
Dormant Account Scheme for Guernsey

Summary of Consultation Responses and Policy Conclusions

November 2013

Summary of Consultation Details

A consultation document aimed at bank account holders, banks, the financial services industry and other interested stakeholders was issued in July 2013, inviting comments about the possible introduction of a dormant bank accounts scheme.

The document was available on the States of Guernsey website, in paper form, and publicised locally. The consultation closed in September 2013 and seven responses to the consultation were received from individuals, trade bodies or organisations within the finance industry and charitable sector.

Summary of Consultation responses

The responses were generally supportive of such a scheme but it was emphasised by many that there must be sufficient funds to justify setting up such a scheme and it was clear that the set up of such a scheme should not just happen as a default position but that it must be very clearly thought through.

Many responses from the charity sector were very supportive of the scheme and felt that funds could be used to assist the local community.

Many felt that although this is a simple concept it is complex in its implementation – therefore it must be well thought through and although the banks which responded were supportive of such a scheme, many made the point that they have a number of priorities brought on by external forces and the dormant account scheme may not be urgent.

There was general agreement that the following suggestions should be taken on board if such a scheme were set up:

1. The excess funds, after administration costs, should be used for charitable purposes / good causes.
2. The States (in conjunction with the local charity sector) should set the general parameters of any scheme and then separate bodies should administrate and allocate funds under these rules set by the States.
3. It should be compulsory for all banks.
4. A consistent approach should be adopted with all the Crown Dependencies.
5. Use best practice from other schemes in other jurisdictions.

The responses to the specific questions are summarised below.

Some of those who responded to the consultation agreed that their comments could be made public but should not be attributed to them.

Dormant Funds

In parallel to the Department's consultation the GFSC carried out a data gathering exercise to ascertain the likely level of dormant balances in Guernsey, which showed the total to be just over £1.2million.

It should be noted that this would not be the total amount which is available for distribution from any scheme because it is likely that the amount would reduce when any dormant scheme was publicised and in addition this amount would also need to cover:

- (i) any initial and ongoing management / administration
- (ii) future claims from deposit holders.

After such deductions it is anticipated that the amount available for good causes and ongoing admin is likely to be no more than £300k.

Other considerations

During the course of the investigations in relation to dormant accounts it was clear that there were other types of unclaimed property that were outside the scope of this initial consultation.

Policy Conclusions

After considering the responses to the consultation and the level in dormant accounts in Guernsey the Department concluded that the dormant account scheme and legislation should not be pursued any further and no further action would be taken by the Board at this time.

However, in light of other potential types of unclaimed property this position would be kept under review and the Department recommends that T&R should consider the opportunities in relation to unclaimed property in light of any conclusions on such related assets and also any developments in the administration by Her Majesty's Receiver General of otherwise ownerless assets (bona vacantia).

Specific consultation questions

GENERAL COMMENTS REQUIRED ON Dormant Bank Accounts

- 1. Comments are invited on the general background and possible treatment in relation to dormant accounts.**

Most answers to this question are included in the summary above.

In addition it was made clear by some industry responses that although the concept is relatively simple, there is the need for significant detail in any legislation and that such a scheme is quite complex to administrate.

There were also various comments about whether such a scheme is a high priority for any jurisdiction and from the banks point of view they are also dealing with a number of other significant external and regulatory issues at this time.

One response made the point that Guernsey could also benefit by considering if other unclaimed property within Guernsey could be treated in a similar fashion. However, as this consultation was specifically about dormant accounts this summary focuses on this rather than other wider ranging but related topics.

Possible scheme options

2. Is the suggested test for dormancy appropriate, i.e. that there should be no transactions or communication from the account-holder for 15 years?

The general consensus was that 15 years was appropriate, although a minority advocated a shorter period. Any period must be consistent across the Crown Dependencies.

Most of the responses from the charitable sector did not comment on the suitability of a time period.

3. What procedures should banks be required to use to attempt to contact the holders of accounts before classifying them as dormant?

Most commented that the detail of individual procedures should be left to the banks themselves but that general guidance could be issued when such a scheme was set up. The general feeling was that it should be that the banks have taken “all reasonable steps” to contact customers and they should be able to prove they have carried this out.

4. Do you agree that on closure of a bank, accounts could be classified as dormant notwithstanding that the period of dormancy was less than 15 years?

Not everyone responded to this question but of those that did there was a consensus that practices adopted by other schemes should be adopted. Some felt that it was reasonable that in the event of a bank closing the dormancy period could be reduced.

5. Should the reclaim fund be based within government (e.g. Treasury and Resources) or should it be an independent body?

There was a variety of responses to this question without a clear consensus. A range of views existed although there was little support for the scheme to be run directly by government, but it was generally felt that government should have a supervisory role, at least from the outset.

Most felt that if an independent body runs the scheme then it should be paid for by the assets and funds within the scheme. It was acknowledged that to carry out this function effectively there would be a not insignificant cost attached and that this must be taken into account, because if the potential funds within the scheme were not large enough to allow the scheme to be run effectively then the scheme may not be viable.

Only one response felt that the government should finance the administration of such a scheme.

6. If the reclaim fund is to be an independent body, how should the trustees/commissioners be appointed?

The consensus from the few that answered this question was that the States of Guernsey – possibly Treasury – should be involved in any appointment and oversight.

One view was that the scheme could be administered by a bank, but most felt that this was not appropriate or did not make such a comment.

7. Should the distribution of the money be carried out by the reclaim fund or by a separate body?

There was a clear view that the functions of administering the scheme and allocating any funds to potential good causes should be separate. Only one response thought that both functions could be carried out by a single body.

There was also consensus that the initial parameters about where any funds should be distributed should be set by government after further consultation with the charitable sector.

Again it was emphasised that it was preferable that any system was replicated across the Crown Dependencies.

8. Should the scheme be voluntary or compulsory for banks?

There was consensus that the scheme should be compulsory.

9. Should account-holders continue to deal with banks following a transfer of the deposits to the reclaim fund, or should there be a central register, so that customers would make a claim directly on the reclaim fund?

There was not a clear consensus in relation to this question, however almost all felt that the individual banks should have some continued involvement with any claim – at a minimum this would be dealing with the initial complaint and verifying that the applicant was legitimate. There was one view that the due diligence around a client should rest with the scheme rather than the bank.

Some felt that the bank could have an agency relationship with the customer and scheme – such as in the UK.

Some made comments about the need for clarity about data protection.

A consistent approach across Crown Dependencies was deemed preferable.

10. If claims are made should they be to banks, and in which case should the bank concerned pay out the funds as soon as it is satisfied that the claim is valid, or should it first await receipt of the funds from the reclaim fund? Or should the reclaim be administered by the fund.

The general view was that initial contact could be made with the banks and thereafter contact should be with the scheme.

11. Should the money raised be used for the benefit of specific good causes for the population of Guernsey? If so, which ones?

Most felt that the parameters for which areas should receive any funds should be set by government with input from the charities / good causes sector. Then a separate body (see Q7 above) should decide on specific distributions and be free to act within the preset criteria.

Most of the responses to this question stated that the recipients should be local good causes and charities. The responses from those areas stated that there were many appropriate causes in Guernsey which would benefit in a positive way for the overall benefit of the community.

There was one response which stated that the funds could be used to fund government expenditure.

12. If the money should be used for charity generally, on what basis should the distributor decide how to allocate the money available?

As question 11.

13. Should a public awareness campaign (beyond the usual distribution of information about new legislation) be conducted prior to the scheme coming into effect? If so, what form should such a campaign take?

Most responses agreed that a local publicity campaign should take place which would include press releases and possibly some adverts. It was felt that this should be the responsibility of the scheme although one suggestion was that government should be responsible.

It was felt that this would enable as many people as possible who may hold dormant accounts to come forward and it was also suggested in one response that this would be positive for banks who would better able to defend

themselves about why funds have been transferred from a bank to the scheme.

14. What factors should be taken into account in assessing applications for grants to good causes? Should grants be made for running costs or for capital expenditure or for both? Should there be a requirement for matching contributions?

As question 11. In addition one commented that the scheme should not be able to be involved in any long term commitments to charities.

Other Considerations

15. How should the level of interest rate be determined for dormant accounts which are claimed?

There were differing views on this matter but most agreed that a simple solution was desirable. Views ranged from paying no interest at all to paying a limited amount of interest based on either what the dormant funds are earning whilst being administered or based on a high street bank rate.

A consistent approach across the Crown Dependencies was emphasised.

16. Who should bear the exchange rate risk for any dormant accounts which are claimed but which are not held in the fund's currency?

Again there were differing views on this matter but most thought that any scheme assets should be held in sterling and therefore if anyone bears any exchange rate risk it should be the holders of the dormant accounts.

A minority of responses suggested that the scheme could hold accounts in the three major currencies of GBP, USD and Euro.

Most of those who responded to this question did not think that the banks should bear this risk.

17. Should dormant accounts in other currencies be converted to Guernsey currency?

As per question 16 most responses felt that the scheme's assets would be held in GBP with a minority suggesting they could also be held in USD and Euro.

18. Do you consider it appropriate that accounts which hold less liquid assets should not be included in the dormant accounts scheme?

Most responses were that the scheme should only deal with cash dormant balances as dealing with other assets would be unduly complicated.

One response advocated that Guernsey could follow other jurisdictions which do extend legislation to cover other less liquid assets.

19. What other areas in relation to dormant accounts which have not been covered by this consultation should be considered?

Most did not provide any additional comment. A minority of responses emphasised some points which had been made earlier including the need for consistency across the Crown Dependencies, simplicity and that data protection issues need clarifying.

Commerce and Employment Minister's response to the Consultation

The Commerce and Employment Minister is grateful to those who have taken the time to consider the proposals and send in their comments and said:

"It is clear that although there was general support for a scheme to be introduced it was clear that it should only go ahead if there are sufficient funds available to justify such a scheme.

The Department has concluded that, in light of the reduced and reducing amount of funds in dormant accounts, the scheme is not viable at this time. To run such a scheme professionally and transparently would require the introduction of legislation, a comprehensive corporate governance structure and significant time and cost. At this stage the costs of this unfortunately outweigh the benefits and no further action in relation to this matter will be taken by the Department at this time.

The Department believes that there may be merit in the States considering the possibility of legislating to cover other types of unclaimed assets - and is open minded whether any investigations into the combined value of these assets and dormant accounts may justify the consideration of a scheme which covers all such assets in the future.

The Department will also monitor any developments in the administration by Her Majesty's Receiver General of otherwise ownerless assets which are passed to the Crown (*bona vacantia*) to see whether it may be possible in future to combine the administration of both sources of funds in order to achieve economies of scale.

The relatively low levels of dormant account balances also confirms that the island's banking system is well run with the banks having a sound knowledge of its customers. "

List of Respondents – not all named – only those who specifically mentioned that they could be named:

Peter Neville
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RBSI