

1. Pensions Transfers

The Commission became the regulator of pensions in Guernsey at the request of the States of Guernsey in June 2017. Since that time it has gathered and analysed information from pension providers as part of its regulatory oversight function. This work helped inform the Commission's initial review of pension regulations which it conducted between 1 December 2017 and 28 February 2018. Following this review, the Commission determined that it was appropriate to introduce some new rules for pension providers to improve the initial pension regulation rules. It consulted on these proposed new rules between 12 September 2019 and 7 November 2019 and published the final rules on 18 February 2020. These new rules come into force on 31 December 2020. They include rules which state explicitly:

"Licensees must pay due regard to the interests of Scheme Members and beneficiaries and treat them fairly. (2.1)..."

Transfer requests and information about transfer values should be processed promptly and accurately and should not be unreasonably delayed.

Licensees must not impose unreasonable conditions on Scheme Members who request a transfer (2.12)."

All pensions providers are obliged to abide by these rules once they come into force and the Commission encourages all pension providers to take heed of them during the remainder of 2020. Individual complaints about pensions will normally be considered by the Channel Islands Financial Ombudsman who generally has powers to award compensation¹. The Commission would generally become involved if it were clear that there were consumer treatment issues which the Ombudsman was not best placed to deal with through adjudication on individual cases.

Pension transfers are not necessarily straightforward and Guernsey pensions providers, to the extent they act as the trustees of the pension funds (which will often be the case), have an obligation to ensure that they are acting in the best interests of the beneficiaries of the trust – the pension scheme members. They are entitled to question

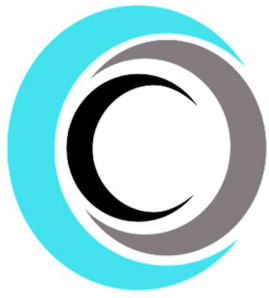
a request for a transfer where they are concerned, inter alia, that the request may arise because of a financial adviser (resident in Guernsey or overseas) manipulating a pension scheme member in the hope of churning the member's pension to make a significant short-term profit at considerable cost to the scheme member's pension. That said, there must be a balance to such scrutiny by Guernsey pension trustees and in cases where the trustee has no reason to believe that the scheme member is not of sound mind, having appropriately checked the pension member's rationale for the transfer and the bona fides of the new trustee², they should respect that individual's reasonable expectation of being able to freely choose where and how to conduct his or her pensions saving and effect a transfer without undue delay, unreasonable charges or conditions in relation to the transfer. They cannot unreasonably substitute their judgement as to the pension member's best interests save in unusual circumstances as we live in a free society. They must also take care not to privilege their commercial interests over their fiduciary duties under the trust law and their legal obligations to adhere to Bailiwick pension regulations.

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2. Commission appoints new President of Panel of Senior Decision Makers

The Commission has announced the appointment of Ms Leigh-Ann Mulcahy QC to succeed Mr Michael Blair QC as President of its Panel of Senior Decision Makers. Mr Blair QC is retiring from that position at the end of this year – a position he has held since its inception in 2014. The Commission would like to place on record its appreciation because Mr Blair QC has undertaken the role and for the considerable assistance, he has afforded to the Commission over the past six years.

Ms Mulcahy QC is a leading advocate, part-time High Court Judge, commercial arbitrator, and mediator. She was called to the Bar of England & Wales in 1993, the Bar of the Republic of Ireland in 1998 and was appointed QC in 2009. Her practice spans commercial, regulatory, and public law. Since very early in her career she has acted for governments. She was First Counsel to the Welsh Government from 2013 to 2016. Prior to taking silk, she held the appointment of Treasury Counsel (A Panel) for the UK Government and she continues to represent the UK Government upon the nomination of the Attorney-General.

Ms Mulcahy QC has held the appointment of Deputy High Court Judge since 2016 and Senior Decision Maker for the Guernsey Financial Services Commission since 2014. She also sits as a commercial arbitrator in international and domestic arbitrations and is a CEDR accredited mediator.

3. Commission clarifies boundaries of Custodians' duties

In its efforts to provide greater regulatory clarity for industry, the Commission has today published new guidance aimed at providing additional clarification about Designated Custodians' duties.

This guidance sets out the standards of conduct that are expected of Designated Custodians when they act for Open-Ended Collective Investment Schemes and where the assets are held indirectly, for example, where assets

are held in a separate legal structure. The guidance presents different ways of complying with the current Rules although a Designated Custodian may also adopt other appropriate and effective measures to those contained in the guidance if it can demonstrate that such measures achieve compliance with the Rules.

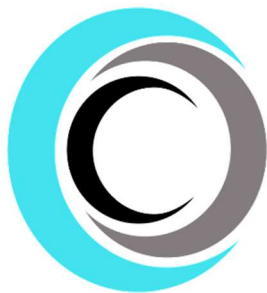
The Commission has also highlighted within the guidance, considering the findings of the Bailiwick's National Risk Assessment, that to mitigate the risk of a Scheme itself being used for criminal purposes, the expectation is that the Designated Custodian should be able to demonstrate knowledge of the underlying assets of the Scheme and the guidance also presents ways of doing this. Designated Custodians should also be cognisant of their obligations to perform ongoing and effective monitoring of transactions and other activity.

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4. Stephen Bougourd

The Guernsey Financial Services Commission decided to impose a financial penalty of £7000 under section 11D of the Financial Services Commission Law on Mr Bougourd.

To read the full story, please click here:
<https://www.gfsc.gg/news/stephen-bougourd-8>

5. Commission proposes deregulation of non-Guernsey Fund Scheme Rules

A Non-Guernsey Scheme is a collective investment scheme that is not established or incorporated in the Bailiwick of Guernsey and is not authorised or registered by the Commission. The Law permits 'Protection of Investors' (PoI) licensees to act for Non-Guernsey Schemes without prior approval if they are authorised in Jersey, Isle of Man, United Kingdom or Ireland.

You can view the Consultation Paper seeking feedback on proposals for changes to the Non-Guernsey Scheme regime here:
<https://consultationhub.gfsc.gg/fiduciary-supervision-policy-and-innovations/consultation-paper-proposals-for-non-guernsey-sche/>

6. Commission consults on increasing Private Investment Fund (PIF) options

The Commission has published a Consultation Paper containing proposals which, if implemented, would allow different investor categories to take advantage of an appropriately regulated fund structure.

Whilst the proposals would see the current approach to registering a PIF continue, other paths would be introduced to complement this.

You can view the Consultation Paper here:
<https://consultationhub.gfsc.gg/fiduciary-supervision-policy-and-innovations/consultation-paper-on-proposals-for-private-invest/>

7. Safehaven International Limited, Mr Richard John Bach, Miss Tracy Jane Ozanne, Mr David Charles Housley Whitworth, Mr Michael John Good and Mr Stephen John Dickinson

The following discretionary financial penalties have been imposed:

Safehaven International Limited (the "Firm") - £100,000

Mr Richard John Bach - £50,000

Miss Tracy Jane Ozanne - £5,000

Mr David Charles Housley Whitworth - £10,000

Mr Michael John Good - £10,000

Mr Stephen John Dickinson - £1,000

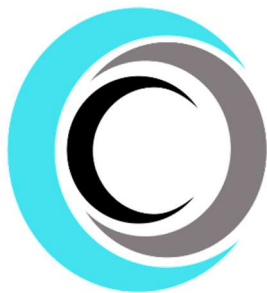
Please click here for the full report:
<https://www.gfsc.gg/news/safehaven-international-limited-mr-richard-john-bach-miss-tracy-jane-ozanne-mr-david-charles>

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8. Senior Commission staff appointed to key positions within the International Association of Insurance Supervisors (IAIS)

The International Association of Insurance Supervisors (IAIS) recently held its held biennial Executive Committee elections which saw the Commission's Director General, William Mason, re-elected as a member.

Please click here for the full report:
<https://www.gfsc.gg/news/senior-commission-staff-appointed-key-positions-within-international-association-insurance>

9. Private Investment Fund – Form PIF (December 2020)

The Commission has issued a revised application form for the Private Investment Fund – Form PIF (December 2020).

Please ensure that this form is used for all future applications and that all applicable requirements are adhered to.

The Form PIF can be found here:
<https://www.gfsc.gg/news/private-investment-fund-form-pif-december-2020>

10. Commission becomes world's first regulator to introduce a green insurance capital regime

In October of this year, the Commission issued a consultation paper proposing amendments to the Insurance Business (Solvency) Rules 2015 which would see the introduction of a specific approach for green assets into the Solvency Rules and help to incentivise increased investment in green assets by life insurers.

The full report can be found here:

<https://www.gfsc.gg/news/commission-becomes-worlds-first-regulator-introduce-green-insurance-capital-regime>

11. Handbook on Countering Financial Crime and Terrorist Financing

The Commission is undertaking a short consultation on changes proposed to rules and guidance in Chapters 3 and 7 of the Handbook on Countering Financial Crime and Terrorist on the risk-based approach and on legal persons and legal arrangements.

The full report can be found here:

<https://www.gfsc.gg/news/handbook-countering-financial-crime-and-terrorist-financing-6>

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