

Ombudsman determination

CIFO Reference Number: 16-000308

Complainants: [The complainant]

Respondent: [Company X]

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.¹

[The complainant] complained that the [Company X] would not comply with the laws of Australia in relation to certifying documents.

Background

[The complainant] informed CIFO that he was unable to encash his policy with [Company X] because their requirements were not in conformity with the Australian Attorney General's Guidelines ("Guidelines") for certifying documents.

[The complainant] complained that in regards to document certification, the wording in Australia was not acceptable to [Company X] and he had supplied them with the official instructions for the Australian Attorney General.

Furthermore, [the complainant] complained that all communication with [Company X] required formal submission by postal carrier. In his view, this caused significant delays in communication.

As a fair and reasonable resolution to the complaint, [the complainant] thought [Company X] should comply with the WA Guidelines so that he could encash his policy.

Findings

I note that [the complainant] did not comply with the requests for further information made by the case handler. The case handler told [the complainant] that his complaint would be closed if he did not assist in the handling of his complaint, and it was subsequently closed in the absence of a response from [the complainant]. However, some months later, [the complainant] contacted CIFO and criticised the office for the delay in the handling of the case. The case handler responded to [the complainant], informing him that the case had been closed following his inaction. Nonetheless, in the interests of

¹ Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

fairness the case was reopened, reviewed by the case handler and now determined by myself.

Notwithstanding the above, I agree with the conclusions of the case handler, and for the same reasons.

[Company X] clarified that they are obliged to request information from [the complainant] in order to comply with their [jurisdiction 2] regulatory requirements and, given that [Company X] is based in [jurisdiction 2], it is these requirements which they are compelled to adhere to, rather than the WA Guidelines.

In their correspondence to [the complainant] of 3 March 2016, following a request made by him to surrender the policy, [Company X] set out that:

“The legislation, which governs all financial institutions, is constantly updated to reflect the current social and political climate and in order to comply with current Money Laundering Regulations and [jurisdiction 2 regulator’s] rules.”

Regulation [of the relevant legislation] reads as follows:

“(4) Where the customer was not a [jurisdiction 2] resident when a financial services business carried out an activity set out in regulation 4(2)(a) or (b), a financial services business must take adequate measures to compensate for the specific risk arising as a result –

(a) when carrying out customer due diligence...”

Regulations 4(2)(a) and (b) expand on the above:

*“(2) The activities and circumstances referred to in paragraph (1) are -
(a) establishing a business relationship,
(b) carrying out an occasional transaction...”*

In addition, paragraph 98 reads as follows:

“98. In order to meet the requirements of Regulation 5 a financial services business must take adequate measures to manage and mitigate the specific risks of business relationships or occasional transactions with a customer who is not a [jurisdiction 2] resident.”

There are also other provisions relating to the certification of documents with which I consider [Company X] would have been required to comply:

“103. A financial services business must give consideration to the suitability of a certifier based on the assessed risk of the business relationship or occasional transaction, together with the level of reliance being placed on the certified documents. The financial services business must exercise caution when considering certified copy documents, especially where such

documents originate from a country or territory perceived by the financial services business to represent a high risk, or from unregulated entities in any country or territory.

104. Where certified copy documents are accepted, the financial services business must satisfy itself, where possible, that the certifier is appropriate, for example, by satisfying itself that the certifier is not closely related to the person whose identity is being certified.

105. A suitable certifier must certify that he has seen original documentation verifying identity and residential address.

106. The certifier must also sign and date the copy identification data and provide adequate information so that contact can be made with the certifier in the event of a query.”

Based on the above, I am satisfied that [Company X] made their requests for information prior to any payments to [the complainant] in order to reasonably comply with their [jurisdiction 2] regulatory requirements.

I acknowledge [the complainant’s] reference to the WA Guidelines but, given that [Company X] provided him with a [jurisdiction 2] policy, they are required to comply with the requirements of the [jurisdiction 2 regulator] rather than those of the Australian Attorney General and I do not consider that they have acted unreasonably by doing so.

In his email response to the case handler dated 21 January 2017, [the complainant] stated that:

“...I have also referred the matter to the relevant Australian Legal and banking authorities, so they are fully updated and appraised of the Legal situation in the Channel Islands and the invalidity of Australian /law.

I think your response also fails to address, at all, how the matter can be resolved, which I would have thought for many people that is the most pertinent point...If as written then it appears to me, that Channel Islands based financial organisation should clearly advise non Channel islands residents that only their laws apply and in a case such as mine they will be unable to encash Insurance policies etc. [sic]”.

I note [the complainant’s] comments, but it is not unreasonable for [Company X] to apply the regulatory requirements for [jurisdiction 2] to the policy when the policy has originated from [jurisdiction 2] and [Company X] themselves are based in [jurisdiction 2]. If the laws of other countries were to apply to [Company X] policies issued from [jurisdiction 2], as [the complainant] suggests, this would invariably lead to contradictions and is wholly unreasonable. Furthermore, I am satisfied that the [jurisdiction 2] regulatory requirements with which [Company X] must comply are not unreasonable in this case. Therefore, I do not consider that [Company X] has made an error.

Final decision

My final decision is that I do not uphold this complaint.

[The complainant] must confirm whether he accepts this determination either by email to ombudsman@ci-fo.org, or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **28 April 2017**. The determination will become binding on [the complainant] and [Company X] if it is accepted by this date. If we do not receive an email or letter by the deadline, the determination is not binding. At this point [the complainant] would be free to pursue his legal rights through other means.

If there are any particular circumstances which prevent [the complainant] confirming his acceptance before the deadline of 28 April 2017, he should contact me with details. I may be able to take these into account, after inviting views from [Company X], and in these circumstances the determination may become binding after the deadline. I will advise both parties of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: 29th March 2017