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Mr David Scott
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14 April 2011

Our Ref:

Dear Mr Scott,

RE: Financial Services Ombudsman Scheme for Jersey and Guernsey Economic Development Department (the "FOS Scheme")

Jersey quite rightly asserts that it has a well regulated financial services industry. However, we are concerned that the Consultation Paper put forward for comment may run the risk of creating a "gold-plated" standard for the financial services industry in Jersey. The adoption of a FOS Scheme in Jersey is clearly important, but the costs of any such initiative need to be borne in mind. There are alternative forms of redress available to consumers as a means for dispute resolution. Mediation is one alternative and a useful complement to any FOS Scheme. The jurisdiction of the Petty Debts Court is limited to disputes of up to £10,000 in value and mediation is a good cost-effective means of resolving any dispute at very little cost. We are not aware of any work that has been undertaken in consideration of the available court sponsored mediation and believe that this warrants further consideration, particularly bearing in mind the type of complaints and monetary amounts likely to be brought to the FOS Scheme in Jersey if we are to look to present referrals to the Isle of Man FOS Scheme.

We note that the Consultation Paper seeks to draw comparisons from the manner in which other FOS Schemes are operated, namely the UK FOS Scheme and the Isle of Man FOS Scheme. However, we would suggest to make any direct comparison to the manner in which the UK FOS Scheme operates would only be partially valid; its scope is necessarily far wider with associated economies of scale, consequently making it difficult to draw any firm conclusions. The Isle of Man FOS Scheme may be a more appropriate comparison and basis from which to gain a better understanding of consumer protection schemes. In this context it is important to note that the Isle of Man FOS Scheme is government funded.

We now address substantively in turn each of the sections of the FOS Scheme upon which request for comment has been sought:

Comments are invited on whether there should be a limit on the size of the trust/foundation whose trustees or council members can bring a complaint to the ombudsman scheme, and if so, what the limit should be (section 7.2).

UBS AG, Jersey Branch are of the opinion that to extend the scope of the FOS Scheme to cover trust or foundations would be entirely inappropriate on the basis that we do not consider these arrangements to fall within the usual remit of consumer protection schemes. The provision of such services is bespoke and a "trust" is not a retail product. Furthermore, there are clearly other means by which a disgruntled settlor or beneficiary can seek redress where they take issue with the actions of the trustee and those mechanisms in Jersey take the form of either the Jersey Royal Court or an approach to the Jersey Financial Services Commission ("JFSC"). The FOS Scheme may therefore make decisions that are inconsistent with well established legal principles in Jersey.

Comments are invited on the proposed categories of complainants able to use the scheme (section 7.4).

We would suggest that the proposed FOS Scheme applies to private individuals and small businesses only with others having available to them alternate forms of redress that may be more appropriate with the hope that for those that proceed to litigate matters that careful consideration is given to the availability of mediation in the Jersey court system both at the Jersey Royal Court as well as at the Petty Debts Court.

Respondents are invited to comment on whether all the proposed relationships between complainants and financial services providers are applicable to Jersey or if there are any others that should be included (section 7.5).

On the basis that we believe that the scope of the FOS Scheme should only apply to private individuals and small businesses, we would suggest that the following categories of complaint should be considered as within scope: banking, insurance, mortgages, credit cards and store cards, loans and credit, pensions, savings and investments, hire purchase, money transfer, financial advice - stocks, shares, unit trusts, bonds etc. We specifically think trust services should not be covered by the scheme.

Time periods. A decision will need to be made about whether to use 6 or 10 years as the general time limit within which to bring a complaint. Comments would be welcomed on the most suitable time limit to be used (section 9.3).

This is problematic as a matter of Jersey law because of the differential between the prescriptive periods in contract and tort. As the Consultation Paper indicates, generally speaking the prescriptive period for contract is 10 years and for an action in tort 3 years. This gives rise to a number of issues and the need to review the prescriptive period in terms of length and overall unity. Furthermore, consideration will need to be given to the differences in prescription periods that apply in Guernsey if, as the Consultation Paper advances, Jersey and Guernsey are to have a unified FOS Scheme. The preference of UBS AG, Jersey Branch would be to apply the UK prescriptive period of 6 years for an action arising from contract.

A three month time limit on financial services providers is proposed (to issue a final response to a complaint), do respondents agree? (section 9.4)

Yes, broadly speaking although for complex complaints in relation to our book of business this may not be entirely appropriate. Our present Client Complaints Procedure is entirely consistent with the requirements of the secondary legislation in the form of the various Codes of Conduct promulgated under Article 19 of the Financial Services (Jersey) Law 1998. Upon receipt of a complaint, unless we can resolve a client complaint within one business day, we send a written acknowledgement to the client within five working days, except where we expect to be able to provide a full response within ten working days. Our final response to a complaint, after having conducted an internal investigation, is usually sent to the client within eight weeks of receipt unless we are of the opinion that the complaint cannot be dealt without extension of the time for a response. In these circumstances we will write to the client accordingly.

A starting date of 1st January 2010 [2011?] is suggested. Comments would be welcomed on the suitability of this date (section 10.1).

We assume that the proposed date of 1st January 2010 is a typographical error. Our view is that presently any discussion around effective date is somewhat premature based on the need to ensure that a number of other dependent deliverables are expedited, namely: i) amendments to primary and secondary legislation; ii) determination as to the appropriate constitution of any such body; iii) interviews and appointment of suitable personnel; iv) corporate governance, whether accountable to the States of Jersey or to the JFSC and who will have independent oversight; and v) clear projection as to the operating costs and budget for the FOS Scheme.

Funding Model. What would be your favoured percentage split between income from annual levies and case fees? (section 15.2.2)

We believe that the funding model warrants greater consultation with industry as to the most appropriate means of funding. We would therefore request further consideration is given to the detail of any such funding arrangements whether borne by industry, generated by case fees or centrally funded by the States of Jersey.

Whilst we understand that in the UK fifty per cent of the budget is raised by the general levy which is allocated between the industry blocks according to the work generated by each industry block. The cost of each industry block is then divided among the individual firms in line with the amount of work conducted. The case fee covers the remaining 50 per cent of the annual budget. For businesses regulated by the Financial Services Authority (FSA), the FSA collects the levy at the same time that it collects both its own regulatory fees and the levy for the Financial Services Compensation Scheme.

In general we would favour a system where the highest possible proportion of funding comes from case fees. This is because this system would provide an incentive to deal expeditiously with complaints. We would not support a system which forced larger banks to pay most of the costs of the system that in fact spends its time dealing with issues in other parts of the financial services industry.

Do you agree with the approach of not charging fees on the first few complaints per year? (section 15.2.3)

As above, we believe presently that wider consultation with industry is required before discussing the merits or otherwise of waiving fees on the first few complaints per year.

Do you agree there should be flat fees for financial services providers that deal with consumers, except in certain areas where it should be graded? (section 15.2.8)

As above, this is a key consideration that warrants further discussion and debate in order to reach a satisfactory conclusion.

Do you agree the data to inform these graded areas should be measures of the size of consumer business or could more basic data such as a number of employees be used? (section 15.2.9)

In principle, a useful measure would be the relative size of the consumer business. The sector approach, bearing in mind the nature and size of the financial services industry in Jersey, may not be entirely appropriate and may in fact result in inequality amongst providers.

Paragraph 15.2.8 Proposal for a graded fee arrangement. Comments are invited on this approach.

See our comments above.

Paragraph 15.2.9. Comments are invited on a graded fee approach in certain sectors in Jersey based on the size of consumer with respect to banking, life insurance, insurance mediation and financial advice.

See comments above.

Having reviewed the terms of the Consultation Paper, we need to ensure that other factors are taken in to consideration which aren't directly addressed in the Consultation Paper:

Issues for further consideration

Whilst we do not question whether there is a need for a FOS Scheme, we are interested in the extent of its coverage and the cost of implementation with the consequential impact this will undoubtedly have in terms of funding. A fundamental of any FOS Scheme is to protect the local consumer and provide an alternate means of dispute resolution.

Structure

How will the Jersey/Guernsey FOS Scheme be structured? We presume it will be set up as a limited company with both the Jersey and Guernsey regulator able to remove directors? Who will be the ombudsmen and how will they be selected? How many will be appointed?

It is crucial that there is greater detail around the means by which directors are appointed. In the UK appointments to the statutory panel of ombudsmen are made under paragraphs 4 and 5 of the Financial Services and Markets Act 2000. The directors of the board are appointed as "non-executive" – they are not involved in considering any individual complaints with the chairman of the board appointed by the FSA with approval of HM Treasury.

Budget/Cost

We assume any budget allocation will need to be approved by the JFSC or States of Jersey. Will it be the JFSC or the States of Jersey who have responsibility for making such a determination?

Governance/Reporting/Accountability

We assume that the Chief Ombudsman will need to report against agreed targets to both John Harris and Nik van Leuven as respective Director Generals for the Jersey and Guernsey regulators. The Consultation Paper suggests as a matter of corporate governance that accountability is to the States of Jersey. If the FOS Scheme is set-up as a limited company, why would there be accountability to the States of Jersey if it is the JFSC that regulates the financial services industry in Jersey? A body corporate is not ordinarily accountable to the States of Jersey, so why would such a reporting line operate for the Jersey/Guernsey FOS Scheme?

Interplay between regulator and FOS Scheme

How will this be managed, presumably as in the UK by means of a Memorandum of Understanding exchanged between the JFSC/GFSC and the FOS Scheme? One of the concerns surrounding the UK FOS Scheme is the extent to which the two parties can share information whilst at the same time not infringing on any privacy rights of the parties concerned – how will this be addressed?

Rules, law and regulation

We assume amendments in draft to the Financial Services (Jersey) Law 1998 will be provided for consideration in due course to accommodate the FOS Scheme and the consequential amendments required to the Codes of Practice promulgated under Article 19 of the Financial Services (Jersey) Law 1998? What is the intention with respect to legislative changes and how soon could such amendments be drafted, reviewed and come into force bearing in mind an already tight legislative timetable? In the UK, for example, the actual complaint handling and resolution procedures are articulated in FSA Handbook, Dispute Resolution: Complaints (DISP). The DISP not only stipulates the procedures of FOS, it also articulates the requirement of a firm's complaint handling procedures.

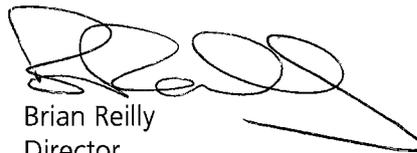
Whilst we are supportive of the introduction of a FOS Scheme we are mindful that any proposal should be appropriate for Jersey and Guernsey so as to ensure that the burden on the financial services industry isn't disproportionately high. We hope that this information will assist you and are more than willing to meet to discuss the issues raised herein in person.

Yours sincerely,

UBS AG



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Head of Legal and Compliance



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