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## Consultation Paper 3

# Model complaint-handling procedure for financial services providers

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### A: This consultation

Under the relevant laws<sup>1</sup>, the Channel Islands Financial Ombudsman [‘CIFO’] may publish a model complaint-handling procedure. While CIFO is not required under the relevant laws to consult with stakeholders on the model complaint-handling procedure, broad input is sought due to the importance of this proposed model procedure to effective financial consumer protection in the Channel Islands. Good industry complaint-handling practice will also contribute to the effective and efficient functioning of CIFO’s mandate.

This consultation is about the proposed model complaint-handling procedure which sets out:

- how financial services providers should deal with internal complaints; and,
- CIFO’s expectations of how financial services providers will work with CIFO to ensure effective and efficient handling of unresolved complaints referred to CIFO.

Section B explains how to respond. Section C explains the role of CIFO. Section D is the proposed model complaint-handling procedure.

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### B: How to respond

Please send any response in writing by email to [consultations@ci-fo.org](mailto:consultations@ci-fo.org) or by post to Channel Islands Financial Ombudsman, P O Box 114, Jersey, JE4 4QG. Responses may be published, unless clearly stated to be confidential.

Responses must reach us no later than 30 October 2015. That time limit takes into account the current plan for CIFO to open on 16 November 2015.

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### C: Financial Ombudsman

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

CIFO 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 about financial

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<sup>1</sup> Section 11(7) of the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 and article 11(7) of the Financial Services Ombudsman (Jersey) Law 2014

<sup>2</sup> [www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cLawFiles%5c2014%2fL-14-2014.htm](http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cLawFiles%5c2014%2fL-14-2014.htm)

<sup>3</sup> [www.guernseylegalresources.gg/article/115617/Financial-Services-Ombudsman-Bailiwick-of-Guernsey-Law-2014](http://www.guernseylegalresources.gg/article/115617/Financial-Services-Ombudsman-Bailiwick-of-Guernsey-Law-2014)

services provided in and from Jersey, Guernsey, Alderney and Sark. It is due to open for business on 16 November 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.

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## D: Model complaint-handling procedure for financial services providers

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- A This is the model procedure referred to in section 11(7) of the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014<sup>4</sup> and article 11(7) of the Financial Services Ombudsman (Jersey) Law 2014<sup>5</sup>*
- B Financial services providers that adopt and follow this model procedure can set a time limit of 6 months from their final response for complainants to refer a complaint to the Channel Islands Financial Ombudsman.*
- C Financial services providers should follow this procedure straightaway in letters, emails, phone calls and in information provided on their website. It may take longer to adapt printed materials, but these should comply as soon as is practicable.*
- D Financial services providers should also consider whether it would be appropriate to send information about the Channel Islands Financial Ombudsman to complainants who have previously been sent a final response.<sup>6</sup>*
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- 1 This model procedure describes how financial services providers [‘providers’] that are covered by the Channel Islands Financial Ombudsman [‘CIFO’] should handle complaints – promptly and fairly – and tell complainants about CIFO.
- 2 To make things simpler for those providers that are also based in the United Kingdom, the model procedure takes into account relevant provisions in the UK Financial Conduct Authority rulebook.
- 3 A complaint is any oral or written expression of dissatisfaction:
  - whether or not the provider considers that it is justified;
  - about providing, or failing to provide, a financial service in or from the Channel Islands;<sup>7</sup>
  - from, or on behalf of, an eligible complainant<sup>8</sup>; and
  - alleging actual or prospective financial loss, material distress or material inconvenience.
- 4 Eligible complainants include:
  - consumers (anywhere in the world);
  - microenterprises (anywhere in the world);
  - certain Channel Islands charities;

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<sup>4</sup> [www.jerseylaw.je/Law/Display.aspx?url=LawsInForce%2fhtm%2fawfiles%2f2014%2fL-14-2014.htm](http://www.jerseylaw.je/Law/Display.aspx?url=LawsInForce%2fhtm%2fawfiles%2f2014%2fL-14-2014.htm)

<sup>5</sup> [www.jerseylaw.je/Law/Display.aspx?url=LawsInForce%2fhtm%2fawfiles%2f2014%2fL-14-2014.htm](http://www.jerseylaw.je/Law/Display.aspx?url=LawsInForce%2fhtm%2fawfiles%2f2014%2fL-14-2014.htm)

<sup>6</sup> Not if the act complained about was before 1 January 2010 in Jersey or before 2 July 2013 in Guernsey, Alderney or Sark

<sup>7</sup> Jersey, Guernsey, Alderney and Sark

<sup>8</sup> See the two recent CIFO consultations on eligible complainants at <https://www.ci-fo.org/cifo-consultations/>

including customers, potential customers and others to whom providers owe a duty of care.

- 5 Providers should publish written information about their complaint-handling procedure, and make it widely and clearly available (for example, on websites and in branches). This should include that, at the end of the provider's complaint-handling procedure, eligible complainants who remain dissatisfied can refer their complaints to CIFO (using its full name).
- 6 Providers should tell eligible complainants in writing about the availability of their complaint-handling procedure, and the ultimate availability of CIFO (using its full name):
  - at the point of sale; or, if no sale is involved
  - immediately after the first contact with the eligible complainant.
- 7 Providers should give written details of their complaint-handling procedure, free-of-charge, to eligible complainants:
  - on request; and
  - (automatically) when acknowledging a complaint.
- 8 A provider's complaint-handling procedure should:
  - allow a complaint to be made by any reasonable means;
  - be clearly accessible by phone from the Channel Islands at the local rate;
  - include reasonable adaptations to assist complainants with disabilities;
  - be transparent, effective, prompt, fair and free-of-charge; and
  - not have more than two stages.
- 9 If a provider receives a complaint, the provider should:
  - aim to resolve the complaint at the earliest opportunity, and so minimise the number of unresolved complaints referred to CIFO;
  - investigate and assess the complaint competently, diligently, impartially, fairly, consistently and promptly – obtaining relevant additional information where necessary;
  - assess whether the complaint should be upheld, and what redress and/or remedy may be appropriate;
  - have that investigation and assessment carried out by someone not involved in the complaint, unless the small size of the provider makes that impossible;
  - take account of the law, any regulatory rules and guidance, good industry practice and any published guidance from CIFO;
  - explain its decision, and any proposed redress or remedy, to the complainant in a way that is fair, clear and not misleading;
  - offer redress and/or remedy where that is appropriate, and comply promptly if the redress and/or remedy is accepted by the complainant.
- 10 Unless:
  - by the end of the third business day following the business day on which the complaint was received, the complainant has confirmed (orally or in writing) that the complaint has been resolved to his/her satisfaction; and
  - the provider has sent the complainant written confirmation that it considers the complaint to be resolved, but that, if the complainant remains dissatisfied, he/she may be able to refer the complaint to CIFO (using its full name and giving CIFO's complete contact details as noted in paragraph 16);

the provider should follow the procedure in paragraph 11.

- 11 The provider should:

- send the complainant a written acknowledgement, confirming that it is dealing with the complaint, promptly – and, in any event, within 5 business days; and
  - keep the complainant informed about the progress of the steps the provider is taking to resolve the complaint.
- 12 Unless the complainant has already accepted in writing a response from the provider that told the complainant:
- how the complainant could pursue the complaint if dissatisfied with the response; and
  - about the ultimate availability of CIFO (using its full name);
- the provider should send the complainant a written 'final response'.
- 13 The provider should send the written final response promptly. This should usually be within 8 weeks of first receiving the complaint – and, in any event, within 3 months of first receiving the complaint.
- 14 A 'final response' should:
- accept the complaint and offer any appropriate redress and/or remedy; or
  - offer redress and/or remedy without accepting the complaint; or
  - reject the complaint and give clear reasons for doing so.
- 15 A 'final response' should also tell/remind the complainant in writing that, if he/she remains dissatisfied, he/she:
- can refer the complaint to CIFO (using its full name and complete contact details as noted in paragraph 16);
  - must refer the complaint to CIFO (using its full name) within 6 months of the final response, giving the date the 6 months expires; and
  - must do so within 6 years of the event complained about or (if later) 2 years of when the complainant could reasonably have been expected to become aware that he/she had a reason to complain.
- 16 The recommended wording for inclusion in the 'final response' to effectively meet the requirements of paragraph 15 is as follows:
- "Please note:
- If you are not satisfied with our final response to your complaint, you can refer your complaint to the Channel Islands Financial Ombudsman (CIFO).
  - You must contact CIFO about your complaint within six (6) months of the date of this letter, that is no later than [insert date six months from the date of the letter] or CIFO may not be able to review your complaint.
  - You must also contact CIFO within 6 years of the event complained about or (if later) 2 years of when you could reasonably have been expected to become aware that you had a reason to complain.

You can contact CIFO at:

Channel Islands Financial Ombudsman (CIFO)  
 P O Box 114  
 Jersey, Channel Islands  
 JE4 9QG

Email: [enquiries@ci-fo.org](mailto:enquiries@ci-fo.org)

Website: [www.ci-fo.org](http://www.ci-fo.org)

Jersey local phone: 01534 748610

Guernsey local phone: 01481 722218

International phone: +44 1534 748610”

- 17 A clear and comprehensive ‘final response’ is more likely to assist the provider’s position if the complaint is referred to CIFO.
- 18 Additionally, providers should:
- make a single member of senior management responsible for complaint-handling;
  - record the number, types and outcome of complaints;
  - identify and remedy any recurring or systemic problem;
  - consider whether to redress similarly-affected customers who have not complained; and
  - use the outcome of complaints to inform staff training.
- 19 CIFO will report to the appropriate regulator (and take into account in assessing compensation) any practices inconsistent with effective complaint-handling, including:
- Misleading a complainant about their right to refer a complaint to CIFO.
  - Purporting (by contract or otherwise) to exclude a complainant’s right to refer a complaint to CIFO.
  - Making a settlement offer that is conditional upon the complainant not referring the complaint to CIFO.<sup>9</sup>
  - Classifying a complaint as merely a service quality issue to avoid the need to follow this Guidance.
  - Proposing to charge a complainant for considering their complaint and/or for responding to CIFO.
  - Proposing to charge a complainant for copies of account statements or other documents needed to support their complaint.
  - Unreasonable delay in providing a complainant with account statements or other documents needed to support their complaint.
  - Attempting to divert a complainant to alternative means of complaint resolution without first informing them of their right to refer their complaint to CIFO.
  - Providing an opinion to a complainant about whether or not their complaint falls, or is likely to fall, within the mandate of CIFO.

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## E: Issues covered by this consultation

The principal ombudsman is currently minded to issue the draft model procedure in the form set out in Part D of this consultation. Comments are invited on the draft model procedure.

The principal ombudsman intends to keep the model procedure under review in the light of cases received by CIFO, and will consult on proposed changes to the model procedure where appropriate.

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<sup>9</sup> The complainant may want to seek independent advice from CIFO before deciding whether or not to accept the offer. This does not prevent a provider – if it has fully informed the complainant of their right to refer their complaint to CIFO – asking the complainant to sign a full and final release as part of a settlement if the offer is accepted.