

CHANNEL ISLANDS FINANCIAL OMBUDSMAN

Background on the role: 16 November 2015

Headlines

Legal basis

The Financial Services Ombudsman (Jersey) Law 2014 and the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 each provide for a Financial Ombudsman, independent of the States. The full powers came into effect on 16 November 2015.

Channel Islands Financial Ombudsman (CIFO)

The Channel Islands Financial Ombudsman (CIFO) is a joint operation of the two statutory ombudsman roles – operating from a shared office in Jersey, with the same board, ombudsman and staff. It covers financial services provided in/from Jersey, Guernsey, Alderney and Sark.

How is CIFO paid for?

The cost of CIFO is met by the financial industry, through annual levies and case fees. CIFO has published schemes detailing how it is funded. The Jersey and Guernsey States provided interim loans for start-up capital before funding was received from the industry.

If a customer has a complaint against a financial services provider

The customer should first take up the complaint with the financial services provider concerned. If the customer is dissatisfied with the financial services provider's reply, the customer may be able to refer the complaint to CIFO.

Who is able to complain to CIFO?

Broadly, CIFO is able to look at complaints from individual consumers and microenterprises whether or not they are in the Channel Islands – plus small Channel Islands charities.

What is a micro-enterprise?

It is a Europe-wide definition for a small business or economic enterprise (including a sole trader, partnership or company) that employs fewer than 10 people and does not have a yearly turnover or balance sheet of more than 2 million Euro.

Which financial services providers can they complain about?

Broadly, financial services providers involved in banking, lending, money services, insurance, pensions and investments – excluding the managers/functionaries of funds that are not recognized funds (Jersey) or class A funds (Guernsey/Alderney and Sark).

How far back can CIFO go?

The event that gave rise to the complaint must have happened on or after 1 January 2010 (if the financial services were provided from Jersey) or 2 July 2013 (if the financial services were provided from Guernsey/Alderney/Sark).

Complaint-handling by financial services providers

CIFO has published a model complaints procedure for financial services providers. If a financial services provider follows the model procedure, or meets conditions in the law, the complainant must go to CIFO within 6 months of the services provider's final response to the complaint.

Are there other time limits?

The complaint must be brought to CIFO within 6 years of the event or – if it is later than that – within 2 years from when the complainant should have known that there was reason to complain.

Handling enquiries

CIFO handles enquiries from complainants and financial services providers, to help them resolve issues between themselves, and to head off cases based on misunderstandings. Experience elsewhere shows only one in four to eight enquiries turns into a case.

Handling cases

CIFO will try to resolve the case by mediation – helping the parties to reach a fair settlement. If mediation does not work, CIFO will investigate the case and issue a decision.

What will be the effect of an ombudsman's decision?

If the complainant accepts the decision, it will become legally binding on both parties. The ombudsman can award compensation, payable by the financial services provider, up to a maximum limit of £150,000.

Boundaries with other financial ombudsmen

It all depends on where the service was provided:

- in/from the Channel Islands = Channel Islands Financial Ombudsman
- in/from the United Kingdom = Financial Ombudsman Service¹
- in/from Ireland = Irish Financial Services Ombudsman's Bureau²
- in/from the Isle of Man = Financial Services Ombudsman Scheme³

Glossary

CIFO = Channel Islands Financial Ombudsman, the public name for the joint operations of Jersey OFSO and Guernsey OFSO.

GFSC = Guernsey Financial Services Commission

Guernsey Department = Department of Commerce & Employment in Guernsey

Guernsey OFSO = Office of the Financial Services Ombudsman in Guernsey, established by the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014

JFSC = Jersey Financial Services Commission

Jersey Department = Department for Economic Development in Jersey

¹ www.financial-ombudsman.org.uk

² www.financialombudsman.ie

³ www.gov.im/oft/ombudsman/welcome.xml

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| Jersey Minister | = Minister for Economic Development in Jersey |
| Jersey OFSO | = Office of the Financial Services Ombudsman in Jersey, established by the Financial Services Ombudsman (Jersey) Law 2014 |

Structure

Background

Jersey:

- 2009: Jersey's States Assembly gave approval for drafting a financial services ombudsman law.
- 2011: The Jersey Department consulted on the financial services ombudsman scheme and Jersey law drafting began.
- 2012: The Jersey Department and industry working groups considered approaches for funding the ombudsman scheme and estimates of complaints volumes.
- 2014: The Financial Services Ombudsman (Jersey) Law 2014 was: approved by Jersey's States Assembly; approved by the Privy Council; and registered in the Royal Court.
- 2015: The legislation came into full force on 16 November.

Guernsey:

- 2011: The Guernsey Department consulted on a financial services ombudsman scheme.
- 2012: The Guernsey Department and industry working groups considered approaches for funding the ombudsman scheme and estimates of complaints volumes.
- 2013: A States Report was approved by Guernsey's States and Guernsey law drafting began.
- 2014: The Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 was: approved by Guernsey's States, Alderney's States and Sark's Chief Pleas; and approved by the Privy Council.
- 2015: The law was registered in the Royal Court. Its full provisions came into force on 16 November.

The Jersey and Guernsey laws and secondary legislation are in similar terms – so that the scope and operations of CIFO is the same across the Channel Islands.

Secondary legislation in Jersey and in Guernsey specifies which financial services providers are covered by CIFO; gives the board of CIFO power to make schemes to set levies and case fees; specifies who is eligible to complain; and brings the complaint-handling provisions into force.

Governance

CIFO is a joint operation, which operates from a shared office in Jersey, with the same board members and staff. The Jersey Minister and the Guernsey Department appoint the board. The board appoints the ombudsman.

The board is part-time and non-executive, with four members.⁴ It is independent of the States. The board is not involved in deciding cases, nor the day-to-day management of CIFO. Its key roles are to:

⁴ David Thomas (chairman) is also a member of the Regulatory Board of the worldwide Association of Chartered Certified Accountants. He was previously: a lawyer in private practice and a member of the Council of the Law Society (England and Wales); Banking Ombudsman (UK); principal ombudsman with the Financial Ombudsman Service (UK); and director of the Legal Ombudsman (England and Wales). He has advised on financial consumer protection in more than 20 countries.

- appoint the ombudsman and help safeguard his/her independence;
- help ensure that that CIFO has adequate resources to handle its work;
- oversee the efficiency and effectiveness of CIFO; and
- advise on the strategic direction of CIFO.

Principal Ombudsman & Staff

CIFO's staff includes a principal ombudsman and chief executive, a manager of administration and stakeholder relations, an administration officer, and one or more case handlers depending on complaint volumes.

The board appointed Douglas Melville as the principal ombudsman and chief executive⁵, who took up the post on 1 June 2015. The principal ombudsman and chief executive is responsible for the dual role of ombudsman as decision-maker with respect to complaints as well as directing the day-to-day operation of the office. The appointment of the Ombudsman is made on a renewable term of five years.

Our People

CIFO's experienced and professional staff is drawn from a variety of fields and disciplines such as law, administration, public policy, finance, banking, insurance and investments. Our staff are committed to conscientious, fair and timely dispute resolution, which is evident in their dealings with all parties.

Our small team based in Jersey responds to initial enquiries and complaints that are received by phone, email, online, letters and faxes each year. Our manager of administration and stakeholder relations oversees outreach and communication activities and is responsible for the operation of the office. Case handlers deal directly on a daily basis with complainants and financial services providers to resolve complaints through mediation and, when required, investigation of the facts to reach a final conclusion about the merits of a complaint and what would be fair and reasonable compensation to return the complainant to the position they would have been in if the matter complained about had not occurred.

Funding

Under a Memorandum of Understanding between the Guernsey Department and the Jersey Minister, the overall cost of CIFO will be split equally between the two bailiwicks for the first few years, until there are sufficient data to show how the workload is actually divided.

The laws provide for the cost of CIFO is to be paid by the financial industry, through a combination of levies and case fees. A consultation on the details of the funding by the Guernsey Department⁶ and the Jersey Department⁷ closed on 14 November 2014.

John Curran is chairman of Guernsey Mind (the mental health charity). He was formerly: the chief executive of the Channel Islands Competition & Regulatory Authorities; director general of the Office of Utility Regulation (Guernsey); and manager of the Operations Division of the Commission for Communications Regulation (Ireland).

Deborah Guillou is a qualified accountant and chief executive of the Medical Specialist Group in Guernsey. She was formerly: head of Generali International; chief financial officer of Generali Worldwide Insurance; a senior finance manager at Investec Asset Management; finance director at Guernsey Electricity; and an accountant with Fairbairn International.

John Mills was formerly: a commissioner at the Jersey Financial Services Commission; director of rural policy in the Department for the Environment, Food and Rural Affairs (England); chief executive (policy and resources) of the States of Jersey; chief executive of Cornwall County Council; director of consumer affairs in the Office of Fair Trading (UK); and a member of the UK Prime Minister's Policy Unit.

⁵ Douglas Melville is currently the chairman of the worldwide International Network of Financial Services Ombudsman Schemes (INFO Network), and has advised internationally on financial consumer protection for the World Bank and others. Until May 2015 he was the ombudsman and chief executive of the Canadian Ombudsman for Banking Services and Investments. He qualified as a lawyer in Ontario and became an ombudsman in 2006. Before that, he held senior roles in the banking, investment and insurance industries. He has also been a board member of various not-for-profit organisations covering healthcare, the environment, anti-poverty policy, financial literacy, international development and performing arts.

⁶ <http://www.gov.gg/fundingconsultation>

⁷ <http://gov.je/Government/Consultations/Pages/OFSOFunding.aspx>

Guernsey and Jersey are each lending CIFO money to cover the start-up and initial operating costs. CIFO will repay the loans from the levy that it collects from the financial industry.

CIFO published its funding schemes on 9 September 2015⁸. Broadly, all financial services providers that are within the scope of CIFO and are regulated or registered by GFSC or JFSC (and so whose identities are already known) will pay a yearly levy – to cover the yearly running costs and, in the first year, the set-up costs. But financial services providers that do not provide relevant financial services or do not deal with the public can claim an exemption in the form of a zero rating.

Because of the transactional nature of banking business, it is expected that banks will produce a significant proportion of cases. So half the levy for annual running costs in each bailiwick will be payable by the banks in that bailiwick, with the rest divided amongst other types of financial services providers.

Any financial services providers about which a case is referred to CIFO will pay a case fee – a £200 case fee for those financial services providers that have paid a levy and a £600 case fee for those financial services providers that have not paid a levy.

Scope

Financial services providers covered

CIFO covers complaints about the following types of financial services provided in/from the Channel Islands:

- Deposit-taking, as provided by:
 - regulated banks; and
 - other deposit-takers that are excluded from the requirement to take out a banking licence.⁹
- Credit, as provided by:
 - lenders;
 - credit brokers whose principal business is financial services;
 - credit reference agencies, debt collectors and debt administrators; and
 - debt-adjusters and debt-counsellors (excluding advice that is free or from a charity).
- Money services, as provided by:
 - bureaux de change;
 - cheque cashers; and
 - money transmission providers.
- Insurance, as provided by:
 - regulated insurance companies;
 - other insurers that are excluded for the requirement to take out an insurance licence; and
 - insurance intermediaries.
- Investments, as provided by:
 - investment dealers;
 - investment intermediaries; and
 - managers and other functionaries of recognized funds in Jersey and class A funds in Guernsey.
- Pensions, as provided by:
 - pension providers;
 - pension intermediaries; and
 - pension managers.

Complainants covered

⁸ www.ci-fo.org/funding

⁹ For example, Channel Islands Co-operative Society Limited and Community Savings & Credit Limited

CIFO covers complaints from the following:

- individual consumers (whether or not they are in the Channel Islands);
- micro-enterprises (whether or not they are in the Channel Islands); and
- Channel Islands charities with annual income under £2 million.

A micro-enterprise (a European Union definition) is a small business or economic enterprise (including a sole trader, partnership or company) that:

- employs fewer than 10 people; and
- does not have a yearly turnover or balance sheet of more than €2 million.

The complainant must also have a relationship with the financial services provider:

- as a customer;
- as a prospective customer; or
- that is sufficiently close, as specified in guidance¹⁰ issued by the ombudsman.

Time limits

The act/omission giving rise to the complaint must not be before:

- 1 January 2010 (Jersey); or
- 2 July 2013 (Guernsey).

The complainant must refer the complaint to CIFO by the later of:

- 6 years from the act/omission; or
- 2 years after complainant should have known he/she had reason to complain.

The complainant must also refer the complaint to CIFO within 6 months of receiving the financial services provider's decision on the complaint if the financial services provider met certain conditions in handling the complaint, including telling the complainant about CIFO and the 6-month time limit.

The ombudsman can waive the time limits in special cases (for example, where the complainant was delayed by illness).

Complaint-handling by financial services providers

Background

It is in everyone's interests for most complaints to be resolved between the complainant and the financial services provider. CIFO will only look at cases where the complainant remains dissatisfied with the financial services provider's response, or if it does not respond in a reasonable time.

Complaint-handling procedure of financial services providers

It is helpful to have a clear process (and time limit) for the handling of complaints by financial services providers, so that:

- as many disputes as possible can be resolved quickly by financial services providers themselves;
- the number of disputes that have to be referred to CIFO is minimised; and
- it is clear when the complainant can refer the dispute to CIFO.

¹⁰ www.ci-fo.org

Telling complainants about CIFO

Financial services providers have asked about when, and how, they should notify complainants about CIFO. CIFO has published guidance on this and a recommended model complaints procedure¹¹.

Assistance from CIFO

CIFO will consider how far it can assist the early resolution of cases by financial services providers through:

- publishing details of its approach to common disputes;
 - giving advice to complainants and financial services providers; and/or
 - helping train consumer advice centres and financial services providers' complaint departments.
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Enquiry and complaint-handling by CIFO

Enquiry-handling

CIFO handles enquiries from complainants and financial services providers, to help them understand the issues, and (where appropriate) indicate the general approach CIFO would take.

This may help the parties to resolve the issue between themselves, and also head off cases based on misunderstandings.

If the complainant has not already complained to the financial services provider, CIFO will first pass the complaint to the financial services provider.

If the matter is something that is outside CIFO's jurisdiction, it will signpost the complainant to any agency that can help.

Based on experience elsewhere, there may be four to eight times as many enquiries as cases.

Mediation

As an independent third party, with relevant sector knowledge, CIFO can help the parties 'see sense' and come to a mutually-agreed and fair solution.

An attempt at mediation is appropriate in most cases, unless there are significant and material disputes of fact or the parties are too-deeply entrenched.

Decision

Following any necessary investigation, a provisional decision will tell the parties what CIFO is minded to decide. The parties can accept or reject this. Experience elsewhere suggests that 65% to 90% will be accepted by both parties.

If either party rejects the provisional decision, the ombudsman will consider any further representations from the parties and then issue a final decision.

An ombudsman's decision can award compensation (up to £150,000 per case) and/or require the financial services provider to take specified steps in relation to that complainant.

An ombudsman decision, if accepted by the complainant, binds both parties. Neither can later bring court proceedings on the same issue.

¹¹ www.ci-fo.org

Feedback by CIFO

This involves CIFO publishing information about the cases it has handled and also identifying generic/systemic issues.

This is for the benefit of the States, JFSC/GFSC, industry bodies, consumer bodies and the public. This helps to identify common pitfalls, so that consumers and financial services providers can avoid them.

It also helps policy-makers to identify areas where action may be required in order to improve things for the future.

This briefing is a summary. It is not a definitive statement of the legal position.