



The Jersey Chamber of Commerce

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Mr D Scott
Strategy Manager
Economic Development Department
3rd Floor, Liberation Place
St Helier
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JE1 1BB

15th April 2011

Dear Mr Scott

**Re: Consultation document entitled:
Financial Services Ombudsman Scheme for Jersey & Guernsey**

The following is the response to the Financial Services Ombudsman Scheme for Jersey and Guernsey compiled on behalf of members of The Jersey Chamber of Commerce ("Chamber").

General comments

The Jersey Chamber of Commerce ("Chamber") welcomes the introduction of a financial services ombudsman scheme although it has serious concerns about the poor quality of the consultation document in fully laying out the various options available for the introduction of such a scheme and the lack of information provided in the document. Those concerns are as follows:

1. It is apparent that the implications of the cost of such a scheme and the effect on financial institutions in the Island have not been appropriately considered. The document gives no indication as to what these costs are likely to be and yet suggests that the industry should contribute some, if not all, of the costs of the scheme. Final costing will depend on a number of important factors such as whether or not the scheme is a Channel Islands scheme or unique to Jersey. The Isle of Man scheme which is referred to is fully funded by government. It would have been helpful if information with regard to the costs of the Isle of Man scheme had been included in the document. We are of the opinion that it is impossible to comment on the costings of a scheme until the final structure of the scheme is determined, including scope and further exploration of sharing the scheme across the Crown Dependencies rather than just with Guernsey.
2. Chamber is strongly of the opinion that the scope of the proposals go beyond the normal retail focus of an ombudsman scheme. Sophisticated, high net worth and institutional investors do not require the protection of an ombudsman scheme and therefore should be excluded. This would result in the more realistic result that private wealth structures administered by our successful trust businesses are not within scope, nor are investors in our many fund structures. Trust companies are not "financial institutions" offering financial services to their clients but rather they offer administrative services to their clients. Trust business is usually referred to the Island by legal gatekeepers such as UK lawyers and there is concern that the involvement of trust businesses in such a scheme would deter these gatekeepers from referring business to the Island. There is general alarm that an ombudsman might be



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able to interfere with a trustee's exercise of discretion. There is a well established procedure for trust matters to be referred to the Royal Court and a volume of case law has been built up since the Trust Law came into force. It is difficult to see how an ombudsman could replace this and indeed, the cost of employing someone of a caliber equivalent to the Royal Court would be enormous. The scheme must be aimed at protecting the retail customer or the "man on the street" and not the "expert" or high net worth customer. The proposed scheme goes well beyond that and is trying to involve everyone.

3. Chamber believes that an ombudsman scheme should be shared with Guernsey and also the Isle of Man. It is hoped that the States do not proceed with a scheme unique to Jersey as this would be contrary to previous political statements about working closer together.

Responses to specific questions:

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:

Chamber is of the opinion that the scheme should apply only to retail complaints and this should be capped at a certain level of investment to exclude high net worth and sophisticated and institutional investors.

Comments are invited on the proposed categories of complainants able to use the scheme:

Chamber believes that it would be better to provide a list of those who **cannot** use the scheme rather than those who can so as to avoid the possibility of excluding someone who should be entitled to take advantage of the scheme.

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:

As stated above, it might be better to state excluded rather than included relationships

A decision will need to be made about whether to use 6 or 10 years as the general time limit within which to bring a complaint. Comments would be welcomed on the most suitable time limit to be used:

Chamber believes that 6 years is the appropriate time limit.

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

A 3 month response period is reasonable.

A starting date of 1st January 2010 is suggested. Comments would be welcomed on the suitability of this date:

This starting date is definitely not agreed. A more sensible approach would be to have a starting date on the 1st January or the 1st June following the implementation of the legislation allowing at least a six month period for financial institutions to prepare for the scheme. The introduction of retrospective legislation creates significant uncertainty for businesses operating in this field and this is something that the States of Jersey should not engage in under any circumstances.

What would be your favoured percentage split between income from annual levies and case fees?



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As stated above, Chamber questions why the States are suggesting that the finance industry should pay for the scheme. No final decision can be made on the funding issue until details of a realistic scope are agreed; the possibility of a pan island ombudsman has been explored and subsequently costed.

Do you agree with the approach of not charging fees on the first few complaints per year?

See above re funding

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?

See above re funding

Should these graded areas include banking, life insurance, insurance mediation and financial advice?

See above re funding

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?

See above re funding.

Yours sincerely

RAY SHEAD
PRESIDENT