

Babbé

Channel Islands Financial Ombudsman – notes for pension providers



This paper gives an overview only. It is not intended and should not be used as a substitute for advice in relation to your particular circumstances.

This note has been prepared primarily for providers, managers and intermediaries of pension schemes in Guernsey, but the principles discussed may also apply to other financial service providers in Guernsey described in the box at the end of this note. You may wish to take further advice if you believe the Channel Islands Financial Ombudsman ("**CIFO**") might be relevant to you.

Overview

- You should consider whether or not you may be subject to the jurisdiction of CIFO
- If so, you should review your internal disputes resolution procedure to ensure it conforms with CIFO's model procedure
- If you are faced with a dispute, you may wish to take careful advice on how to resolve it

Introduction

The Channel Islands Financial Ombudsman ("**CIFO**") was established to provide an independent dispute resolution service to settle disputes that individuals, or micro-enterprises or smaller charities who are not themselves financial services providers (the legislation refers to such complainants as "**eligible complainants**") may have with certain relevant financial service providers. Intended to be, so far as possible, a less formal alternative to going to Court, CIFO is, generally speaking, free for eligible complainants, although service providers may have to pay costs.

Those involved in pension schemes may be within CIFO's jurisdiction

Whilst generally speaking trustees carrying on trust business in Guernsey are outside CIFO's jurisdiction, trustees in Guernsey involved in pension schemes and anyone else providing a service that relates to the choice, establishment and operation of a pension scheme may be subject to CIFO's jurisdiction (this is subject to some limited exceptions) in relation to eligible complainants.

Furthermore, business that is "ancillary" to such pension business may also be subject to CIFO's jurisdiction. So, for example, if you also give financial advice in relation to the pension schemes you offer, such "ancillary business" may come within CIFO's remit.

Implications of a CIFO complaint

The CIFO model is in many ways similar to the UK's Financial Ombudsman Service. However, in the case of pensions, the UK's Financial Ombudsman Service generally only considers disputes that predominantly concern advice in relation to the sale and marketing of personal pension arrangements and the UK's Pensions Ombudsman deals with matters concerning the administration and management of personal and occupational pension schemes. By contrast, CIFO is responsible for both, which given the different powers that the UK gave its Pension Ombudsman, is, perhaps, surprising.

CIFO has wide powers to consider disputes and make determinations on disputes on a basis it believes is fair and reasonable. This may range from making monetary awards up to a maximum potential of £150,000 to directing a relevant financial service provider to act in a particular way. CIFO is not limited to making awards which a Court might make.

Further, once a decision is made, the complainant (but not the financial service provider) is asked whether or not he or she accepts the decision. If so, that decision becomes binding on both the complainant and the financial service provider, so the financial service provider would have no redress or appeal, except to the extent that the financial service provider may raise an administrative law complaint in relation to the manner in which CIFO has exercised its powers.

In due course, CIFO has said that it will publish case studies to help explain its approach to dispute resolution. At this early juncture, no case studies are available, but CIFO has indicated that case studies from other ombudsmen, including the UK's Financial Ombudsman Service, but not, interestingly, the UK's Pensions Ombudsman, may be helpful

Points to consider

Are you potentially subject to CIFO's jurisdiction? If so, we recommend:

- **You consider and, if necessary, update your internal dispute resolution procedure and any terms and conditions relating to how you deal with disputes**

This is because, before bringing a complaint to CIFO, an eligible complainant must have given the financial services provider a reasonable opportunity to respond to his complaint.

- If the financial services provider has a dispute resolution procedure that conforms to a model procedure published by CIFO, the eligible complainant generally has only 6 months from the date that the internal complaints procedure has been exhausted to bring a complaint to CIFO (unless the general time limit referred to below expires at an earlier date).
- Where the provider's dispute resolution procedure does not conform to the model procedure, the general time limit usually applies, which may give the eligible complainant a longer period to bring the complaint to CIFO: 2 years from the date the complainant reasonably should have been aware of their complaint or, if later, 6 years from the date of the complaint.

So there is a particular benefit in having a dispute resolution procedure that conforms to CIFO's model procedure in relation to any client who may be eligible to raise a complaint.

You may decide, for ease of administration and perceived fairness, that the same dispute resolution procedure should apply to all complaints, regardless of whether or not the complainant could take the complaint to CIFO, although this is not mandatory.

The dispute resolution procedure should be widely and freely available and communicated to all relevant individuals, who should also be reminded of it on request and also where complaints arise.

Please seek advice if you wish to know more about the steps you should take to adopt a disputes resolution procedure that conforms with CIFO's model procedure.

- **Where a dispute arises, you should take careful advice on how to handle this**

There are potentially costly financial and reputational risks involved in dealing with complaints which makes careful handling essential. For example:

- CIFO has a statutory obligation to determine complaints by reference to what it considers is “fair and reasonable in all the circumstances of the case”. The behaviour of the parties, including where they have made any reasonable offer to resolve the dispute, may be relevant factors for CIFO when considering whether or not to reject a complaint at the outset, and may be relevant to its assessment of the complaint.
- CIFO has particular powers to require information and documentation which may change the usual approach a trustee might take to such requests. Failure to comply with such requests and/or providing misleading information may lead to a criminal offence, not just for any trustee but also potentially, if a corporate trustee, for any directors or other key decision makers.

Postscript: other service providers in Guernsey

Whilst this note has been produced primarily for those involved in pensions, it should be noted that other financial service providers may also be within CIFO’s jurisdiction in relation to eligible complainants. By way of broad outline only, here is a summary of the various groups of other service providers. This is not intended to be a comprehensive list, and should not be relied upon as such. You should seek direct advice if you wish to confirm whether or not the services you provide might bring you within the scope of CIFO.

- **Deposit-taking, as provided by**
 - regulated banks; and
 - other deposit-takers that are excluded from the requirement to take out a banking licence
- **Credit, as provided by**
 - lenders;
 - credit brokers where 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 transaction 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 class A funds in Guernsey

The scope of CIFO’s jurisdiction may also extend to successors to such businesses which are within its scope.

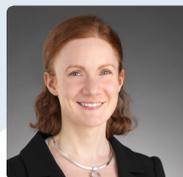
Between them, Nicholas Donnithorne and Anna Gray at Babbé have 25 years experience advising the pensions industry on trusts and pensions law. They have advised government bodies and industry bodies, private individuals and commercial trustees. If you have any questions in relation to the above, please contact.



Nicholas Donnithorne

Tel: +44 (0)1481 746179

n.donnithorne@babbelegal.com



Anna Gray

Tel: +44 (0)1481 746190

a.gray@babbelegal.com