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Financial Services Ombudsman Scheme for Jersey and Guernsey Summary of Industry Consultation Responses

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Summary of Consultation Details

A consultation document aimed at the financial services industry was issued on 1st February 2011, inviting comments about the proposed structure and funding of the financial ombudsman scheme. The document was available on the States of Jersey website and in paper form. The closing date of 11 March was subsequently extended to 15 April 2011 and 32 responses to the consultation were received, with the majority of responses from the finance industry. This included a consolidated response from Jersey Finance Limited summarising the responses that it had separately received.

Summary of responses

Not all respondents answered the specific questions posed in the consultation document and many wrote more generally about aspects of the scope of the ombudsman scheme. The responses to the specific questions are summarised later.

Most respondents were supportive of the introduction of an ombudsman scheme. A few queried the need for an ombudsman scheme, suggesting cost-benefit analysis before proceeding or consideration of other alternatives such as court-sponsored mediation. However, a political decision to introduce a new Financial Services Ombudsman Law had already been made by the States of Jersey (in Amendment No.6 to the Business Plan 2010), so this decision was not open to debate in the consultation.

Activities covered

A significant number of responses (17) argued that trust company business should not be within the scope, for reasons including practical concerns relating to the significant differences between this sector and the retail financial services area; the role and experience of the Royal Court in relation to disputes; parity with other jurisdictions and the potential impact on the competitiveness of the sector.

Some respondents queried as to whether accountancy and legal services would be covered by the Scheme, through the supervision of these persons by the Financial Services Commission in connection with the Proceeds of Crime (Jersey)

Law 1999, and stated they would not expect them to fall within. It can be clarified that it was not the intention to cover these professional services.

Funding

Many respondents commented on the area of funding. Several respondents were critical that no data on costs had been included in the consultation document and some requested further consultation or a working party once figures are available.

Some suggestions were received that complainants should be charged to use the scheme. However, the proposal agreed by the States of Jersey was for a no cost alternative dispute resolution scheme and this is in line with the UK and IOM schemes and the British and Irish Ombudsman Association's criteria for ombudsman schemes. (The European Commission Recommendation on principles applicable to bodies responsible for out of court settlement of consumer disputes states such procedures should be free of charges or of moderate cost.)

Consultation questions

(a) Comments are invited on whether there should be a limit on the size of trust/foundation whose trustees or council members can bring a complaint to the ombudsman scheme, and if so, what the limit should be. (section 7.2)

There were eight responses to this question. The majority support (5/8) was for no limit on the size of the trust or foundation.

(b) Comments are invited on the proposed categories of complainants able to use the scheme (section 7.4)

There were fourteen responses to this question. There were a large variety of answers with some support for the proposed categories and a wide spread of other suggestions and no particular view having majority support.

(c) Respondents are invited to comment on whether all the proposed relationships between complainants and financial services providers are applicable to Jersey or if there are any others that should be included (section 7.5).

Fourteen respondents made a variety of comments on this section.

(d) Comments would be welcomed on the most suitable time limit (6 or 10 years) to be used (section 9.3).

There were 13 responses, of which the majority support (9/13) was for a 6-year time limit. *This accords with the UK and IOM schemes, so 6 years will be adopted.*

(e) A 3-month time limit on financial services providers is proposed (to issue a final response to a complaint), do respondents agree? (section 9.4)

There were 15 responses, of which a majority (13/15) agreed.

(f) A starting date of 1st January 2010 is suggested. Comments would be welcomed on the suitability of this date. (section 10.1)

There were 17 responses, of which 4 supported the starting date, 10 disagreed with it and 3 made other comments. There was general misunderstanding of the starting date, which actually limits the amount of retrospection under the Scheme at the outset. The general time limit allows complaints to be considered about acts or omissions that occurred within the previous 6 years. A starting date would limit this at the inception of the scheme.

(g) What would be your favoured percentage split between income from annual levies and case fees? (section 15.2.2)

Ten respondents directly answered this question, with most (7/10) expressing a preference for the majority of income coming from case fees.

(h) Do you agree with the approach of not charging fees on the first few complaints per year? (section 15.2.3)

Ten respondents directly answered this question and opinion was divided with a slight majority (6/10) agreeing.

(i) Do you agree there should be flat fees for financial services providers that deal with consumers, except in certain areas where it should be graded? (section 15.2.8)

Several supported some form of graded approach to annual fees, with some suggestions it would be fairer on a 'user pays' ie complaints volume basis rather than size of the provider.

(j) Should these graded areas include banking, life insurance, insurance mediation and financial advice? (section 15.2.8)

Only two respondents directly addressed this question, one noting surprise that two of the Island's largest sectors (trust company business and funds services business) were not included. Another considered all sectors should be graded.

(k) Do you agree the data to inform these graded areas should be measures of the size of consumer business or could more basic data such as number of employees be used? (section 15.2.9)

The seven responses were fairly mixed, although there was some support for using employee numbers data.

Minister for Economic Development's response to the industry consultation

The Minister for Economic Development is grateful to those who have taken the time to consider the proposals and send in their comments. The proposal for a financial services ombudsman has the broad support of industry, with the exception of coverage of the trust company business sector.

Following the close of the consultation exercise, a further meeting was held with representatives of the sector. After full consideration a policy decision was taken

to include pension trusts / SIPP complaints but to exclude other areas of trust company business initially, with a commitment to monitor and review.

Other policy amendments resulting from the consultation

A 6-year general time limit on complaints was supported by respondents and will be adopted. This accords with both the UK and IOM schemes.

Economic Development will be taking up the offers of assistance through a working party to assist with the development of funding arrangements. Draft legislation will be published/circulated/consulted on in due course.

List of Respondents

Barclays Wealth
Basel Trust Group
Bedell Group
CAPCO Trust Jersey Limited
Citi Private Bank
Clive Tomes & Co
Consacc Accounting & Tax Services
Equinox Trustees Limited
Fairburn Private Bank Limited
Fairburn Trust Limited
Fiduciary Management Ltd (FML)
Heritage Insurance Limited
Hill Street Chambers
Homebuyer Financial Services Ltd & Channel Island
Retirement Solutions
HSBC (consolidated response)
Islands Insurance
Jersey Association of Trust Companies
Jersey Chamber of Commerce
Jersey Citizens Advice Bureau
Jersey Finance Limited
Jersey Funds Association
Jersey Law Society
Jersey Financial Services Commission
Jersey Society of Chartered and Certified Accountants
Pentera Trust Company Limited
Philean Trust Company Limited
R&H Trust Co (Jersey) Limited
RBS International
Societe Generale Private Banking
Standard Chartered (Jersey) Limited
UBS AG
Volaw Trust & Corporate Services Limited