

Policy on factors to be considered in rejecting complaints

Introduction

- 1 The Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 and the Financial Services Ombudsman (Jersey) Law 2014 ('the Ombudsman Laws') give the Channel Islands Financial Ombudsman ('CIFO') powers to reject certain complaints.¹
- 2 In respect of those powers to reject complaints, the Ombudsman Laws require CIFO to publish its policy on the factors that will be considered by CIFO in deciding whether or not to reject complaints.² This policy is issued by the principal ombudsman of CIFO on 16 November 2015.

Factors that will be considered

- 3 In deciding whether the complaint is one that *will* be rejected because it is not a complaint that may be referred under the Ombudsman Laws³, reasons and factors that will be considered include those set out in schedule 1 to this policy.
 - 4 In deciding whether the complaint is one that *may* be rejected because there are compelling reasons why it is inappropriate for the complaint to be dealt with by CIFO⁴, reasons and factors that will be considered include those set out in the schedule 2 to this policy.
 - 5 The principal ombudsman will keep the policy under review in the light of cases received by CIFO, and will publish updated policies if necessary. Any comments or suggestions on this policy should be sent to consultations@ci-fo.org.
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¹ Section/article 12(1) to (4)

² Section/article 12(7)

³ Section/article 12(1)

⁴ Section/article 12(2)

Schedule 1:**Reasons and factors to be considered in deciding whether the complaint is not one that may be referred under the Ombudsman Laws**

	Reasons	Factors include
A	Whether or not the complainant is eligible under the Ombudsman Laws.	To be eligible, the complainant must satisfy three tests: <u>First test</u> – At the time of the act complained about, the complainant must have been: <ul style="list-style-type: none">▪ an individual;▪ a microenterprise; or▪ a small Channel Islands charity An individual: <ul style="list-style-type: none">▪ means someone who was not acting for the purpose of his or her trade, business or profession; and▪ includes (for example) an individual acting as:<ul style="list-style-type: none">- a trustee of a trust or pension fund; or- council member of a foundation;if not acting for the purposes of his or her trade, business or profession. A microenterprise is a European definition. It means a small business or economic enterprise (including a sole trader, partnership or company) that: <ul style="list-style-type: none">▪ employs fewer than 10 people; and▪ does not have a yearly turnover or annual balance sheet of more than €2,000,000 (two million euros). A small Channel Islands charity in one that: <ul style="list-style-type: none">▪ was based, and legally recognised as a charity in, one of the Channel Islands;▪ did not have a yearly turnover of more than £2,000,000 in the financial year before that in which the complaint was referred to CIFO.

	<p>A club or association may qualify as a charity, a microenterprise or a collection of individuals.</p> <p><u>Second test –</u></p> <p>The complainant must <i>not</i>:</p> <ul style="list-style-type: none"> ▪ have been a financial services provider at the time of the act complained about; and ▪ be a financial services provider at the time the complaint is referred to CIFO. <p><u>Third test –</u></p> <p>At the time of the act complained about, the complainant must have:</p> <ul style="list-style-type: none"> ▪ been a client of the provider (for transactions or advice); or ▪ been attempting to become a client of the provider; or ▪ had another relationship to the provider that was sufficiently close that CIFO considers that its services should be available to the complainant, taking into account: <ul style="list-style-type: none"> – guidelines issued by the Principal Ombudsman (after consultation);⁵ – whether acts of the provider are likely to have effects on the interests of those having that relationship; and – whether it is fair and reasonable to expect the relevant provider to accept responsibility for the effect of those acts on those interests.
B	<p>Whether or not the complaint relates to an act in the course of relevant financial services business</p> <p>Act includes omission.</p> <p>The act must have been <i>in the course of</i> relevant financial services business. The act itself does not have to have been relevant financial services business.</p> <p><u>Relevant financial services business in the Bailiwick of Guernsey</u> is defined in the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order 2015.⁶</p> <p>Broadly, it comprises:</p>

⁵ <https://www.ci-fo.org/wp-content/uploads/2015/11/151116-CIFO-model-complaint-procedure.pdf>

⁶ www.guernseylegalresources.gg/CHandler.ashx?id=95900&p=0

	<ul style="list-style-type: none"> ▪ deposit-taking requiring a licence under the Banking Supervision (Bailiwick of Guernsey) Law 1994⁷; or ▪ money service business: <ul style="list-style-type: none"> - requiring a licence under the Banking Supervision (Bailiwick of Guernsey) Law 1994⁸; or - requiring registration under the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law 2008⁹; or - exempted from registration under the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law 2008¹⁰ by a direction from the Guernsey FSC under section 44 of that Law; or ▪ insurance intermediary business requiring a licence under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law 2002¹¹; or ▪ insurance business requiring a licence under the Insurance Business (Bailiwick of Guernsey) Law 2002¹², except for the following categories under the Insurance Business (Solvency) Rules 2015¹³: <ul style="list-style-type: none"> - category 2 [commercial life reinsurers]; - category 4 [commercial general reinsurers]; <p>and, where the provider does not provide insurance business to, or for the benefit of, eligible complainants:</p> <ul style="list-style-type: none"> - category 5 [captive (re)insurers]; and - category 6 [special purpose entities]; or ▪ controlled investment business requiring a licence under the Protection of Investors (Bailiwick of Guernsey) Law 1987¹⁴, where it involves: <ul style="list-style-type: none"> - any restricted activity in connection with a Class A Collective Investment Scheme under that Law; or
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⁷ www.guernseylegalresources.gg/article/93835/Banking-Supervision-Bailiwick-of-Guernsey-Law-1994-Consolidated-text

⁸ www.guernseylegalresources.gg/article/93835/Banking-Supervision-Bailiwick-of-Guernsey-Law-1994-Consolidated-text

⁹ www.guernseylegalresources.gg/article/97030/Registration-of-Non-Regulated-Financial-Services-Businesses-Bailiwick-of-Guernsey-Law-2008

¹⁰ www.guernseylegalresources.gg/article/97030/Registration-of-Non-Regulated-Financial-Services-Businesses-Bailiwick-of-Guernsey-Law-2008

¹¹ www.guernseylegalresources.gg/article/95385/Insurance-Managers-and-Insurance-Intermediaries-Bailiwick-of-Guernsey-Law-2002-Consolidated-text

¹² www.guernseylegalresources.gg/article/95374/Insurance-Business-Bailiwick-of-Guernsey-Law-2002-Consolidated-text

¹³ [www.gfsc.gg/The-Commission/Policy%20and%20Legislation/The%20Insurance%20Business%20\(Solvency\)%20Rules%202015.pdf](http://www.gfsc.gg/The-Commission/Policy%20and%20Legislation/The%20Insurance%20Business%20(Solvency)%20Rules%202015.pdf)

¹⁴ www.guernseylegalresources.gg/article/96824/Protection-of-Investors-Bailiwick-of-Guernsey-Law-1987-Consolidated-text

	<ul style="list-style-type: none"> - the restricted activity of advising, managing or dealing in connection with a category 2 controlled investment Scheme under that Law; or ▪ regulated activities in relation to a pension scheme requiring a fiduciary licence under the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law 2000¹⁵; or ▪ category 1 controlled investments that are authorised as Class A Collective Investment Schemes; or ▪ relevant pension business unless it is: <ul style="list-style-type: none"> - 'exempt occupational pension business' [see below]; or - 'exempt ancillary brokerage business' [see below]; or ▪ relevant credit business, whether or not the provider is regulated under the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law 2008¹⁶, unless it is: <ul style="list-style-type: none"> - 'exempt store credit business' [see below]; or - 'exempt debt advice business' [see below]; or - 'exempt ancillary brokerage business' [see below]. <p><u>Relevant financial services business in Jersey</u> is defined in the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014¹⁷ as amended by the Financial Services Ombudsman (Exempt Business) (Amendment) (Jersey) Order 2015.¹⁸</p> <p>Broadly, it comprises:</p> <ul style="list-style-type: none"> ▪ deposit-taking: <ul style="list-style-type: none"> - requiring registration under the Banking Business (Jersey) Law 1991¹⁹; or - exempted under article 4 of, or schedule 1 to, the Banking Business (General Provisions) (Jersey) Order 2002; or ▪ money service business:
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¹⁵ www.guernseylegalresources.gg/article/97040/Regulation-of-Fiduciaries-Administration-Businesses-and-Company-Directors-etc-Bailiwick-of-Guernsey-Law-2000

¹⁶ www.guernseylegalresources.gg/article/97030/Registration-of-Non-Regulated-Financial-Services-Businesses-Bailiwick-of-Guernsey-Law-2008

¹⁷ www.jerseylaw.ie/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%260Year2014%2fR%260-158-2014.htm

¹⁸ www.jerseylaw.ie/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%260Year2015%2fR%260-087-2015.htm

¹⁹ www.jerseylaw.ie/Law/display.aspx?url=lawsinforce%2fconsolidated%2f13%2f13.075_BankingBusinessLaw1991_RevisedEdition_1January2015.htm

	<ul style="list-style-type: none"> - requiring registration under the Financial Services (Jersey) Law 1998²⁰; or - exempted under articles 4 or 5 of the Financial Services (Money Service Business) (Exemptions) (Jersey) Order 2007; or ▪ the business of a functionary requiring a permit under the Collective Investment Funds (Jersey) Law 1988²¹; or ▪ general insurance mediation business requiring registration under the Financial Services (Jersey) Law 1998²²; or ▪ insurance business: <ul style="list-style-type: none"> - requiring a permit under the Insurance Business (Jersey) Law 1996²³; or - exempted under article 5(5)(d) of the Insurance Business (Jersey) Law 1996²⁴; or ▪ investment business requiring registration under the Financial Services (Jersey) Law 1998²⁵; or ▪ relevant pension business unless it is: <ul style="list-style-type: none"> - 'exempt occupational pension business' [see below]; or - 'exempt ancillary brokerage business' [see below]; or ▪ relevant credit business unless it is: <ul style="list-style-type: none"> - 'exempt store credit business' [see below]; or - 'exempt debt advice business' [see below]; or - 'exempt ancillary brokerage business' [see below]. <p><u>Relevant business also covers ancillary business, which includes:</u></p>
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²⁰ www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f13%2f13.225_FinancialServicesLaw1998_RevisedEdition_1January2015.htm

²¹ If the fund is incorporated, the fund itself is a functionary under the Law – as the definition of functionary includes in Group 1 'any company issuing units'.

²² www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f13%2f13.225_FinancialServicesLaw1998_RevisedEdition_1January2015.htm

²³ www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f13%2f13.425_InsuranceBusinessLaw1996_RevisedEdition_1January2015.htm

²⁴ www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f13%2f13.425_InsuranceBusinessLaw1996_RevisedEdition_1January2015.htm

²⁵ www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f13%2f13.225_FinancialServicesLaw1998_RevisedEdition_1January2015.htm

	<ul style="list-style-type: none"> ▪ business ancillary to the main business carried on in relation to the complainant; and ▪ introducing (directly or by intermediary), or giving advice with a view to making introductions, to the main business of another relevant provider; but excludes 'exempt ancillary brokerage business' [see below]. <p>Ancillary business may include:</p> <ul style="list-style-type: none"> ▪ current accounts; ▪ cash machines; ▪ financial advice about the main business; ▪ designing or establishing financial schemes or arrangements that require provision of the main business. <p><u>Relevant pension business</u> is any business so far as it comprises the choice, establishment or operation of a 'pension scheme'. A 'pension scheme' is a fund, scheme or other arrangement (in one or more instruments or agreements) that:</p> <ul style="list-style-type: none"> ▪ is, or is held out as being or as capable of being: <ul style="list-style-type: none"> - for the Bailiwick of Guernsey, a fund approved by the Director of Income Tax in accordance with section 150, 157A or 157E of the Income Tax (Guernsey) Law 1975²⁶; or - for Jersey, a fund described in article 131G(1) of the Income Tax (Jersey) Law 1961²⁷; or - a 'registered pension scheme' or a 'recognised overseas pension scheme' as defined in section 150 of the Finance Act 2004²⁸ (of the United Kingdom) as amended from time to time; or - recognised under legislation of any country or territory (other than Jersey, Guernsey, Alderney and Sark) and having equivalent effect to such a fund, 'registered pension scheme' or 'recognised overseas pension scheme'; and it is irrelevant whether the fund, scheme or other arrangement: <ul style="list-style-type: none"> - has any effect on any liability to tax; or
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²⁶ www.guernseylegalresources.gg/article/98265/Income-Tax-Guernsey-Law-1975-Consolidated-text

²⁷ www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f24%2f24.750_IncomeTaxLaw1961_RevisedEdition_1January2015.htm

²⁸ www.legislation.gov.uk/ukpga/2004/12/section/150

	<ul style="list-style-type: none"> - has, or is held out as having or as capable of having, effect so as to provide benefits to, or in respect of other persons or in other circumstances linked to death, age or employment; or ▪ has, or is held out as having or as capable of having, effect so as to provide benefits to, or in respect of people: <ul style="list-style-type: none"> - on retirement from an employment; or - on retirement from all employment; or - in similar circumstances. <p><u>Relevant credit business</u> is any business so far as it comprises:</p> <ul style="list-style-type: none"> ▪ provision of credit under credit agreements; or ▪ credit reference agency business [which is collecting and providing information about financial standing]; or ▪ debt-adjusting [which is, in relation to debts under credit agreements: <ul style="list-style-type: none"> - negotiating with a creditor, on behalf of a debtor, terms for the discharge of a debt; or - taking over, in return for payments by a debtor, the debtor's obligations to discharge a debt; or - any similar activity concerned with the liquidation of a debt]; ▪ debt-counselling [which is giving advice to debtors about liquidation of debts under credit agreements]; or ▪ debt-collecting [which is taking steps to procure payment of debts under credit agreements]; or ▪ debt administration [which is taking steps to: <ul style="list-style-type: none"> - perform duties under a credit agreement on behalf of the creditor; or - exercise or enforce rights under a credit agreement on behalf of the creditor, so far as it is not debt-collecting]. <p><u>Exempt ancillary brokerage business</u> is where the provider's activity is:</p> <ul style="list-style-type: none"> ▪ wholly incidental to a principal business that is not relevant business; and
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- ancillary to a main business, carried on by someone else, that is relevant business;

but this does not exempt that main business.

Exempt debt advice business is where:

- it constitutes:
 - debt-adjusting; or
 - debt-counselling; and
- it is not ancillary to relevant business; and
- it is carried on without charge and without creating income; and
- it is carried on by someone:
 - as wholly incidental to a principal business that is not relevant business; or
 - whose income is exempt from income tax
[in the Bailiwick of Guernsey, under section 40(k) or (r) of the Income Tax (Guernsey) Law 1975²⁹; or
in Jersey, under article 115(a), (aa) or (ab) of the Income Tax (Jersey) Law 1961.³⁰]

Exempt occupational pension business is where:

- the respondent is an employer;
- the pension business is an occupational pension scheme which relates to people who are, or have been, employees of that employer; and
- that employer does not carry on any other relevant pension business.

Exempt store credit business is where the credit business:

- is in the course of, and incidental to, the respondent's principal business of:
 - selling goods; or
 - letting goods under a hire-purchase agreement; or
 - supplying services, other than by way of relevant credit business;

²⁹ www.guernseylegalresources.gg/article/98265/Income-Tax-Guernsey-Law-1975-Consolidated-text

³⁰ www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f24%2f24.750_IncomeTaxLaw1961_RevisedEdition_1January2015.htm

	<ul style="list-style-type: none"> ▪ mainly comprises providing credit under a credit agreement to the person to whom the goods are sold or let, or the services are supplied, with a view to facilitating that sale, letting or supply; and ▪ in the Bailiwick of Guernsey, it is not carried on by a financial services business within the meaning of section 1 of the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law 2008³¹ where section 2 of that Law: <ul style="list-style-type: none"> - requires the business to register with the Guernsey FSC; or - exempts the business by a direction from the Guernsey FSC under section 44 of that Law; or ▪ in Jersey, it is not specified Schedule 2 business under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008³², requiring registration under article 10 of that Law. <p><u>CIFO can consider the complaint against –</u></p> <ul style="list-style-type: none"> ▪ the relevant provider (even if it is no longer a financial services provider when the complaint is referred to CIFO); or ▪ another respondent which: <ul style="list-style-type: none"> - has any liability in relation to the act complained about, where the liability was transferred on or after 16 November 2015 from the relevant provider; and - is carrying on relevant financial services business (whether or not the same business as that to which the complaint relates) in/from the Bailiwick; or ▪ a successor respondent designated by an ombudsman where, when the complaint is referred to CIFO: <ul style="list-style-type: none"> - any business, asset or liability (in relation to the act complained about or any other matter) of the relevant provider has been transferred to the successor respondent after the commencement date; - the relevant provider no longer exists or the ombudsman considers there will be substantial prejudice to the complainant if the relevant provider is treated as the only respondent; - the successor is carrying on relevant financial services business (whether or not the same business as that to which the complaint relates) when the complaint is referred to CIFO; and
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³¹ www.guernseylegalresources.gg/article/97030/Registration-of-Non-Regulated-Financial-Services-Businesses-Bailiwick-of-Guernsey-Law-2008

³² www.jerseylaw.ie/Law/display.aspx?url=lawsinforce%5Chtm%5CLawFiles%5C2008%2FL-32-2008.htm

	<ul style="list-style-type: none"> - after inviting and considering objections from the successor, the ombudsman considers that it is fair and reasonable to treat the successor as answerable for the act of the relevant provider. <p>Reference to a transfer includes a transfer:</p> <ul style="list-style-type: none"> ▪ that was: <ul style="list-style-type: none"> - direct; or - through any other person or persons; or - through any number of transactions; and ▪ that was: <ul style="list-style-type: none"> - by agreement of the relevant provider (with the successor or another person); or - by operation of law; or - as part of the winding up of the relevant provider; or - in any other manner.
C	<p>Whether or not that business was carried on in or from the Channel Islands</p> <p>The Channel Islands means Jersey, Guernsey, Alderney and Sark.</p> <p>It does not matter where the complainant was. But the relevant business must have been provided in the Channel Islands or from the Channel Islands.</p> <p>This depends on the location of the provider's office or branch which dealt with the complainant.</p> <p>If the provider's office or branch which dealt with the complainant was in the Channel Islands, it makes no difference if 'back-office' functions were carried out elsewhere.</p>
D	<p>Whether or not the complaint was referred within the time limits applicable under the Ombudsman Laws</p> <p>There are 4 time limits affecting whether a complaint can be referred to CIFO.</p> <p>An ombudsman may treat the second and third time limits as suspended during any period throughout which, in the ombudsman's opinion, the complainant could not be expected to pursue the complaint for any reason relating to:</p> <ul style="list-style-type: none"> ▪ the complainant being a minor; or ▪ the complainant's lack of mental capacity; or ▪ some other impediment affecting the complainant and justifying the suspension in all the circumstances.

	<p><u>First time limit: 2010/2013 cut-off –</u></p> <p>The first time limit is that the act complained about must have been on or after:</p> <ul style="list-style-type: none"> ▪ 2 July 2013 in the Bailiwick of Guernsey; or ▪ 1 January 2010 in Jersey. <p><u>Second time limit: from date of act or knowledge –</u></p> <p>The second time limit is that the complaint must be referred to CIFO on or before the later of:</p> <ul style="list-style-type: none"> ▪ 6 years after the act complained about; or ▪ 2 years after the complainant could reasonably have been expected to become aware that there was reason to complain in relation to the act complained about. <p>unless, in an ombudsman's opinion, there is some exceptional reason justifying CIFO investigating the complaint despite the expiry of the time limit.</p> <p><u>Third time limit: from provider's final response –</u></p> <p>The third time limit applies only if:</p> <ul style="list-style-type: none"> ▪ the respondent has established a complaint-handling procedure; ▪ the procedure either: <ul style="list-style-type: none"> - follows a model published by CIFO³³; or - otherwise requires the respondent to investigate the complaint, to attempt to resolve it and to notify the complainant of the result; ▪ the respondent notifies the complainant in writing that it has applied the procedure and regards it as exhausted; ▪ that notification is given within 3 months after the respondent first had sufficient information to be able to start to investigate the complaint, in an ombudsman's opinion; and ▪ that notification tells (or reminds) the complainant in writing: <ul style="list-style-type: none"> - about the complainant's right to refer the complaint to CIFO and the way CIFO may be contacted; - about the effect of the third time limit and specifies the date on which it expires; and
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	<ul style="list-style-type: none"> - if the respondent has reason to believe that the second time limit may expire before the third time limit, of the need to check the second time limit; <p>If all these conditions are satisfied, the third time limit is 6 months after all these conditions are met – unless, in an ombudsman’s opinion, there is some exceptional reason justifying CIFO investigating the complaint despite the expiry of the time limit.</p> <p><u>Fourth time limit: before the complaint can be referred to CIFO –</u></p> <p>The fourth time limit is that the complaint cannot be referred to CIFO until the earliest of:</p> <ul style="list-style-type: none"> ▪ 3 months after the respondent first had sufficient information to be able to start to investigate the complaint, in an ombudsman’s opinion; or ▪ the respondent telling the complainant that the respondent will take no further action on the complaint for any reason; or ▪ the complainant having given the respondent a reasonable opportunity to deal with the complaint, in an ombudsman’s opinion after considering all the relevant circumstances, including any of the following issued by the FSC where relevant: <ul style="list-style-type: none"> - a direction; or - a Code of Practice; or - guidance; or - other rule or standard; unless, in an ombudsman’s opinion, there is some exceptional reason justifying CIFO investigating the complaint without the respondent having had a reasonable opportunity to deal with it.
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³³ <https://www.ci-fo.org/wp-content/uploads/2015/11/151116-CIFO-model-complaint-procedure.pdf>

Schedule 2

Reasons and factors to be considered in deciding whether the complaint is one where there are compelling reasons why it is inappropriate for the complaint to be dealt with by CIFO

Reasons include	Factors include
A Whether the complaint has no real prospect of success, such as where: <ul style="list-style-type: none">▪ the complaint is frivolous or vexatious;▪ the complainant has not suffered, and is unlikely to suffer, compensable loss (or material distress/inconvenience); or▪ the complaint is evidently misconceived even on the complainant's version of the facts	<p>In determining whether a complaint is frivolous or vexatious, CIFO will consider:</p> <ul style="list-style-type: none">• the conduct of the complainant toward the financial services provider and/or CIFO in connection with the individual complaint;• whether the amount of compensation claimed by the complainant has a reasonable connection to the potential compensable loss (or material distress/inconvenience) or the circumstances alleged by the complainant; and• whether the complainant is seeking something other than compensation for compensable loss (or material distress/inconvenience). For example, where the complainant only seeks from CIFO some form of punishment, deregistration/termination of, or regulatory sanction against a financial services provider or individual, the complaint will likely be rejected. <p>In determining whether or not a complainant has suffered, or is unlikely to suffer, compensable loss (or material distress/inconvenience), CIFO will consider:</p> <ul style="list-style-type: none">• whether the loss claimed is merely hypothetical at the time the complaint is made;• whether the impact on the complainant could not reasonably have been foreseen under the circumstances;• whether the circumstances alleged by the complainant could not reasonably be considered to have caused the loss claimed³⁴. <p>In determining whether a complaint is evidently misconceived even on the complainant's version of the facts, before rejecting a complaint CIFO will consider:</p> <ul style="list-style-type: none">• whether there is evidence of compensable loss (or material distress/inconvenience), even if it does not appear to be due to the act or omission complained about or facts presented by the complainant; and• whether there is evidence of some other possible act or omission on the part of the financial services provider which might have been the cause of a

³⁴ CIFO will apply a "but for" test which asks the following question: "but for the act or omission of the financial services provider, would the complainant have suffered a compensable loss (or material distress/inconvenience)".

		compensable loss (or material distress/inconvenience) even if not clearly understood or articulated by the complainant.
B	<p>Whether the subject matter of the complaint has already been appropriately dealt with, such as where:</p> <ul style="list-style-type: none"> ▪ an offer of compensation, or a goodwill payment, from the respondent is still open for acceptance and is fair and reasonable in relation to the circumstances alleged by the complainant; ▪ the subject matter of the complaint has previously been considered or rejected by CIFO, and the complainant presents no evidence that: <ul style="list-style-type: none"> – is likely to affect the outcome; and – was unavailable to the complainant at the time of the previous consideration or rejection; ▪ the subject matter of the complaint has been the subject of legal proceedings in which a final decision has been made on the merits; or ▪ the subject matter of the complaint has been finally dealt with by an independent complaints scheme or dispute-resolution process that is comparable to CIFO 	<p>In determining whether an offer of compensation, or a goodwill payment, from the respondent is still open for acceptance and is fair and reasonable in relation to the circumstances alleged by the complainant, CIFO will consider:</p> <ul style="list-style-type: none"> • evidence that the financial service provider made the offer and that it remains open for acceptance (which may include CIFO obtaining confirmation in writing from the financial services provider); • whether, based on a preliminary review of the complaint, the offer made appears to be reasonable in terms of the action proposed by the financial services provider and/or amount of compensation offered and any conditions attached to the offer by the financial services provider. <p>In determining whether the subject matter of the complaint has previously been considered or rejected by CIFO, CIFO will consider:</p> <ul style="list-style-type: none"> • whether a final decision was made by the ombudsman on the merits of the complaint; • whether new evidence is provided that is not merely a rearguing of the previous complaint already considered or rejected by CIFO; • whether the new evidence provided might cause CIFO to have made a different decision as to the merits of the complaint and/or the loss suffered; • whether the new evidence could have and should have been made available to CIFO by the complainant for the original consideration of the complaint; and • whether there are other circumstances which suggest that it would be fair and reasonable for CIFO to review the complaint again. <p>In determining whether the subject matter of the complaint has been the subject of legal proceedings in which a final decision has been made on the merits, CIFO will consider:</p> <ul style="list-style-type: none"> • Whether the final decision in a legal proceeding on the merits was based on a procedural deficiency, limitation period, or failure to respond on the part of the complainant. In those circumstances, CIFO will likely not reject the complaint. Where the previous legal proceeding considered and ruled upon the merits of the complaint, the complaint will likely be rejected by CIFO.

	<ul style="list-style-type: none"> • Whether or not a complaint contains several elements. Where a complaint contains several elements, legal proceedings where there was a final decision on the merits on one or more of the elements of a complaint will not likely result in CIFO rejecting the complaint with respect to the other elements of the complaint which were not the subject of legal proceedings where a final decision has been made on the merits. <p>In determining whether the subject matter of the complaint has been finally dealt with by an independent complaints scheme or dispute-resolution process that is comparable to CIFO, CIFO will consider:</p> <ul style="list-style-type: none"> • Whether the independent complaints scheme or dispute-resolution process was likely one that is independent and impartial and which provides a substantially comparable ability for the complainant to have the merits of their complaint considered without cost and have a decision made that is based on fairness in the circumstances. An independent complaints scheme or dispute resolution process that is a member of the International Network of Financial Services Ombudsman Schemes (INFO Network)³⁵ and whose operation is consistent with the effective approaches adopted by the INFO Network³⁶ will likely be considered comparable to CIFO.
C	<p>Whether there is a more appropriate forum available than CIFO, such as where:</p> <ul style="list-style-type: none"> ▪ the subject matter of the complaint is the subject of current legal proceedings, and those proceedings are not stayed for the purpose of enabling the matter to be referred to CIFO; ▪ the subject matter of the complaint is being dealt with by an independent complaints scheme or dispute-resolution process that is comparable to CIFO; <p>In determining whether the subject matter of the complaint is the subject of current legal proceedings, CIFO will consider:</p> <ul style="list-style-type: none"> • whether the complainant initiated legal proceedings or engaged another independent complaints scheme or dispute-resolution process because they were not made aware by their financial services provider of the ability to refer the complaint to CIFO; • whether the complainant initiated legal proceedings in order to preserve their legal rights against possible limitation period expiry during the course of a review of their complaint by the financial services provider and/or CIFO; • whether a stay of proceedings is possible in the circumstances, and if so, whether the complainant agrees to a staying of any current legal proceedings for the purpose of enabling the matter to be referred to CIFO;

³⁵ <http://networkfso.org/>

³⁶ <http://networkfso.org/principles.html>

	<ul style="list-style-type: none"> ▪ the complaint cannot be determined without deciding on a significant point of law, and the need for resolution of that point by a court outweighs the benefits of the CIFO procedure; or ▪ it would be more appropriate for the subject matter of the complaint to be dealt with by a court (for example, where the advantages of evidence on oath outweigh the benefits of the CIFO procedure); ▪ the value of the claim so far exceeds the amount that could be awarded by CIFO that CIFO considers the complaint is merely a 'fishing expedition' preparatory to legal proceedings; or ▪ it would be more appropriate for the subject matter of the complaint to be dealt with by an arbitration scheme, or another complaints scheme or dispute-resolution process that is comparable to CIFO and to which the complainant can reasonably be expected to resort <p>• whether the subject matter of the complaint is also the subject matter of a class action to which the complainant is or could become a party.</p> <p>In determining whether the subject matter of the complaint is being dealt with by an independent complaints scheme or dispute-resolution process that is comparable to CIFO, CIFO will consider:</p> <ul style="list-style-type: none"> • the independent complaints scheme or dispute-resolution process was likely one that is independent and impartial and which provides a substantially comparable ability for the complainant to have the merits of their complaint considered without cost and have a decision made that is based on fairness in the circumstances. An independent complaints scheme or dispute resolution process that is a member of the International Network of Financial Services Ombudsman Schemes (INFO Network)³⁷ and whose operation is consistent with the effective approaches adopted by the INFO Network³⁸ will likely be considered comparable to CIFO. <p>In determining whether the complaint cannot be determined without deciding on a significant point of law, and the need for resolution of that point by a court outweighs the benefits of the CIFO procedure, CIFO will consider:</p> <ul style="list-style-type: none"> • whether, in the opinion of the ombudsman, CIFO would be able to reach a fair and reasonable conclusion of the complaint given the circumstances without a decision on the question of law by a court; and • whether the cost and time associated with resolving the question of law in court would be fair and reasonable to impose taking into account the circumstances and loss claimed. <p>In determining whether it would be more appropriate for the subject matter of the complaint to be dealt with by a court (for example, where the advantages of evidence on oath outweigh the benefits of the CIFO procedure), CIFO will consider:</p> <ul style="list-style-type: none"> • whether the decision regarding the merits of the complaint, due to a lack of other evidence, turns solely upon the competing recollections and credibility of the parties; • whether there is a reasonable expectation for the financial services provider to have documented evidence relevant to the complaint;
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³⁷ <http://networkfso.org/>

³⁸ <http://networkfso.org/principles.html>

	<ul style="list-style-type: none"> • whether, in the opinion of the ombudsman, CIFO would be able to reach a fair and reasonable conclusion of the complaint given the circumstances and the evidence available; and • whether the cost and time associated with resolving the matter in court to enable to provision of evidence on oath would be fair and reasonable taking into account the circumstances and loss claimed. <p>In determining whether the value of the claim so far exceeds the amount that could be awarded by CIFO that CIFO considers the complaint is merely a 'fishing expedition' preparatory to legal proceedings, CIFO will consider:</p> <ul style="list-style-type: none"> • whether, taking into account all of the circumstances, there is a reasonable expectation that, if CIFO were to conclude that the complaint had merit and the loss greatly exceeded CIFO's compensation limit of £150,000, that the complainant would accept compensation of no more than £150,000. <p>In determining whether it would be more appropriate for the subject matter of the complaint to be dealt with by an arbitration scheme, or another complaints scheme or dispute-resolution process that is comparable to CIFO and to which the complainant can reasonably be expected to resort, CIFO will consider the circumstances on a case by case basis.</p>
D	<p>Whether the subject matter of the complaint is inappropriate for CIFO, such as where the complaint is about:</p> <ul style="list-style-type: none"> ▪ employment matters, where the complainant is an employee or former employee of the financial services provider; ▪ investment performance, as opposed to unsuitable or negligent advice or unsuitable or negligent selection or management of investments; <p>In determining whether the subject matter of the complaint is inappropriate for CIFO where the complainant is an employee or former employee of the financial services provider, CIFO will consider:</p> <ul style="list-style-type: none"> • whether the provision of financial services to an employee or former employee of the financial services provider is the basis of the complaint by the employee or former employee. Where the complaint is substantially similar in nature to that which would normally be made by any other customer of a financial services provider, CIFO will not likely reject the complaint. <p>In determining whether the subject matter of the complaint is inappropriate for CIFO as it relates to investment performance, as opposed to unsuitable or negligent advice or unsuitable or negligent selection or management of investments, CIFO will consider:</p>

	<ul style="list-style-type: none"> ▪ the legitimate exercise of the financial services provider's commercial judgement (for example, whether or not to lend and, if so, at what interest rate); or ▪ a decision by the financial services provider exercising a discretion under a will or trust, including any failure to consult that complainant before exercising such a discretion in a case where there is no legal obligation to consult <ul style="list-style-type: none"> • whether the complaint relates solely to investment performance due to changes in market value of investments that were suitable for the complainant. In such cases, CIFO will likely reject the complaint. • whether the complainant's investment performance was negatively impacted by either: <ul style="list-style-type: none"> ➢ unsuitable or negligent advice; or ➢ unsuitable or negligent selection or management of investments. <p>If there is evidence of a negative impact on investment performance, CIFO will not likely reject the complaint even if the complainant's investments yielded a positive return. Conversely, a negative return on investments does not necessarily mean that there was a compensable loss (or material distress/inconvenience) as suitable investments can also lose market value.</p> <p>In determining whether a complaint involves the legitimate exercise of the financial services provider's commercial judgement, CIFO will generally consider commercial judgment to include such matters as:</p> <ul style="list-style-type: none"> • an initial decision whether to enter into business with a customer; • the pricing of products and services; • a decision whether or not to lend or extend, increase, decrease, or withdraw credit; • a decision to realize on security in order to recover an amount owed by the customer to the financial services provider; • a decision to initiate collection activity to recover an amount owed by the customer to the financial services provider; or • a decision to terminate a relationship with a customer. <p>However, the manner with which a financial services provider exercises its commercial judgement is a matter that CIFO may review in response to a complaint. CIFO will consider:</p> <ul style="list-style-type: none"> • whether the complainant was given reasonable and sufficient notice of any change in the business relationship in order to provide time to rearrange their financial affairs in response to the commercial decision of the financial services provider; • whether the complainant reasonably relied upon other statements or assurances from the financial services provider that differed from the commercial decision made by the financial services provider;
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		<ul style="list-style-type: none"> • whether the disclosure of terms relating to the circumstances in which the financial services provider would be able to exercise commercial judgement was reasonable, clear and understandable; • whether the disclosure of the reasons for which the financial services provider actually exercised its commercial judgement was reasonable, clear and understandable; • whether the terms relating to the circumstances in which the financial services provider would be able to exercise commercial judgement would have complied with the European Union directive on unfair terms in consumer contracts (93/13/EEC); • whether the realization on security was handled in a reasonable manner; or • whether collection activity was conducted in a reasonable manner.
E	<p>Whether it would be inappropriate to deal with the complaint in the circumstances, such as where:</p> <ul style="list-style-type: none"> ▪ the complaint is made on behalf of the complainant by someone who has not been authorized by the complainant or by law; ▪ there is no consent from another potential complainant whose interests would be unreasonably prejudiced by proceeding without his/her consent; ▪ the dispute is primarily between two or more complainants, as opposed to being primarily between the complainants and the financial services provider; ▪ after due warning, the complainant fails to provide (or, where applicable, fails to authorize the provision of) relevant information; or ▪ after due warning, the complainant fails to cooperate with CIFO or behaves in a threatening or abusive manner 	<p>In determining whether it would be inappropriate to deal with the complaint in the circumstances as the complaint is made on behalf of the complainant by someone who has not been authorized by the complainant or by law, CIFO will consider:</p> <ul style="list-style-type: none"> • that CIFO operating procedure will normally require written authorization of the complainant or evidence of authorization having been granted by a competent authority. In the absence of such authorization, CIFO will likely reject the complaint. <p>In determining whether it would be inappropriate to deal with the complaint in the circumstances as there is no consent from another potential complainant whose interests would be unreasonably prejudiced by proceeding without his/her consent, CIFO will consider:</p> <ul style="list-style-type: none"> • whether assets or liabilities of a complainant are held jointly with another or others. In such circumstances, it will normally be required by CIFO to have the prior consent of all in order to proceed with a review of the complaint. Where such consent is not provided, CIFO will likely reject the complaint. <p>In determining whether it would be inappropriate to deal with the complaint in the circumstances as the dispute is primarily between two or more complainants, as opposed to being primarily between the complainants and the financial services provider, CIFO will consider:</p> <ul style="list-style-type: none"> • whether a complainant's entitlement to the assets that form the subject of the complaint is in question or under dispute such as: • where there is a current legal proceeding between the complainant and another party other than the financial service provider;

	<ul style="list-style-type: none"> • where there is an asset seizure or garnishment pursuant to a legal proceeding or an order from a public authority; • where there is a marital separation or divorce proceeding; • where there is a contested estate matter; or • where there is an assertion that a transfer of title to the assets that form the subject of the complaint was made fraudulently or under diminished capacity. <p>In determining whether it would be inappropriate to deal with the complaint in the circumstances as, after due warning, the complainant fails to provide (or, where applicable, fails to authorize the provision of) relevant information, CIFO will consider:</p> <ul style="list-style-type: none"> • whether the complainant fails to provide written authorization in a timely manner or attempts to restrict the scope of the authorization for CIFO to obtain all relevant information relating to their complaint; • whether the complainant provides in a timely manner all relevant information, including any relevant documents and electronic records, within their possession or control including personal, business and tax records as appropriate; • whether the complainant authorizes CIFO to obtain all relevant information, including any relevant documents and electronic records, from other parties, including their professional advisors, if any; and • whether there are unusual circumstances beyond the control of the complainant that caused the failure to respond to CIFO's requests for information. <p>In determining whether it would be inappropriate to deal with the complaint in the circumstances as, after due warning, the complainant fails to cooperate with CIFO or behaves in a threatening or abusive manner, CIFO will consider:</p> <ul style="list-style-type: none"> • whether the complainant cooperates in a timely manner in response to a request for an interview and/or any subsequent oral or written questions from CIFO; and • whether the complainant cooperates in a timely manner to both authorize and facilitate CIFO's ability to interview other parties with information relevant to the complaint, including professional advisors, and/or to pose any subsequent oral or written questions to the other parties • whether there are unusual circumstances beyond the control of the complainant that caused the failure to cooperate with CIFO; and
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		<ul style="list-style-type: none"> • whether oral or written communication with CIFO could reasonably be interpreted as threatening or abusive.
F	Whether (in the opinion of the Principal Ombudsman) there are other compelling reasons, such as (but not limited to) money-laundering, fraud, other crime or oppressive/threatening conduct	In determining whether (in the opinion of the Principal Ombudsman) there are other compelling reasons, such as (but not limited to) money-laundering, fraud, other crime or oppressive/threatening conduct, CIFO will consider the circumstances on a case by case basis.