

Consolidated response from:

HSBC Bank plc, Jersey Branch
HSBC Bank International Limited
HSBC Private Bank (CI) Limited, Jersey Branch
HSBC Trustee (CI) Limited

Collectively referred to as "HSBC"

Summary

HSBC acknowledge that the introduction of an ombudsman scheme would generally be advantageous for the Channel Islands as a whole, bringing the Islands to an expected international standard. The introduction of such a scheme would also help ensure a minimum standard is achieved across financial institutions and not just the larger companies who generally work either to a Group or UK standard. Any scheme introduced should be proportionate to the needs of the Channel Islands.

It is also fair to say, there is little appetite currently for additional costs, both with regard to the implementation and the ongoing running of the proposed scheme, as it is currently presented, especially in a market that is already well regulated and under cost constraints.

Further clarification is also sought with regard to the following:

Firstly it would appear the scheme is a prerequisite for Jersey's application in to SEPA, yet the benefits of such an application are not generally understood or of benefit to the wider number of financial institutions that would be required to comply with the proposed scheme. It is also noted the consultation paper is positioned as a "Channel Islands" scheme but it would appear that whilst the paper has been circulated in Guernsey there are no immediate plans to introduce such a scheme and they (as a jurisdiction) are not considering an application into SEPA.

In 2010 the JFSC conducted a review of Complaint handling as part of their on-site examination program. It is not clear if the findings from this review have been considered in the context of the proposed scheme. HSBC would be interested to understand what industry statistical information has been used to structure the proposed scheme. It is assumed that there is evidence to support the fact complaints are not being dealt with appropriately by financial institutions in Jersey. The JFSC would be able to substantiate this fact and provide high level information on how many cases they receive annually with an assessment of those sectors impacted.

Finally HSBC would strongly recommend that Trust business is not included in the scheme. Any issues of clarification are raised through the Royal Court of Jersey where resolution is based on local case law. This is an intrinsic element of both the structure and operation of such vehicles.

In summary HSBC would welcome further comment on the above points and would support the introduction of an ombudsman scheme, that if deemed required, is focused and targeted on a more defined audience rather than the far reaching audience of the proposed scheme.

General comments on the proposed scheme

Section 3.1 and Section 5.5

It is assumed that the proposed primary legislation will cover all relevant Data Protection and AML/CTF exemptions afforded to financial institutions e.g. in cases where the Bank has decided to exit an account following an external Suspicious Activity Report, with the consent of JFCU

Section 5.2

It is noted the Ombudsman should be able to 'seek to mediate a solution' it would be helpful to make clear the Ombudsman cannot impose mediation.

Section 5.6/6.1

As the scheme is open to complainants worldwide and reference will be made to legal requirements, industry standards etc, it would be helpful to confirm the only legal requirements and industry standards considered will be those of either Jersey (or Guernsey), depending on where the service provider is based, and not those where the complainant is resident.

There is therefore a need for public education and awareness to ensure that potential complainants understand which scheme is relevant to their case.

Section 6.2

This requires further definition between the jurisdiction of the UK and the Channel Islands schemes and sufficient information to be publicised to ensure clarity for potential complainants and financial firms. This is especially important where products and services are provided (by way of referral) by a Jersey (and or Guernsey branch) of a financial services provider headquartered in the UK, e.g. credit cards which would be covered by the UK scheme.

There is a need for public education and awareness to ensure that potential complainants understand which scheme is relevant to their case and that they cannot inundate both schemes.

Section 8

Complaints should be reviewed with reference to the prevailing regulation as to when product was sold or service provided; regulations/guidelines should not be applied retrospectively. This will align to UK FOS where "act or omission to which the complaint relates occurred at a time when the compulsory jurisdiction rules were in force in relation to the activity in question" (UK Financial Service & Markets Act 2000, Section 226 (2C))

The scope of the proposed scheme should also take precedence from current JFSC regulations where certain products/services are considered out of scope of the regulatory regime e.g. 'Guidance Note: Complaints against regulated financial service providers' Part 2.2

Complainants that have already had their case reviewed by the JFSC and or received final settlement should also be excluded from the proposed scheme.

It is noted that complaints will be ineligible if the complainant has not suffered consequential loss, material inconvenience or material distress. By implication the Ombudsman will consider, and make monetary awards up to £150,000, based on these factors. It would be beneficial to provide within the scheme indications and or examples of what it would consider reasonable monetary awards for consequential loss, inconvenience or distress, as per the Isle of Man scheme. This may otherwise drive complainant behavior and or expectations.

Section 12.1 - 12.2

It is noted that the proposed scheme is intended to be the final arbiter on a dispute and there will be no process of appeal for financial service providers other than by judicial review in the royal Court. Consideration should be given to situations where this is not the case and exemptions should be embedded within the scheme.

Section 14.1

The proposed scheme outlines the intention for the Ombudsman to share information with customers 'potentially targeted at specific areas based on complaints history'. Greater clarification around this intent and any proposed activity. With funding for the proposed scheme coming from the industry it is important to ensure transparency over costs.

Response to Specific Questions raised on the proposed scheme

16.1 Respondents are invited to comment generally on the ombudsman scheme proposals, specific questions are listed below:-

Complainants

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)

HSBC strongly recommends that trusts and foundations are not included in such a scheme, as per the Isle of Man scheme. Any issues of clarification are raised through the Royal Court of Jersey where resolution is based on local case law. This is an intrinsic element of both the structure and operation of such vehicles.

Whilst it maybe appropriate to adopt the same maximum NAV £1m for trusts/foundations as the UK FOS it should not be used or offered as an option to those who can afford to progress matters through the courts, when the burden of cost will be disproportionate to the scheme.

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

HSBC broadly agrees with the categories of complainant proposed in this section, subject to the comment made in 7.2 and the need for such a scheme to be proportionate to the needs in the Channel Islands. In this respect preference is to ensure the proposed scheme is targeted to those areas or businesses that are currently deficient in correctly handling complaints to a satisfactory standard. Recognition must be also be given to the fact Jersey's entry into SEPA requires such a scheme and it must therefore be proportionate to the benefit of such an application.

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

Clarification is required on how a 'potential' customer can fall within scope of the proposed scheme if a contractual relationship has not been established. It will equally be difficult to quantify the "amount of loss" &/or what liability a financial services provider will have to a non-customer. This would challenge a financial service provider's ability to decline a new relationship, for what ever reason.

Time Periods

A decision should be made about whether to use 6 or 10 years as the general limit within which to bring a complaint. Comments would be welcomed on the most suitable time limits to be used (section 9.3)

6 years is reasonable and aligns to the UK FOS

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

A 3-month time limit for issuing a final response is reasonable and aligns to the existing JFSC guidelines

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

A starting date of 1 Jan 2010 is not appropriate and a date should be considered only once all feedback from the consultation has been received and the final details of the scheme announced.

Funding

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

It is not clear what the total estimated cost of implementation and running of the proposed scheme is and consequently difficult to comment on any proposed split between income from annual levies and case fees. It would be useful for the industry to have sight of the high level metrics / statistical information on complaints referred to the JFSC as a base on which a fair costing could be expected.

However as a start we would suggest a 20/80 split between income from annual levies and case fees. This would need to be quantified and validated but would appear fair.

We also recommend that this is reviewed from time to time to ensure an equitable distribution.

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

We find that the approach is favorable to incentivize providers and drive correct behaviors. A tiered fee applied to volume of complaints may also be a further incentive.

The proposed scheme rules will need to clarify circumstances where a case fee is 'chargeable' especially in reference to the range of available outcomes (particularly where there is no straightforward conclusion).

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)

To clarify, a financial services firm providing a large range of services may be expected to pay a flat fee plus a graded fee (for every sector that a firm participates in)?

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

The UK FSA levy establishes thresholds in reference to what sectors can be expected to afford in a year and puts in place a layer of cross-subsidy to ensure that overall funding

Financial Services Ombudsman Scheme ("the proposed scheme") for Jersey and Guernsey
Consultation Paper

remains consistent regardless of fluctuations in each sectors' performance. Similar ceilings need to be established so that larger firms are not penalized by subsidizing smaller firms.

We recommend an annual review to assess income contribution of service providers and volume of complaints per service provider to ensure an equitable collection.

We further recommend that the ombudsman accounts are made visible and accessible and any surplus is carried forward to the following year (and fees to be adjusted accordingly)

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

The number of employees will not be an accurate measure of a firm's participation in a certain sector (e.g. some staff may serve other clients).