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Dear Sirs

***Financial Services Ombudsman Scheme for Jersey and Guernsey  
Response to Consultation Document  
Barclays Wealth in Jersey***

Thank you for the opportunity to provide feedback on the proposed introduction of a Jersey Financial Ombudsman Service (JFOS). Please find outlined below our comments on the proposed structure and funding.

**Complainants**

It is our strong view that an ombudsman scheme should only offer protection to those for whom other means of redress are not feasible. We recommend that ombudsman scheme coverage be restricted to those qualifying for protection under the Jersey Depositor Compensation Scheme (JDCCS). Any extension of coverage beyond this group would increase the complexity of adjudication and may prove difficult to resource with appropriate expertise.

In regard to international high net worth individuals as Settlers' of trusts, we feel that they would want the certainty of being able to utilise the available pool of highly trained lawyers, judges and court precedent to resolve disputes. Due to the inherent complexity surrounding trust disputes, an ombudsman scheme would not be appropriate to consider these matters.

**Specific comments were invited on section 7.2 regarding whether there should be a limit on the size of trust/foundation those trustees or council members can bring a complaint to the ombudsman scheme, and if so, what the limit should be. Section 7.2 states:**

*Individuals who are trustees or council members in the case of foundations will be able to bring complaints about financial services received. The UK's Financial Ombudsman Service allows trustees to complain where the trust has a net asset value of less than £1million. That limit is thought to be too low to be applicable to Jersey. The principle should be that the ombudsman scheme is only open to those for whom using the courts is not a viable option, so complaints will be excluded from trustees and council members who are carrying on trust company business. It is fair to consider that these professionals are better able and resourced to progress a complaint with the financial services provider without the need to use the ombudsman scheme. So, examples of trustees who could complain would include family members who are appointed as trustees on a family trust or an individual who has set up a self-invested personal pension and is a trustee.*

Barclays Wealth is the wealth management division of Barclays and operates through Barclays Bank PLC and its subsidiaries. Barclays Bank PLC is registered in England and authorised and regulated by the Financial Services Authority. Registered number is 1026167 and its registered office is 1 Churchill Place, London E14 5HP.

Barclays Private Clients International Limited is licensed by the Isle of Man Financial Supervision Commission to conduct banking and investment business.

Barclays Private Clients International Limited is regulated by the Jersey Financial Services Commission to carry on deposit taking business under the Banking Business (Jersey) Law 1991 and for the conduct of Investment Business under the Financial Services (Jersey) Law 1998. Barclays Private Clients International Limited is licensed under the Banking Supervision (Bailiwick of Guernsey) Law 1994, and the Protection of investors (Bailiwick of Guernsey) Law 1987 as amended. Barclays Private Clients International Limited, part of the Barclays Group. Registered in the Isle of Man. Registered No: 5619. Registered Office: Barclays House, Victoria Street, Douglas, Isle of Man IM99 1AJ.

Notwithstanding our earlier comments on scheme coverage, we are unclear why an arbitrary limit would be applied and why the UK Financial Ombudsman Scheme's limit is considered too low.

**Specific comments were invited on section 7.4 regarding the proposed categories of complainants able to use the scheme. Section 7.4 states:**

*To summarise, the following categories of complainant will be able to use the scheme:*

- *Consumer/private individual with no limitations*
- *Small businesses: a suitable definition of small businesses will be used, this could simply be below the turnover threshold used for Goods and Service Tax or could include other factors such as number of employees.*
- *Charities with an annual income of less than £1million*
- *Trustee of a trust or council member of a foundation who is not carrying on trust company business.*

We would reiterate our initial thoughts that we would expect the aim of the ombudsman scheme to provide the same scope of coverage as the JDCS. This protects core consumers who are unlikely to have the means of seeking redress via litigation.

**Specific comments were invited on section 7.5 regarding 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 states:**

*Complainants may not always have an ongoing, direct relationship with the financial services provider. However, they may still have experienced financial loss as a result of the actions of the provider and so have a valid complaint to be considered. (Please note there is provision to exclude complaints that are for example frivolous or vexatious or where the complainant has not suffered any loss, see section 8). So, it is proposed that the complainant will be further defined as having one of the following relationships with the financial services provider. The list is as follows:*

- *the complainant is or was an actual or potential customer*

Our response: We would expect only existing customers or previous customers (as per our proposal in section 9.3 regarding 'general time limits' below) who meet our proposal of 'eligible complainant' in section 7.2 above.

- *the complainant is the holder, or the beneficial owner, of units (defined to include shares and partnership interests) in a collective investment fund as defined in the Collective Investment Funds (Jersey) Law 1988 and the complaint is made against a financial services provider that is a fund services business, or a functionary of a fund; or against the holder of the fund certificate. This would not include unregulated funds or COBO only funds as these are considered not to be available generally to consumers;*

Our response: This appears to be a reasonable definition at this consultation stage

- *the complainant is the holder of shares in an investment trust company and the firm is the manager or investment manager of the investment trust company*

Our response: We would expect this proposed definition to clarify only eligible complainants can lodge complaints in relation to the activities of the manager or investment manager as defined by relevant Jersey legislation.

- *the complainant is a beneficiary of, or has a beneficial interest in, a personal pension scheme;*

Our response: We would expect this proposed definition to clarify only those entities who meet our proposal of eligible complainant above.

- *the complainant is a beneficiary under a trust, foundation or estate of which the respondent is trustee, council member or personal representative;*

Our response: We would reiterate our initial thoughts regarding eligible complainants above that we would expect the aim of the proposed ombudsman scheme to offer redress to those qualifying under the JDCS.

- *the complainant is a person for whose benefit a contract of insurance was taken out or was intended to be taken out with or through the financial services provider or the complainant has a legal right to benefit from a claim*

Our response: We would expect only existing customers or previous customers (as per our proposal in section 9.3 regarding 'general time limits' below) who meet our proposal of 'eligible complainant' in section 7.2 above.

- *the complainant relied in the course of business on a cheque guarantee*

Our response: We would expect this proposed definition to clarify only those entities who meet our proposal of eligible complainant above.

- *card issued by the provider;*

Our response: We would expect this proposed definition to clarify only those entities who meet our proposal of eligible complainant above.

- *the complainant is the true owner of a cheque collected by the provider*

Our response: We would expect this proposed definition to clarify only those entities who meet our proposal of eligible complainant above.

- *for someone else's account;*

Our response: We would need to understand more about this category e.g. would the complainant be legally authorised to represent the client, would their status have to be confirmed and verified by the provider, does this relate to instances where Power of Attorney (PoA) is in place?

- *the complainant has received a banker's reference issued by the provider;*

Our response: We would expect this proposed definition to clarify only those entities who meet our proposal of eligible complainant above and existing/former customer above.

- *the complainant gave the provider a guarantee or security for a mortgage or other lending*

Our response: We would expect this proposed definition to clarify only those entities who meet our proposal of eligible complainant above and existing/former customer above.

- *the provider in operating a credit reference agency held information relevant to the complainant's financial standing;*

Our response: This definition would not apply to our service offering and therefore unable to comment.

- *the provider has sought to recover payment or the provision of other duties from the complainant under a consumer credit agreement in relation to debt collection or debt administration;*

Our response: We would need to understand more about this category e.g. would this be in relation to how the provider recovers funds in the event of default?

- *(where the respondent is a dormant account fund operator) the complainant is (or was) a customer of a bank or building society which transferred any balance from a dormant account to the respondent.*

Our response: We would need to understand more about this category.

### **Time periods**

**Specific comments were invited on section 9.3 regarding whether to use 6 or 10 years as the general time limit within which to bring a complaint. Section 9.3 states:**

*In Jersey the limitation or prescriptive period for contract is more generally 10 years so a decision will need to be made about whether to use 6 years (similar to Isle of Man and the UK) or 10 years.*

We would prefer general time limits to be less than the potential proposed minimum of 6 years but still allow for the ombudsman to apply discretion in extenuating circumstances.

**Specific comments were invited on section 9.4 regarding the proposed 3-month time limit on financial services providers (to issue a final response to a complaint) and whether they agreed. Section 9.4 states:**

*In addition to the limits on the length of time after the act or omission leading to the complaint, there will also be limits relating to the length of time after the financial services provider considered the complaint. The Jersey Financial Services Commission has issued codes of practice for registered persons that require financial services providers to have effective complaints handling systems. Providers should be able to resolve the majority of complaints internally but there will need to be a time limit set on financial service providers for issuing a final response. So, where a complainant remains dissatisfied or a final response has not been received within the set time limit, the complainant can bring the complaint to the Ombudsman Scheme. The UK sets a limit of 8 weeks for firms to issue a final response to a complaint; in the Isle of Man a 12-week period is set.*

Our understanding of the underlying consumer demand for the proposed ombudsman scheme is limited. Whilst the scheme's availability may in itself act as a catalyst for increased complaints,

we already believe that current JFSC policy actively encourages complaints (and so inflates potential case load) to the Commission at an early stage in comparison to other locations.

However, we are of the opinion that the proposed 3-month time limit appears to be a reasonable limit at this consultation stage.

**Specific comments were invited on section 10.1 regarding suitability of a starting date of 1st January 2010. Section 10.1 states:**

*There will need to be a starting date from which complaints can be considered by the Ombudsman Scheme. Complaints by their very nature are retrospective, concerning acts or omissions that have occurred previously, so it is proposed that the scheme can consider complaints relating to acts or omissions occurring on or after 1st January 2010.*

If implemented, we would like consideration to be given to the official scheme inception date as the most suitable starting date to be used.

### **Funding**

In keeping with a broader trend, co-operation with Guernsey and other locations is highly desirable and a means of attracting expertise and sharing cost. The Isle of Man already has an ombudsman scheme established within their Office of Fair Trading which is funded entirely by the Isle of Man Government.

In earlier industry consultation, it was intimated by the States of Jersey representatives that start-up costs would be funded by the States, a commitment that is absent from the consultation paper.

A number of banks have taken steps to closely manage their cost base through the recessionary phase of the economic cycle. Further additions to the cost base are unwelcome and likely to be examined closely in terms of the competitiveness of that jurisdiction.

We would encourage further close consultation with industry to determine the impact of costs arising from a Jersey Financial Ombudsman scheme on top of continued increases in JFSC licensing fees, Jersey Finance Limited (JFL) subscriptions and costs associated to the JDCS.

**Specific comments were invited on section 15.2.2 regarding firms favoured percentage split between income from annual levies and case fees. Section 15.2.2 states:**

*Initially, in Jersey, funding will need to come from an industry levy but over time the funding model can be adjusted as to the proportion from an annual levy and from case fees.*

If implemented, our preference would be the most cost effective model for the financial services industry in Jersey whilst ensuring the island does not become less competitive. We note that a Swiss Banking Ombudsman exists but no ombudsman services appear to exist in Hong Kong, Singapore, Cayman Islands or Bermuda.

It is therefore extremely difficult to indicate our favoured percentage split between income from annual levies and case fees. This is further exacerbated in the absence of indicative amounts particularly in relation to each case.

**Specific comments were invited on section 15.2.3 regarding whether firms agree with the approach of not charging fees on the first few complaints per year. Section 15.2.3 states:**

*Comments are also invited on the approach of not charging fees on the first few complaints received from a financial services provider per year. However, it is likely that this approach would need to be developed after the ombudsman scheme had gained some complaints experience.*

As stated in response to section 15.2.2 above, it is extremely difficult to comment constructively in the absence of key rationale and indicative figures whilst ensuring the island does not become less competitive.

**Specific comments were invited on section 15.2.8 regarding whether 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 states:**

*It is proposed that an outline approach for funding the scheme in Jersey is for a graded-fee for certain sectors, with a flat fee for providers that deal with consumers/personal customers in other areas. The sectors with a graded-fee approach could consist of banking, life insurance, insurance mediation and financial advice.*

As stated in response to sections 15.2.2&3 above, it is extremely difficult to comment constructively in the absence of key rationale and indicative figures whilst ensuring the island does not become less competitive.

Furthermore the licensed activities of Barclays' legal entities operating in Jersey under its wealth management division would span the proposed area split. We would be interested in your views regarding whether proposals have considered how these costs are aggregated in such scenarios.

**Specific comments were invited on section 15.2.9 regarding whether member firms agree that 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 states:**

*Data would need to be collected to enable a graded-fee approach in certain sectors in Jersey, based on the size of consumer (i.e. personal customer) business. Other data potentially more readily available is the number of employees, which could be used as a more basic tool for quantifying the levy for different providers.*

Again, we would defer to our responses within the Funding section of this correspondence.

Thank you for the opportunity to provide our constructive comments on this consultation paper. We trust your timely receipt of our comments will enable you to review and consider.

Yours faithfully



**Richard Corrigan**  
Director  
Barclays Wealth, Jersey

Cc Jersey Bankers Association (JBA)  
Jersey Finance Limited (JFL)  
Jersey Association of Trust Companies (JATCo)