

CIFO General Approach to Compensation for Losses

Introduction

If a customer has been affected by an error, there may be different types of compensation to consider. This information is to help stakeholders understand the general approach taken by CIFO in determining fair and reasonable compensation for complaints relating to losses.

When a complaint referred to CIFO is found to have merit, our objective is to restore the customer to the position they would have been in if things had not gone wrong. For investment complaints, that can mean awarding money – for example, compensation for financial loss due to unsuitable advice or refunding a fee that was charged incorrectly. But we may also direct financial services providers (FSPs) to do something that does not involve money such as correcting information or issuing a written apology.

In some cases, we will award compensation for non-financial loss – for example, for the distress and inconvenience an issue has caused a customer.

Types of Compensation CIFO Can Award

The [Financial Services Ombudsman \(Jersey\) Law 2014](#) and the [Financial Services Ombudsman \(Bailiwick of Guernsey\) Law, 2014](#) both empower CIFO to make decisions requiring an FSP to pay compensation or directing an FSP to do something. These can include:

- money awards
- awards for distress and inconvenience
- interest awards
- costs awards
- directions

Money Awards

When a customer has lost out financially, we usually tell the FSP to compensate them for the loss it caused. This can be any amount of money up to our award limit of £150,000 set by law.

Where it's clear how much a customer lost, we will specify the amount of money the FSP needs to pay.

Where it is not clear we will usually set out the basis on which the FSP should compensate a customer, rather than a specific amount. For example, if a customer was unaware that their mortgage payment had been calculated incorrectly, we might ask the FSP to calculate how much they would have owed if the error had not occurred.

In cases where we think a customer is due more than our statutory award limit of £150,000, we will recommend the additional amount we think the FSP should pay. While CIFO can only make a binding award of compensation up to £150,000, the recommended compensation above £150,000 reflects the total amount of compensation that we believe would be fair and reasonable in the

circumstances. Once they understand the basis of CIFO's conclusion, some FSPs decide to pay the full amount.

Awards for Trouble, Upset, Distress or Inconvenience

A mistake can affect a customer practically or emotionally, as well as financially. So CIFO can also award fair compensation for any of the following:

- distress
- inconvenience
- pain and suffering
- damage to reputation

We might award these if we feel a customer faced obstacles or difficulties that could have been avoided if the FSP had handled things differently.

Examples of Awards for Distress and Inconvenience

In considering compensation for distress and inconvenience, CIFO has taken note of, and will generally seek to be consistent with the approach taken and compensation ranges used by the Financial Ombudsman Service in the United Kingdom (UK FOS). The ranges of compensation are as follows:

- Moderate (less than £500)
- Substantial (£500 to £2,000)
- Severe (£2,000 to £5,000)
- Extreme (£5,000 or more)

Awards for moderate distress and inconvenience will generally be associated with errors which cause any one or more of:

- A short delay
- Brief upset
- Mild concern
- Minor inconvenience

In considering whether awards for distress and inconvenience in individual complaints should be for an amount falling within the higher ranges noted above, CIFO will generally take into account such aggravating factors as:

- Whether the error was a single incident or a recurring sequence of similar or different incidences;
- The degree of frustration or unnecessary delay caused to the customer;
- The degree of unnecessary and/or ongoing stress and disruption caused to the customer's life and wellbeing;
- The degree of embarrassment caused to the customer;
- The degree of reputational damage and time spent mitigating;
- The degree of disappointment caused to the customer;
- The degree of distress and anxiety caused to the customer;
- The length of time the disruption is caused to the customer;
- The reduced living standard caused to the customer;

- The lost opportunity for a significantly different lifestyle caused to the customer;
- The degree of pain and suffering caused to the customer;
- The degree of vulnerability of the customer;
- The long-term and/or far-reaching consequences caused to the customer; and/or,
- The irreversible changes to the personal or professional life of the customer.

CIFO will also take into account the customer's conduct in determining the amount of any award for distress and inconvenience. CIFO will generally take into account such factors as:

- Whether the customer could have taken reasonable steps to mitigate the effect of the FSP's error; and/or,
- Whether the conduct of the customer contributed to the incident that gave rise to the distress and inconvenience.

An ombudsman's decision does not set a precedent. This is because each case is decided in accordance with what is fair and reasonable in those specific case circumstances. While it is acknowledged that similar products and services are seen across different cases, the number of variables present (such as different complainants, firms, factual backgrounds and outcomes) means it would be unreasonable to bind future decisions to the individual circumstances of previous ones.

Interest Awards

CIFO might tell an FSP to pay interest on top of (or as part of) any payment we recommend. Interest on an award is usually calculated from the date the customer should have had the money until the date it was actually paid. This additional compensation accounts for the fact that the FSP arguably could have, and should have, made the funds available to the customer throughout the period since the incident occurred to when the compensation is paid.

We can award interest in three ways:

- **As part of the award itself.** For example, we might tell the FSP to refund interest it charged the customer on their mortgage if they were incorrectly paying a higher amount.
- **On top of a financial award.** For example, if the customer was 'deprived' of money – meaning they did not have it available to use – we can tell the FSP to pay interest on top of the money award.
- **After the financial award has been calculated.** For example, if there is an unreasonable delay in settling a complaint following an ombudsman decision. We can decide that 8% simple interest should start to accrue until the award is paid.

In most cases, we think a rate of 8% simple interest per year is appropriate to reflect the cost of being deprived of money in the past. We would not normally use the current rates paid on deposit accounts as a benchmark. This is because the rates of interest customers have to pay in order to access funds to replace the funds lost are usually much higher. This rate takes also into account that:

- The rate is gross before tax is deducted;
- It often applies to losses at times when different base rates applied; and,
- Current interest rates charged on overdrafts and loans may not have reduced in line with the base rate.

In some cases, we can use a different rate if we think it is fair to do so. For example, if we think the money a customer was deprived of might have been used to pay a credit card bill, we might use the higher interest rate they were charged on the outstanding credit card balance instead.

We note that most customers will have to pay a basic rate of income tax.

Costs Awards

Occasionally, we might tell an FSP to reimburse some or all of the costs a customer reasonably incurred. Costs awards are not common, but we need to think about what is fair in each individual case. As CIFO is a free service operating in a non-legalistic manner, we do not normally reimburse for legal advice or other professional expenses if, in our view, they were not reasonably required in the circumstances.

Costs awards can also include interest.

Directions

We might decide that an FSP needs to put things right in a way that does not involve paying money. For example, amending an error in a customer's credit file or issuing a letter of apology.

How Compensation is Paid

In most cases, FSPs should pay the compensation amount that we award directly to their customer.

But this is not always appropriate. For example, if the customer owes a debt to an FSP, we might say it is reasonable to offset any compensation against the debt owed. CIFO would only do this where we think the complaint would be fairly addressed by doing so.

In some other circumstances, for example where there is a trust in place holding investment or pension assets, we may direct that payment be made directly to the trust to restore the trust assets that may have been affected by the FSP's error or omission. In this way we avoid or minimise any undue impact on the trust itself and any potential legal, confidentiality or taxation implications which could arise.

Calculating Compensation - General

Sometimes we will recommend that an FSP follow a formula to work out the right amount of money to pay to the customer.

This might be because the calculations involve information that CIFO does not have but is on the FSP's own systems or is available from a third party, such as an actuary.

As an example, where we think an FSP gave their customer unsuitable investment advice, we might tell the FSP to compare the value of the actual investment with a suitable investment or benchmark portfolio of suitable investments that was available at the time.

We might also ask an FSP to re-work an account – for example if the customer has been charged an incorrect interest rate and they incurred additional charges or costs as a result. Where we tell the FSP the basis on which to pay compensation, we will always explain the principle behind the calculation to customers so that they can understand what was involved.

Calculating Compensation - Investment-related Complaints

Investment-related complaints require a more specific approach to determining compensation where we think an FSP gave their customer unsuitable investment advice, we might tell the FSP to compare the value of the actual investment with a suitable investment or benchmark portfolio of suitable investments that was available at the time.

Where it is not clear what product a complainant may otherwise have invested into, CIFO uses the ARC Private Client Indices (PCI) as an appropriate comparative benchmark. The PCI is produced by Asset Risk Consultants Limited (ARC) using performance data gathered from 68 contributing portfolio managers, many of which are based in the Channel Islands. This affords it a particular relevance to investment complaints brought to CIFO as opposed to a benchmark or index predominantly focused on UK-based firms or investments.

The PCI has four benchmarks which measure the average performance of portfolios of varying levels of risk. The benchmarks are listed below from lowest to highest risk:

- Cautious
- Balanced
- Steady Growth
- Equity Risk

CIFO is aware that some investment firms use more than four risk profiles when assigning a risk rating to a customer. Where a complainant appears to straddle the border between two PCI risk profiles, CIFO will generally use the average performance of the two benchmarks to calculate compensation.

To calculate compensation for a single unsuitable investment which is no longer worth anything, CIFO will run the benchmark from the original date of investment up until the point the unsuitable investment was either sold, became illiquid, or the date of CIFO's final decision. If the PCI indicates that a suitably invested portfolio would have increased in value during the corresponding period, this percentage growth will be added to the complainant's original invested amount in order to calculate total compensation payable.

It is important to note that the value of any investment, even those which are suitable, can go up or down. If the PCI indicates that an alternative investment would have lost value in the invested period, CIFO is likely only to award the amount that the investment would have been worth had it been invested suitably. As a result of actual market performance, this may result in the complainant receiving less than they originally invested.

In some circumstances, CIFO will need to undertake more complex calculations to come to a fair and reasonable settlement. The following factors may affect the amount of compensation or type of resolution determined by the CIFO in an investment complaint:

- The unsuitable investment had, or still has, some realisable value;
- The unsuitable investment has not caused a loss and/or has actually increased in value;
- The complainant has received income from the unsuitable investment;
- The unsuitable investment has not yet matured, and its value cannot be easily determined before a certain future date;

- The unsuitable investment has value but cannot currently be sold, for example an investment into a fund which has been suspended.

CIFO will take all of these factors into account to ensure that the complainant is placed in the position they would have been but for the error made by the FSP.

Examples of Loss Calculation – Investment-related Complaints

Where an unsuitable investment has failed entirely and has no value, CIFO will compensate the invested amount plus the return which could otherwise have been generated with reference to the PCI which accords with the complainant’s risk profile:

Invested Amount	Current Investment Value	ARC Benchmark to Date	ARC Benchmark Investment Return (+)	Total Compensation
£10,000	£0	+10%	+£1,000	£11,000

If the PCI suggests that the investment would have lost value, even if suitably invested, CIFO will only compensate the value of the investment as it would have stood according to the PCI:

Invested Amount	Current Investment Value	ARC Benchmark to Date	ARC Benchmark Investment Return (+)	Total Compensation
£10,000	£0	-10%	-£1000	£9,000

If the investment has already been sold, CIFO will remove the proceeds received from the sale from the final compensation amount to avoid overcompensating the complainant:

Invested Amount	ARC Benchmark to Date	ARC Benchmark Investment Return (+)	Investment Sale Proceeds Already Received (-)	Total Compensation
£10,000	10%	+£1,000	-£2,000	£9,000

Similarly, if the complainant has received income from the investment during the time invested, this will also be removed from the final compensation amount:

Invested Amount	ARC Benchmark to Date	ARC Benchmark Investment Return (+)	Investment Sale Proceeds Already Received (-)	Investment Income Already Received (-)	Total Compensation
£10,000	10%	+£1,000	-£2,000	-£1,000	£8,000

In the event an unsuitable investment has increased in value and overperformed the PCI which accords to the complainant's risk profile, CIFO will generally decide not to award any compensation to the complainant:

Invested Amount	Current Investment Value	ARC Benchmark to Date	Actual Performance to Date	Current Investment Value compared to ARC Benchmark Value (+/-)	Loss on Investment Amount compared to ARC Benchmark Value	Total Compensation
£10,000	£12,000	+10%	+20%	+£1,000	Nil	Nil

In the event an unsuitable investment has been suspended, or has not yet matured, CIFO will generally take one of the following approaches depending on the wishes of the complainant:

- Request that the complainant immediately sell the investment, thereby crystallising the loss and allowing CIFO to proceed with calculating compensation up to the point of sale; or,
- Order the FSP to take back the unsuitable investment, along with the right to any future proceeds in the event the investment matures or is no longer suspended and compensate the complainant for the total value of the investment and any PCI return up until the date of transfer to the FSP.

Scenario 1

Invested Amount	Current Investment Sale Value	Loss on Invested Amount	ARC Benchmark on Invested Amount to Date of Sale	ARC Benchmark Investment Return (+)	Total Compensation
£10,000	£3,000	£7,000	10%	£1,000	£8,000

Scenario 2

Invested Amount	Current Investment Value	Loss on Invested Amount	Amount FSP to Pay as Consideration for Transfer of Investment	ARC Benchmark on Invested Amount to Date of Transfer	ARC Benchmark Investment Return (+)	Total Compensation
£10,000	?	?	£10,000	10%	£1,000	£11,000

The Principal Ombudsman will keep this guidance under review in the light of cases received by CIFO and will publish updated guidance if necessary. This version is correct as of 26 April 2021. Any comments or suggestions on this guidance may be sent to consultations@ci-fo.org.