

Guidelines on sufficiently close relationships

1 In these guidelines:

<u>CIFO</u>	= Channel Islands Financial Ombudsman, which is the joint operation of the bodies established by the <u>Ombudsman Laws</u> ;
<u>exempt ancillary brokerage business</u>	= as defined in the <u>Exempt Business Orders</u> paragraph 6;
<u>Exempt Business Orders</u>	= the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order 2015; ¹ and the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014 ² as amended by the Financial Services Ombudsman (Exempt Business) (Amendment) (Jersey) Order 2015; ³
<u>exempt occupational pension business</u>	= as defined in the <u>Exempt Business Orders</u> paragraph 3;
<u>Ombudsman Laws</u>	= the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014; ⁴ and the Financial Services Ombudsman (Jersey) Law 2014. ⁵
<u>relevant business</u>	= business activities covered by the jurisdiction of CIFO;
<u>relevant credit business</u>	= credit business activities covered by the jurisdiction of CIFO;
<u>relevant pension business</u>	= pension business activities covered by the jurisdiction of CIFO; and
<u>relevant provider</u>	= the financial services provider that carried out the act that led to the complaint.

2 These guidelines are issued by the principal ombudsman of CIFO under section/article 8 of the Ombudsman Laws. They come into effect on 16 November 2015.

3 Under the Ombudsman Laws, a complainant must satisfy three conditions in order to use CIFO.⁶ The complainant must:

¹ www.guernseylegalresources.gg/CHttpHandler.ashx?id=95900&p=0

² www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%26OYear2014%2fR%26O-158-2014.htm

³ www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%26OYear2015%2fR%26O-087-2015.htm

⁴ www.guernseylegalresources.gg/article/115617/Financial-Services-Ombudsman-Bailiwick-of-Guernsey-Law-2014

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

⁶ Article/section 8(2).

- 3.1 be in a specified category;
 - 3.2 not be a financial services provider; and
 - 3.3 have a specified relationship with the financial services provider complained about.
- 4 The specified categories are:
- 4.1 consumers and microenterprises (from anywhere in the world);⁷ and
 - 4.2 small charities in the Bailiwicks of Guernsey and Jersey, with a gross annual income under £2 million in the previous financial year;⁸
- and the consumer category includes non-professional trustees / council members / personal representatives.
- 5 The specified relationships are that the complainant must have:
- 5.1 been a client of the relevant provider (for transactions or advice); or
 - 5.2 attempted to become a client of the relevant provider; or
 - 5.3 had another relationship to the relevant provider that was sufficiently close that CIFO considers that its services should be available to the complainant, taking into account:
 - these guidelines;
 - whether acts of the relevant provider are likely to have effects on the interests of those having that relationship;
 - whether it is fair and reasonable to expect the relevant provider to accept responsibility for the effect of those acts on those interests; and
 - the desirability of aligning the approaches for the Bailiwicks of Guernsey and Jersey.
- 6 The principal ombudsman considers that, save in exceptional circumstances, the relationship of the complainant to the relevant provider is sufficiently close in each of the following circumstances:
- Collective investments**
- 6.1 The complainant (or someone on his/her behalf) participated in a collective investment scheme for which the relevant provider carried on relevant business, or the complainant attempted to enter into that relationship.
- Pensions**
- 6.2 The complainant was a beneficiary, or had an actual or prospective beneficial interest, under a pension scheme for which the relevant provider carried on relevant business, or the complainant attempted to enter into that relationship.
- This includes an occupational pension scheme where, for the employer (but not the relevant provider), it was exempt occupational pension business or exempt ancillary brokerage business.⁹

⁷ Specified by the Ombudsman Laws

⁸ <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=98019&p=0;>
<http://www.jerseylaw.je/law/display.aspx?url=LawsInForce\htm\ROFiles%5cR%26OYear2015%2fR%26O-128-2015.htm>

⁹ In the case of exempt occupational pension business, CIFO has jurisdiction over the provider but not the employer.

Trust

- 6.3 The complainant was a beneficiary, or had an actual or prospective beneficial interest, under a trust, foundation or estate of which the relevant provider was a trustee or personal representative, or the complainant attempted to enter into that relationship.

Payment service

- 6.4 The complainant was the payer or payee in respect of a payment service¹⁰ provided by the relevant provider by way of relevant business, or the complainant attempted or was intended to enter into that relationship.

Cheque guarantee card

- 6.5 The complainant relied, in the course of business, on a cheque guarantee card issued by the relevant provider by way of relevant business, or the complainant attempted to enter into that relationship.

Cheque

- 6.6 The complainant was the true owner (or the person entitled to immediate possession) of a cheque or bill of exchange (or the funds it represents) collected for the account of another person by the relevant provider by way of relevant business, or the complainant attempted to enter into that relationship.¹¹

Banker's reference

- 6.7 The complainant received a banker's reference given by the relevant provider by way of relevant business, or the complainant attempted to enter into that relationship.

Guarantee or security

- 6.8 The complainant gave the relevant provider a guarantee or security in relation to credit provided by way of relevant credit business, or the complainant attempted to enter into that relationship.

Credit information

- 6.9 The complainant was a person about whose financial standing the relevant provider held information by way of relevant credit business, or the complainant attempted to enter into that relationship.

Credit enforcement

- 6.10 The complainant was someone against whom the relevant provider took (or attempted to take) steps by way of relevant credit business.

Insurance

- 6.11 The complainant was a beneficiary, or had an actual or prospective beneficial interest, or had the right to benefit from a claim, under an insurance contract taken out (or intended to be taken out) where the relevant provider carried on relevant business in respect of the contract, or the complainant attempted to enter into that relationship.¹²

¹⁰ For example, a direct debit or standing order or credit transfer.

¹¹ For example, where a cheque payable to A is wrongly intercepted and paid into B's bank account, this usually includes a complaint by A against B's bank.

¹² For example, this usually includes: an employee where the employer took out a group income-protection policy for the benefit of its employees; or the dependents of an employee where an employer took out a group death-in-service policy for the benefit of its employees' dependents.

This includes a complainant on whom the legal right to benefit from a claim has been devolved by contract, assignment, subrogation or legislation.

But this excludes circumstances where the complainant was a third party victim whose right to benefit from a claim arose solely from a legal right of action against an insured who was entitled to be indemnified under the insurance contract – which, save in exceptional circumstances, the principal ombudsman does not consider to be a sufficiently-close relationship.¹³

- 7 This is not an exhaustive list. The principal ombudsman may consider that, in the circumstances of a particular case, some other form of relationship between the complainant and the relevant provider is sufficiently close.
- 8 The principal ombudsman will keep this guidance under review in the light of cases received by CIFO, and will publish updated guidance if necessary. Any comments or suggestions on this guidance should be sent to consultations@ci-fo.org.

¹³ For example, where cars driven by A and B collide, this usually excludes a claim by A against B's insurers – as the primary dispute is a private one between A and B. It would not exclude a claim by A against A's insurers, or by B against B's insurers.