

Consultation Paper 2

Eligible Complainants: Sufficiently-close relationships

A: This consultation

Under the relevant laws, clients and prospective clients of financial services providers ('providers') are eligible to refer complaints to the Channel Islands Financial Ombudsman ['CIFO'] once it is open.

This consultation is about what other relationships with providers are sufficiently-close for non-customers to be able to refer complaints to CIFO.

Section B explains how to respond. Section C explains the role of CIFO. Sections D to G explain the existing provisions about who will be able to refer a complaint to CIFO. Section H explains the questions covered by this consultation.

B: How to respond

Please send any response in writing by email to consultations@ci-fo.org or by post to Channel Islands Financial Ombudsman, P O Box 114, Jersey, JE4 4QG. Responses may be published, unless clearly stated to be confidential.

Responses must reach us no later than 14 September 2015. That time limit takes into account the general desire for CIFO to open as soon as possible.

C: Financial Ombudsman

CIFO is the joint operation of the statutory bodies established by the Financial Services Ombudsman (Jersey) Law 2014 ['the Jersey Ombudsman Law']¹ and the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 ['the Guernsey Ombudsman Law'].²

CIFO is independent of the States. The joint operation – working from a shared office in Jersey, with the same board, ombudsman and staff – will cover complaints about financial services provided in and from Jersey, Guernsey, Alderney and Sark. It is due to open for business later in 2015.

It will resolve complaints against financial services providers – independently, fairly, effectively, promptly, with minimum formality and so as to offer a more accessible alternative to court proceedings. This will help to underpin confidence in the finance sectors, both locally and internationally.

¹ www.jerseylaw.je/laws/revised/Pages/13.255.aspx

² www.guernseylegalresources.gg/article/115617/Financial-Services-Ombudsman-Bailiwick-of-Guernsey-Law-2014

D: Legal background

Under the Jersey and Guernsey Ombudsman Laws [‘the Ombudsman Laws’], a complainant can be from anywhere in the world³ - but must satisfy three conditions in order to use CIFO.⁴ The complainant must:

- be in a specified category;
- not be a financial services provider; and
- have a specified relationship with the financial services provider complained about.

This paper summarises all three conditions. But this consultation is only about the third condition. The first condition is covered by an earlier consultation. The second condition is fixed by the Ombudsman Laws.

E: First condition: specified category ⁵

The first condition is that the complainant must have been in a specified category at the time of the act complained about. The Ombudsman Laws automatically include the categories of consumers and microenterprises, whether in the Channel Islands or elsewhere. The consumer category includes non-professional trustees / council members / personal representatives.

The Ombudsman Laws allow the Jersey Minister for Economic Development and the Guernsey Department for Commerce and Employment to make Orders adding any other category that relates to charities, trusts, foundations or other bodies.⁶

That power is subject to a number of conditions, including a recommendation by CIFO,⁷ which must consult before making a recommendation.⁸

CIFO’s Consultation Paper 1 – Eligible Complainants: Categories⁹ proposes adding small charities in the Bailiwicks of Guernsey and Jersey, with a gross annual income under £1 million in the previous financial year.

F: Second condition: not a financial services provider ¹⁰

The second condition is that the complainant must not be a financial services provider, and must not have been a financial services provider at the time of the act complained about.

This consultation is not about the second condition, which is fixed by the Ombudsman Laws.

³ Article 8(16) of the Jersey Ombudsman Law and section 8(2) of the Guernsey Ombudsman Law.

⁴ Article/section 8(2).

⁵ Article/section 8(3).

⁶ Article/section 8(3)(c).

⁷ Article/section 8(3)(c)(iii).

⁸ Article/section 8(11).

⁹ www.gov.je/Government/Consultations/Pages/FSOmbudsmaneligibility.aspx

¹⁰ Article/section 8(2)(b).

G: Third condition: relationship with provider ¹¹

The third condition is that the complainant must have had a specified relationship with the relevant provider at the time of the act complained about.

The Ombudsman Laws automatically cover those who were clients¹² or prospective clients.¹³ They also cover any other relationship which is sufficiently-close to give appropriate standing for the services of CIFO to be available. This is to be decided by CIFO, taking account of guidelines.

The guidelines are to be determined by the principal ombudsman¹⁴ after consultation¹⁵ and are to be published, with the date on which they (or any changes to them) come into effect.¹⁶ This consultation is about these guidelines.

H: Issues covered by this consultation

The Ombudsman Laws automatically cover those who were clients¹⁷ or prospective clients.¹⁸ They also cover any other relationship which was sufficiently close to give appropriate standing for the services of CIFO to be available.

This consultation is about what guidelines the principal ombudsman should issue about relationships that were sufficiently-close. The Ombudsman Laws require the principal ombudsman to issue guidance and also to include certain specified circumstances.¹⁹

The principal ombudsman is currently minded to issue the guidelines in the form set out in the attached annex. Comments are invited on the proposed categories and also on the clarity of the drafting.

The proposed guidelines include the circumstances specified in both of the Ombudsman Laws and apply them to both Bailiwicks. They also have regards to the equivalent categories in the UK Financial Conduct Authority's rules concerning the jurisdiction of the UK Financial Ombudsman Service.

The principal ombudsman intends to keep the guidance under review in the light of cases actually received by CIFO, and will consult on updated guidance if that appears to be appropriate.

Q1: Do you have any comments on the categories proposed?

Q2: Do you have any comments on the drafting of the proposed guidance?

Annex: Draft guidelines on sufficiently-close relationships

¹¹ Article/section 8(2)(c).

¹² Article/section 8(6)(a).

¹³ Article/section 8(6)(b).

¹⁴ Article/section 8(6)(c) and article/section 8(7).

¹⁵ Article/section 8(12).

¹⁶ Article/section 8(14).

¹⁷ Article/section 8(6)(a).

¹⁸ Article/section 8(6)(b).

¹⁹ Article/section 8(7) to (9).

- 1 In these guidelines:

<u>exempt ancillary brokerage business</u>	= as defined in the <u>Exempt Business Orders</u> paragraph 6;
<u>Exempt Business Orders</u>	= the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order 2015; ²⁰ and the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014 ²¹ as amended by the Financial Services Ombudsman (Exempt Business) (Amendment) (Jersey) Order 2015; ²²
<u>exempt occupational pension business</u>	= as defined in the <u>Exempt Business Orders</u> paragraph 3;
<u>Financial Ombudsman</u>	= Channel Islands Financial Ombudsman, which is the joint operation of the bodies established by the <u>Ombudsman Laws</u> ;
<u>Ombudsman Laws</u>	= the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014; ²³ and the Financial Services Ombudsman (Jersey) Law 2014. ²⁴
<u>relevant business</u>	= business activities covered by the jurisdiction of CIFO;
<u>relevant credit business</u>	= credit business activities covered by the jurisdiction of CIFO;
<u>relevant pension business</u>	= pension business activities covered by the jurisdiction of CIFO; and
<u>relevant provider</u>	= the financial services provider that carried out the act that led to the complaint.

- 2 These guidelines are issued by the principal ombudsman of CIFO under section/article 8 of the Ombudsman Laws. They come into effect on [date]²⁵ 2015.

- 3 Under the Ombudsman Laws, a complainant must satisfy three conditions in order to use CIFO.²⁶ The complainant must:
 - 3.1 be in a specified category;
 - 3.2 not be a financial services provider; and
 - 3.3 have a specified relationship with the financial services provider complained about.

²⁰ www.guernseylegalresources.gg/CHttpHandler.ashx?id=95900&p=0

²¹ www.jerseylaw.je/laws/revised/Pages/13.255.30.aspx

²² www.jerseylaw.je/laws/enacted/Pages/RO-087-2015.aspx

²³ www.guernseylegalresources.gg/article/115617/Financial-Services-Ombudsman-Bailiwick-of-Guernsey-Law-2014

²⁴ www.jerseylaw.je/laws/revised/Pages/13.255.aspx

²⁵ [This will be the same date as CIFO's opening date.](#)

²⁶ Article/section 8(2).

- 4 The specified categories are:
 - 4.1 consumers and microenterprises (from anywhere in the world);²⁷ and
 - 4.2 small charities in the Bailiwicks of Guernsey and Jersey, with a gross annual income under £1 million in the previous financial year;²⁸

and the consumer category includes non-professional trustees / council members / personal representatives.
- 5 The specified relationships are that the complainant must have:
 - 5.1 been a client of the relevant provider (for transactions or advice); or
 - 5.2 attempted to become a client of the relevant provider; or
 - 5.3 had another relationship to the relevant provider that was sufficiently close that CIFO considers that its services should be available to the complainant, taking into account:
 - these guidelines;
 - whether acts of the relevant provider are likely to have effects on the interests of those having that relationship;
 - whether it is fair and reasonable to expect the relevant provider to accept responsibility for the effect of those acts on those interests; and
 - the desirability of aligning the approaches for the Bailiwicks of Guernsey and Jersey.
- 6 The principal ombudsman considers that, save in exceptional circumstances, the relationship of the complainant to the relevant provider is sufficiently close in each of the following circumstances:

Collective investments

 - 6.1 The complainant (or someone on his/her behalf) participated in a collective investment scheme for which the relevant provider carried on relevant business, or the complainant attempted to enter into that relationship.

Pensions

 - 6.2 The complainant was a beneficiary, or had a beneficial interest, under a pension scheme for which the relevant provider carried on relevant business, or the complainant attempted to enter into that relationship.

This includes an occupational pension scheme where, for the employer (but not the relevant provider), it was exempt occupational pension business or exempt ancillary brokerage business.²⁹

Trust

 - 6.3 The complainant was a beneficiary under a trust, foundation or estate of which the relevant provider was a trustee or personal representative, or the complainant attempted to enter into that relationship.³⁰

²⁷ Specified by the Ombudsman Laws

²⁸ Subject to the outcome of the consultation covered by CIFO's Consultation Paper 1

²⁹ This excludes a complaint against the employer, but includes a complaint against the provider.

³⁰ Except as provided for in the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order 2015 and the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014 as amended by the Financial Services Ombudsman

Cheque guarantee card

- 6.4 The complainant relied, in the course of business, on a cheque guarantee card issued by the relevant provider by way of relevant business, or the complainant attempted to enter into that relationship.

Cheque

- 6.5 The complainant was the true owner (or the person entitled to immediate possession) of a cheque or bill of exchange (or the funds it represents) collected for the account of another person by the relevant provider by way of relevant business, or the complainant attempted to enter into that relationship.³¹

Banker's reference

- 6.6 The complainant received a banker's reference given by the relevant provider by way of relevant business, or the complainant attempted to enter into that relationship.

Guarantee or security

- 6.7 The complainant gave the relevant provider a guarantee or security in relation to credit provided by way of relevant credit business, or the complainant attempted to enter into that relationship.

Credit information

- 6.8 The complainant was a person about whose financial standing the relevant provider held information by way of relevant credit business, or the complainant attempted to enter into that relationship.

Credit enforcement

- 6.9 The complainant was someone against whom the relevant provider took (or attempted to take) steps by way of relevant credit business.

Insurance

- 6.10 The complainant was a beneficiary or had a beneficial interest, or had the right to benefit from a claim, under an insurance contract taken out (or intended to be taken out) where the relevant provider carried on relevant business in respect of the contract, or the complainant attempted to enter into that relationship.³²

This includes a complainant on whom the legal right to benefit from a claim has been devolved by contract, assignment, subrogation or legislation.

But this excludes circumstances where the complainant was a third party victim whose right to benefit from a claim arose solely from a legal right of action against an insured who was entitled to be indemnified under the insurance contract – which, save in exceptional circumstances, the principal ombudsman does not consider to be a sufficiently-close relationship.³³

(Exempt Business) (Amendment) (Jersey) Order 2015, complaints relating to the provision of trust services will not be covered by the jurisdiction of CIFO.

³¹ For example, where a cheque payable to A is wrongly intercepted and paid into B's bank account, this usually includes a complaint by A against B's bank.

³² For example, this usually includes: an employee where the employer took out a group income-protection policy for the benefit of its employees; or the dependents of an employee where an employer took out a group death-in-service policy for the benefit of its employees' dependents.

³³ For example, where cars driven by A and B collide, this usually excludes a claim by A against B's insurers – as the primary dispute is a private one between A and B. It would not exclude a claim by A against A's insurers, or by B against B's insurers.