



# CAPCO TRUST

INTEGRITY & INDEPENDENCE

Your Ref:  
Our Ref: RAB/CMW/C116  
Date: 1 April 2011

## Strictly Private & Confidential

Strategy Manager  
Economic Development Department  
3rd Floor  
Liberation Place  
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JE1 1BB

Dear Sir

I refer to your request for comments relating to the Financial Services Ombudsman Scheme and have pleasure in enclosing the views of Capco.

Yours faithfully

**R A Bougeard**  
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Enc:



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## Replies to the consultation questions for the Financial Services Ombudsman Scheme for Jersey and Guernsey

1. In 3.3 we do not consider that the proposals provide a level playing field given that a major competitor namely, the Isle of Man's scheme does not cover trusts and corporate business. That said we recognise it is probably necessary for the Island's international financial standing to proceed with such a scheme to include trust companies but if there is no pressure then there is little need.
2. In 7.2, we do not feel that the figure is reasonable in terms of quantum. Whilst the UK scheme has a limit it does not really recognise trust and corporate situations. In trust situations if the limit is not very much larger, trustees will find themselves in a position of either acquiescing or risking a personal liability if indeed they have to go to court and are unsuccessful and this seems relatively inequitable. Any legal action requires an indemnity to be paid into court beforehand and certainly as far as the trustees are concerned this cannot really be a viable option.

In addition in any event, we fail to understand why the trust size ought to be the measure given that the trust may for example be totally illiquid. We have as a company had cause to try in the United Kingdom to get redress however through an Ombudsman, because it was a trust company involved we were unable to do so as regard was had to our status not that of the client. The Commission actually expressed surprise at the approach adopted by the Ombudsman and the approach that the Bank had taken when we had our last visit. It was the Bank's action in not respecting the terms of the mandate that was the source of our complaint. We do not believe that such a limit should therefore apply.

3. In 7.5 we do not believe that how the scheme should apply to trusts has been thought through given that most issues involving trusts could not be dealt with by reference to the Ombudsman unless to obtain fairness in a relatively straightforward issue but if trustee issues are likely to involve legal action in any event. An interesting area is how matters will be dealt with where there is a corporate trustee together with an individual trustee and the standing of which one of these will apply. In both cases it can lead to unfairness of treatment.
4. In 9, we believe that the period should be two years rather than six after becoming aware of errors and omissions six seems to be an unusually lengthy period.
5. In 10, we believe that this should not be retrospective indeed it should take effect when the legislation is enacted.
6. In 11.2, we believe this should only be £150,000 if the UK increase it to that level too.

7. In 14.1, the definition of how the scheme works should probably read “be able to share the following” rather than “information with the following”.
8. In 15.2.2, we believe that in an ideal world everything should come from the case fees but recognise that there will be a need to fund the scheme, this ought to be reasonable and not penalise the people who actually run their businesses soundly therefore the 20% fee with 80% case fees seems reasonable.
9. In 15.2.3, we believe that it should be chargeable per case and the first few complaints from a financial service provider should not be free of charge. We assume from this you mean the complaints about a financial services provider rather than from.
10. In 15.2.8, we agree that it should be flat fees for financial services for providers who deal with consumers however, we do not believe that this should apply or include trustees and it is not clear whether or not this will be so.
11. In 15.2.9, we do not understand how this is going to be measured. The bigger the numbers of people or indeed of the size of the business. There are more likely to be complaints about the larger companies by reason of sheer size so the headcount may well be the only reasonable solution.