for the purposes of the calculation and the payment of late filing fees.

Schedule

	Base Fee	Relevant employee element
Sole Trader	£425	Not applicable
All other firms	£850	Plus: £210 per relevant employee calculated in accordance with this notice (the total annual fee is capped at £22,000)