

Consultation Paper 1 Eligible Complainants: Categories

A: This consultation

Under the relevant laws, consumers and microenterprises will be eligible to refer complaints to the Channel Islands Financial Ombudsman [‘the Financial Ombudsman’] once it is open. This consultation is about whether small charities should also be eligible.

It follows on from earlier consultations on this topic by the Jersey Department for Economic Development [‘the Jersey Department’] and the Guernsey Department for Commerce & Employment [‘the Guernsey Department’].

Section B explains how to respond. Section C explains the role of the Financial Ombudsman¹. Sections D to G explain the existing provisions about who will be able to refer a complaint to the Financial Ombudsman. Section H explains the questions covered by this consultation.

B: How to respond

Please send any response in writing by email to consultations@ci-fo.org or by post to Channel Islands Financial Ombudsman, P O Box 114, Jersey, JE4 9QG. Responses may be published, unless clearly stated to be confidential.

Responses must reach us no later than 17th August 2015. That time limit takes into account that the Jersey and Guernsey Department have already consulted on the topic, and the general desire for the Financial Ombudsman to open as soon as possible.

C: Financial Ombudsman

The Financial Ombudsman is the joint operation of the statutory bodies established by the Financial Services Ombudsman (Jersey) Law 2014 [‘the Jersey Ombudsman Law’]² and the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 [‘the Guernsey Ombudsman Law’].³

The Financial Ombudsman is independent of the States. The joint operation – working from a shared office in Jersey, with the same board, ombudsman and staff – will cover complaints

¹ References to the Financial Ombudsman refer to the office of the Financial Ombudsman, references to the Principal Ombudsman refer to the person carrying out the role

² www.jerseylaw.ie/Law/display.aspx?url=lawsinforce%5chtm%5cLawFiles%5c2014%2fL-14-2014.htm

³ www.guernseylegalresources.gg/article/115617/Financial-Services-Ombudsman-Bailiwick-of-Guernsey-Law-2014

about financial services provided in and from Jersey, Guernsey, Alderney and Sark. It is due to open for business later in 2015.

It will resolve complaints against financial services providers – independently, fairly, effectively, promptly, with minimum formality and so as to offer a more accessible alternative to court proceedings. This will help to underpin confidence in the finance sectors, both locally and internationally.

D: Legal background

Under the Jersey and Guernsey Ombudsman Laws [‘the Ombudsman Laws’], a complainant can be from anywhere in the world⁴ - but must satisfy three conditions in order to use the Financial Ombudsman.⁵ The complainant must:

- be in a specified category;
- not be a financial services provider; and
- have a specified relationship with the financial services provider complained about.

This paper summarises all three conditions. But this consultation is only about the first condition. The second condition is fixed by the Ombudsman Laws. The third condition will be the subject of a separate consultation in due course.

E: First condition: specified category ⁶

The first condition is that the complainant must have been in a specified category at the time of the act complained about. The Ombudsman Laws automatically include the categories of consumers and microenterprises, whether in the Channel Islands or elsewhere.

A consumer is an individual who is acting for purposes other than his/her trade, business or profession. This includes a non-professional trustee / council member or personal representative.

A microenterprise is a Europe-wide definition, covering a small business or economic enterprise (including a sole trader, partnership or company) that employs fewer than ten people and does not have a turnover or annual balance sheet of more than €2,000,000. This will cover around 50% of Guernsey businesses⁷ and over 80% of Jersey businesses.⁸

The Ombudsman Laws allow the Jersey Minister for Economic Development [the Jersey Minister] and the Guernsey Department to make Orders adding any other category that relates to charities, trusts, foundations or other bodies.⁹ That power is subject to a number of conditions.

⁴ Article 8(16) of the Jersey Ombudsman Law and section 8(2) of the Guernsey Ombudsman Law.

⁵ Article/section 8(2).

⁶ Article/section 8(3).

⁷ Business Trends Survey 2015, prepared for Chamber of Commerce and Young Business Group by BWCI Consulting Ltd, 1 June 2015

⁸ Jersey in Figures 2014, States of Jersey Statistics Unit

⁹ Article/section 8(3)(c).

The Jersey Minister and the Guernsey Department can only make Orders following a recommendation by the Financial Ombudsman,¹⁰ which must consult before making a recommendation.¹¹

The Jersey Minister and the Guernsey Department must take account of the desirability of ensuring that the Financial Ombudsman is primarily available to those who – because of lack of resources, expertise or other characteristics – could not reasonably be expected to use other means (for example, the courts).¹²

The Jersey Minister and the Guernsey Department must also take account of the desirability of aligning the arrangements in the two Bailiwicks.¹³

The Jersey Department and the Guernsey Department have previously consulted on draft orders – the Financial Services Ombudsman (Eligible Complainants)(Jersey) Order 201- and the Financial Services Ombudsman (Eligible Complainants) (Bailiwick of Guernsey) Order 2015. These have since been revised to be more closely aligned with one another and to focus solely on the further category relating to charities, trusts, foundations and other bodies.

The areas of sufficiently close relationships relating to occupational pension schemes (previously in the draft Jersey Order) and individuals acting as non-professional trustees or council members (previously in the draft Guernsey Order) will now be addressed in guidance to be issued by the Ombudsman; see section G.

F: Second condition: not a financial services provider ¹⁴

The second condition is that the complainant must not be a financial services provider, and must not have been a financial services provider at the time of the act complained about.

This consultation is not about the second condition, which is fixed by the Ombudsman Laws.

G: Third condition: relationship with financial services provider ¹⁵

The third condition is that the complainant must have had a specified relationship with the relevant financial services provider at the time of the act complained about.

The Laws automatically cover those who were clients¹⁶ or prospective clients.¹⁷ They also cover any other relationship which is sufficiently close to give appropriate standing for the services of the Financial Ombudsman to be available.

¹⁰ Article/section 8(3)(c)(iii).

¹¹ Article/section 8(11).

¹² Article/section 8(5)(a).

¹³ Article/section 8(5)(b).

¹⁴ Article/section 8(2)(b).

¹⁵ Article/section 8(2)(c).

¹⁶ Article/section 8(6)(a).

¹⁷ Article/section 8(6)(b).

This is to be decided by the Financial Ombudsman, taking account of guidelines. The guidelines are to be determined by the Principal Ombudsman¹⁸ after consultation¹⁹ and must cover a list of relationships specified in the Laws. They will be published, with the date on which they (or any changes to them) come into effect.²⁰

This consultation is not about the third condition. The guidelines proposed by the Principal Ombudsman will be the subject of a further consultation in due course.

That consultation will include the position of complainants who are beneficiaries of a pension fund. So, in a change from the previous consultation by the Jersey Department, they are not now covered by the attached proposed Financial Services Ombudsman (Eligible Complainants) (Jersey) Order 2015.

H: Issues covered by this consultation

This consultation is about what recommendation the Financial Ombudsman should make to the Jersey Minister and the Guernsey Department in respect of the first condition – about making Orders to add any additional category that relates to charities, trusts, foundations or other bodies.

The Financial Ombudsman has taken account of the previous consultations by the Jersey Department and the Guernsey Department. It has also taken account of the provisions of the Ombudsman Laws.²¹

The Ombudsman Laws already cover consumers (including non-professional trustees and personal representatives) and microenterprises.

The Financial Ombudsman is currently minded to recommend to the Jersey Minister and the Guernsey Department the following additional categories:

- a charity in Jersey with a gross annual income under £1 million in the previous financial year; and
- a charity in the Bailiwick of Guernsey with a gross annual income under £1 million in the previous financial year.

It is thought that most charities will have income within this limit. Comments are invited on the proposed recommendations and also on the drafting of the attached proposed Financial Services Ombudsman (Eligible Complainants) (Jersey) Order 2015 and Financial Services Ombudsman (Eligible Complainants) (Bailiwick of Guernsey) Order 2015. The draft Jersey order is set in the context of the current legislative position pending the full commencement of the Charities (Jersey) Law 2014. It is understood that this would be revised once the Charities Law is fully in place.

In formulating your response to this consultation, please remember the over-riding objective that the Financial Ombudsman should primarily be for those who – because of lack of

¹⁸ Article/section 8(6)(c) and article/section 8(7).

¹⁹ Article/section 8(12).

²⁰ Article/section 8(14).

²¹ Article/section 8(5)(a).

resources, expertise or other characteristics – could not reasonably be expected to use other means (for example, the courts).²²

Question 1: Do you have any comments on the categories proposed?

Question 2: Do you have any comments on the drafting of the proposed Orders?

²² Article/section 8(5)(a).