



Feedback Paper on Consultation Paper No. 11 2019

Consultation on the proceeds of Civil Financial Penalties
Financial Services Commission (Jersey) Law 1998

Feedback on a consultation on proposals regarding the disbursement of money received as proceeds of Civil Financial Penalties.

Issued: January 2020

Consultation Feedback

This paper reports on responses received by the JFSC to the Consultation Paper No. 11 2019 published by the JFSC on 10 December 2019.

Glossary of Terms

Defined terms are indicated throughout this document as follows:

AIF Code	Code of Practice for Alternative Investment Funds
AIFJR	Alternative Investment Funds (Jersey) Regulations 2012
Banking Code	Code of Practice for Deposit-taking Business
BBJL	Banking Business (Jersey) Law 1991
Codes of Practice (Codes, or individually, Code)	collectively, the <ul style="list-style-type: none"> › AIF Code; › Banking Code; › FSB Code; › GIMB Code; › IB Code; › Insurance Code; › MSB Code; and › TCB Code
Commission Law	Financial Services Commission (Jersey) Law 1998
CP	Consultation Paper
FRS 102	The Financial Reporting Standard applicable in the UK and Republic of Ireland (March 2018)
FSB Code	Code of Practice for Fund Services Business
FSB Order	Financial Services (Financial Services Business) (Jersey) Order 2009
FSJL	Financial Services (Jersey) Law 1998
GIMB	General Insurance Mediation Business
GIMB Code	Code of Practice for General Insurance Mediation Business
IB Code	Code of Practice for Investment Business
IBJL	Insurance Business (Jersey) Law 1996
Insurance Code	Code of Practice for Insurance Business
JFSC/Commission	Jersey Financial Services Commission
MSB	Money Service Business
MSB Code	Code of Practice for Money Service Business
Penalty/Penalties	Civil Financial Penalties imposed in accordance with Articles 21A – 21G of the Commission Law
Proceeds	Money received in respect of a Penalty in accordance with Article 21G of the Commission Law

registered person/persons	a person who is registered, or holds a permit or certificate, as applicable, under one or more of the regulatory laws or the plural thereof
Regulatory Laws	Alternative Investment Funds (Jersey) Regulations 2012 Banking Business (Jersey) Law 1991 Financial Services (Jersey) Law 1998 Insurance Business (Jersey) Law 1996 Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
SBJL	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
TCB	Trust Company Business
TCB Code	Code of Practice for Trust Company Business

Table of Contents

Consultation Feedback.....	2
1 Executive Summary	6
1.1 Overview	6
1.2 Feedback received.....	6
1.3 Next steps.....	6
2 Consultation Feedback.....	7
2.1 Feedback received.....	7
2.2 Do you agree with the JFSC's proposed approach to the retention of Proceeds as income?.....	7
2.3 Do you agree with the JFSC's proposal to treat "class of business" according to the classes detailed?	7
2.4 In the case of Penalties applied to more than one class of business, do you agree with the JFSC's proposal to allocate Proceeds to future fees based on the relative proportion of fees income from those classes?	8
2.5 Do you agree with the JFSC's proposed approach in respect of reductions in future fees?	8

1 Executive Summary

1.1 Overview

- 1.1.1 On 10 December 2019 the Jersey Financial Services Commission (**JFSC**) issued Consultation Paper No. 11 2019 (**CP**), which sought views on proposals regarding the disbursement of money received by the JFSC as proceeds of Civil Financial Penalties (**Penalties**).
- 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 implementing its proposals.

1.2 Feedback received

- 1.2.1 Four respondents, one a representative body via Jersey Finance, provided written comments. 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 to implement the proposals.
- 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 During 2020 two annual fee cycles – those for Trust Company Business and Fund Services Business – will receive an allocation of Proceeds. The amount that each firm within these industry sectors will receive will be specified in the invoice that is raised in respect of their annual fees.
- 1.3.2 The JFSC's 2019 Annual Report and Financial Statements will report on the application of Proceeds as stated at 4.3.6 of the consultation.
- 1.3.3 In future periods, should Proceeds be received, the approach outlined within the Consultation and this Feedback Paper will be adhered to.

2 Consultation Feedback

2.1 Feedback received

2.1.1 This section summarises the substantive comments received in response to the CP.

2.2 Do you agree with the JFSC's proposed approach to the retention of Proceeds as income?

2.2.1 All respondents agreed with the approach consulted on.

JFSC response

2.2.2 The JFSC will implement the proposed approach to the retention of Proceeds as income, as consulted on.

2.3 Do you agree with the JFSC's proposal to treat "class of business" according to the classes detailed?

2.3.1 All respondents agreed with the approach consulted on.

2.3.2 One respondent stated that a "caveat should be where the fine relates to very specific activity where there are only limited class holders then perhaps in this case these firms should be the ones to benefit. For example, not every firm has a class N licence for MTCs [(Managed Trust Companies)], so if the real issue was MTC related perhaps it would be relatively straightforward to determine this."

2.3.3 One respondent stated that "if X TCB Ltd is fined, the current wording of the proposal seems to indicate the reduced fees would be applied across all registered persons of the same class, including X TCB Ltd. If this is the case, then X TCB Ltd is not being fined the full amount because part of the fine will be used to reduce its future fees."

2.3.4 The respondent also explained that there was divided opinion regarding the appropriateness of this formulation:

2.3.4.1 The firm that has paid the penalty should not be included in future discounts, no matter how small such discounts would be; against,

2.3.4.2 The payment of a penalty, and associated public statement etc. is the punishment enough and once dealt with, a line is drawn.

JFSC response

2.3.5 The JFSC recognises that there may be circumstances where a contravention has been in respect of a specific activity within a class of business. The approach to class of business outlined in the consultation, is generally anticipated to be suitably granular given the principles-based form of the Codes of Practice. In a circumstance such as that described by the respondent at 2.3.2 the JFSC would consider the specific facts of the contravention and, if it was appropriate, would allocate Proceeds to future fees based on the most appropriate criteria which might be a more granular approach.

2.3.6 The JFSC recognises that the outcome of the proposal to reduce future fees for the entire class of business (as consulted on) would be that the firm that has paid the Penalty will receive an allocation of the Proceeds in their future fee levies. This is considered to be an acceptable outcome given that the regulatory sanction and

associated processes will have concluded before the future fee period in which Proceeds are applied.

- 2.3.7 The JFSC will implement the proposal to treat “class of business” according to the classes detailed in the consultation.

2.4 In the case of Penalties applied to more than one class of business, do you agree with the JFSC’s proposal to allocate Proceeds to future fees based on the relative proportion of fees income from those classes?

- 2.4.1 All respondents agreed with the approach consulted on.

JFSC response

- 2.4.2 The JFSC will implement the proposal, in the case of Penalties applied to more than one class of business, to allocate Proceeds to future fees based on the relative proportion of fees income from those classes, as consulted on.

2.5 Do you agree with the JFSC’s proposed approach in respect of reductions in future fees?

- 2.5.1 All respondents agreed with the approach consulted on.
- 2.5.2 One respondent stated that “it would be helpful if the JFSC were to issue guidance on how any Proceeds being allocated for future periods should be accounted for and reflected in the business accounts”.

JFSC response

- 2.5.3 The JFSC will apply Proceeds to future fees by way of a specific line within firms’ JFSC fees invoice being “discount in respect of Civil Financial Penalties”. Until such a time as fees have been levied, the precise amount of this “discount” cannot be determined due to the changeable nature of firms’ JFSC fee calculations (e.g. employees, members of affiliations, pools of assets, income). If further guidance is required by firms then the JFSC will liaise with Representative Bodies to ensure that sufficient clarity is ascertained.
- 2.5.4 The JFSC will implement the proposed approach in respect of reductions in future fees as consulted on.

Appendix A – List of respondents to the CP

Name of Respondent	Type of Business
Anonymous via Jersey Finance	Representative Body
Anonymous	Fund and Trust Company Business
Anonymous	Investment and Trust Company Business
Anonymous	Trust Company Business