



## Feedback on Consultation Paper 2

### **Eligible Complainants: Sufficiently-close relationships**

Issued: 13 January 2016

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#### **A: Summary**

In Consultation Paper 2: Eligible Complainants: Sufficiently-close relationships [‘CP2’] the Channel Islands Financial Ombudsman [‘CIFO’] sought input from stakeholders on draft guidelines the Principal Ombudsman will take account of in determining the type of sufficiently-close relationships that give appropriate standing for the services of CIFO to be available. There were no stakeholder responses provided to this consultation.

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#### **B: Consultation overview**

Under the relevant laws, consumers and microenterprises are eligible to refer complaints to the Channel Islands Financial Ombudsman [‘CIFO’]. CIFO is the joint operation of the Office of the Financial Services Ombudsman established by law in Jersey and the Office of the Financial Services Ombudsman established by law in Guernsey. Consultation Paper 2: Eligible Complainants: Sufficiently-close relationships [‘CP2’] was about the guidelines the Principal Ombudsman will take account of in determining the type of sufficiently-close relationships that give appropriate standing for the services of CIFO to be available. The closing date was 14 September 2015 and no responses were received.

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#### **C: Summary of responses**

4 responses were received. Comments were generally supportive of the draft guidelines.

Several comments were intended to enhance clarity in terms of potential inclusion of specific circumstances. [CIFO response: CIFO considers the nature of the current wording to be sufficiently flexible to encompass complainants and circumstances who could reasonably be expected to fall within the remit. CIFO will take note of the input and, with experience obtained from the handling of complaints over time, may increase the specificity of the provisions in the guidelines.]

General concerns were raised regarding the complexity of identifying the beneficiary of a trust and the need to apply a flexible approach which acknowledges that, while some beneficiaries should be eligible complainants, some who claim to be beneficiaries will not have a sufficient interest in the affairs of the trust to be entitled to recourse under CIFO's mandate. [CIFO response: CIFO notes the concerns and will look at the circumstances of each complaint to determine where a relationship is sufficiently close as to reasonably have an interest in the matter.]

General concerns were also raised with respect to the large amounts often associated with trust disputes which would exceed CIFO's compensation limit of £150,000, the complexity of trust law that would presumably underlie some complaints, and the interaction of CIFO's process with the law including possible litigation and use of CIFO's process to gain advantage in litigation or access to trust information otherwise not obtainable. [CIFO response: CIFO is intended to be an alternative to the legal process for the resolution of complaints between consumers and financial services providers. CIFO notes the concerns raised and, given the importance of individual complaint fact situations to the determination of what would be fair and reasonable in the circumstances, will consider the concerns raised by financial services providers in the context of individual complaints.]

Other submissions included editorial suggestions or included requests for greater clarity in the application of the guidelines, and CIFO's mandate in general, to specific types of pension arrangements. [CIFO response: CIFO will consider the circumstances in each individual fact situation that is referred to the office in order to fulfil the mandate of determining what would be fair and reasonable in the circumstances of each complaint.]

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## D: Next steps

After considering the responses to the consultation, the guidelines set out in Annex A were adopted by the Principal Ombudsman effective 16 November 2015.

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## Appendix 1: responses received

1	Bank [confidential]
2	Dawn Tindall, Solicitor and Compliance Specialist
3	Guernsey Association of Pension Providers (GAPP)
4	Lloyds Bank International [content confidential]

# Annex A: Guidelines on sufficiently-close relationships

- 1 In these guidelines:
  - exempt ancillary brokerage business = as defined in the Exempt Business Orders paragraph 6;
  - Exempt Business Orders = the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order 2015;<sup>1</sup> and the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014<sup>2</sup> as amended by the Financial Services Ombudsman (Exempt Business) (Amendment) (Jersey) Order 2015;<sup>3</sup>
  - exempt occupational pension business = as defined in the Exempt Business Orders paragraph 3;
  - Financial Ombudsman = Channel Islands Financial Ombudsman, which is the joint operation of the bodies established by the Ombudsman Laws;
  - Ombudsman Laws = the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014;<sup>4</sup> and the Financial Services Ombudsman (Jersey) Law 2014.<sup>5</sup>
  - relevant business = business activities covered by the jurisdiction of CIFO;
  - relevant credit business = credit business activities covered by the jurisdiction of CIFO;
  - relevant pension business = pension business activities covered by the jurisdiction of CIFO; and
  - relevant provider = 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 came into effect on 16 November 2015.
  
- 3 Under the Ombudsman Laws, a complainant must satisfy three conditions in order to use CIFO.<sup>6</sup> The complainant must:
  - 3.1 be in a specified category;
  - 3.2 not be a financial services provider; and

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<sup>1</sup> [www.guernseylegalresources.gg/CHttpHandler.ashx?id=95900&p=0](http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=95900&p=0)

<sup>2</sup> [www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%26OYear2014%2fR%26O-158-2014.htm](http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%26OYear2014%2fR%26O-158-2014.htm)

<sup>3</sup> [www.jerseylaw.je/law/display.aspx?url=LawsInForce\htm\ROFiles%5cR%26OYear2015%2fR%26O-087-2015.htm](http://www.jerseylaw.je/law/display.aspx?url=LawsInForce\htm\ROFiles%5cR%26OYear2015%2fR%26O-087-2015.htm)

<sup>4</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)

<sup>5</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>6</sup> Article/section 8(2).

- 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);<sup>7</sup> and
- 4.2 small charities in the Bailiwicks of Guernsey and Jersey, with a gross annual income under £1 million in the previous financial year;<sup>8</sup>
- 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 a 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.<sup>9</sup>

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<sup>7</sup> Specified by the Ombudsman Laws

<sup>8</sup> Subject to the outcome of the consultation covered by CIFO's Consultation Paper 1

<sup>9</sup> This excludes a complaint against the employer, but includes a complaint against the provider.

## **Trust**

- 6.3 The complainant was a beneficiary 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.<sup>10</sup>

## **Cheque guarantee card**

- 6.4 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**

- 6.5 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.<sup>11</sup>

## **Banker's reference**

- 6.6 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**

- 6.7 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**

- 6.8 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**

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

## **Insurance**

- 6.10 The complainant was a beneficiary or had a 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.<sup>12</sup>

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

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<sup>10</sup> Except as provided for in the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order 2015 and the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014 as amended by the Financial Services Ombudsman (Exempt Business) (Amendment) (Jersey) Order 2015, complaints relating to the provision of trust services will not be covered by the jurisdiction of CIFO.

<sup>11</sup> 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.

<sup>12</sup> 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.

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.<sup>13</sup>

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<sup>13</sup> 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.