



Isle of Man Office of Fair Trading

CONSULTATION ON PROPOSED CHANGES TO THE SCOPE OF THE FINANCIAL SERVICES OMBUDSMAN SCHEME

SUMMARY OF RESPONSES



Isle of Man
Government

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Contents

1. Introduction

2. The Consultation Exercise

3. The Responses

4. Conclusion

Appendix 1: List of Respondents

Appendix 2: Summary of Responses received

1. Introduction

The consultation document was produced to invite comment on proposed changes to the scope of the Financial Services Ombudsman Scheme (the Scheme).

The OFT has identified two areas, namely personal pension schemes where the investment is directed by the member (commonly referred to as Self-Invested Personal Pension Schemes or 'SIPPs') and Insurance Intermediaries where it believes there are loopholes in the consumer protection provided to consumers by the Scheme.

2. The Consultation Exercise

The consultation exercise ran from 30th July 2014 to 10th September 2014 and was distributed to the following:

- Members of Tynwald
- H.M. Attorney General
- Local Authorities
- Chief Officers of Government Departments, Boards and Offices
- Isle of Man Chamber of Commerce
- Isle of Man Law Society
- Isle of Man Trade Union Council
- Isle of Man Financial Supervision Commission (FSC)
- Isle of Man Insurance and Pensions Authority (IPA)
- All financial institutions registered with the FSC or the IPA
- Isle of Man Pensions Ombudsman
- Isle of Man Financial Planners and Insurance Brokers Association
- Association of Pension Scheme Providers
- Senior Adjudicator and Adjudicators to the Financial Services Ombudsman Scheme

The document was also made available in the 'Consultations' section of the Isle of Man Government and Office of Fair Trading websites.

3. The Responses

A total of 28 responses were received; a list of respondents is attached at Appendix 1 and a detailed summary of those responses is attached at Appendix 2.

4. Conclusion

Following the consultation exercise and further consideration the Isle of Man Office of Fair Trading (OFT) agreed that :-

(a) Given the broad support the OFT will proceed to make an Order which extends the scope of the Financial Services Ombudsman Scheme to cover Self-Invested Personal Pensions (or SIPPs as they are commonly called within the financial services industry).

(b) Whilst there was no real agreement in the responses as to whether there was sufficient clarity in the draft Order contained in Appendix 3 to the Consultative Document over what was meant by a SIPP, in the light of the concerns the OFT will modify the draft Order to provide a definition of a SIPP.

(c) The draft Order contained in Appendix 3 to the Consultative Document will also be modified to remove any potential for misinterpretation that the extension of scope is limited to SIPPs with a single corporate trustee; that was never the intention.

(d) Given the broad support the OFT will proceed to make an Order which will extend the scope of the Financial Services Ombudsman Scheme to cover regulated insurance intermediaries.

(e) Given the misunderstanding by some respondents that the proposal was to extend the scope of the FSOS to include both regulated and exempted insurance intermediaries the draft Order contained in Appendix 5 to the Consultative Document will be modified to provide enhanced clarity.

(f) In responding to the consultation there were suggestions that the scope of the Financial Services Ombudsman Scheme should be further widened to cover:-

(1) Exempted insurance intermediaries

(2) Small Businesses

Whilst interesting, these suggestions went beyond the scope of the current consultation exercise. The OFT, in conjunction with relevant stakeholders will consider these suggestions at a policy level. In the event that the OFT decides to propose any changes in these areas the proposal will be subject to its own consultation exercise.

(g) In view of the modifications to the draft Orders the OFT is now proposing that subject to the formal approval processes the Orders will come into force on 1 April 2015 rather than 1 January 2015 as proposed in the drafts.

APPENDIX 1

LIST OF RESPONDENTS

AXA IOM (Paul Halliday, Company Secretary)
AXA Wealth International (Helen Shipley, Compliance Technician)
Boal & Co Pensions Limited
Britannia International
Castletown Commissioners
Miss Cathleen Galbraith
Chase Financial Services Ltd
Department of Home Affairs
Fairways Finance Limited (Laurence Keenan)
Financial Supervision Commission
Mrs Gwyneth Walker
IIM Limited & Sippsonline Ltd (Rod Leonard)
John Wright (Adjudicator to the Scheme)
Hon J Watterson MHK
M and M (?)
MAC (Nigel Gregg)
Marown Parish Commissioners
MHG Ocean Benefits Limited
Monarch Assurance
Nick Gough
Nick Woolard (Adjudicator to the Scheme)
Norman Teare (Senior Adjudicator to the Scheme)
RL 360 Insurance Company Limited
Royal Insurance Services Company
Santander Wealth Management
Steven Rumsey (Adjudicator to the Scheme)
Zurich Financial Services (Isle of Man) Insurance Manager Limited (Claire Cope)
Zurich International Life Limited (Laurine Douglas)

APPENDIX 2

SUMMARY OF RESPONSES

Question 1

Please give your name and if applicable the name of the organisation on whose behalf you are responding.

A list of respondents is included in Appendix 1.

Question 2

Do you agree that paragraph 1(1)(a) of Schedule 4 of the Financial Services Act 2008 should be modified to permit a corporate body appointed as trustee of a SIPP to be a complainant under the FSOS?

Answer	Number	Percentage
Yes	20	72%
No	2	7%
No comment	6	21%

- This is clearly explained within the document.
- The law requires that fit and proper trustees must be appointed to undertake the role of trustee on a SIPP. As with many cases the appointed trustees are corporate bodies however the individual member could still suffer an impact through bad investment advice or poor service. We would agree that the new proposal creates fairness for the individual members concerned by allowing the Corporate Trustee to have access to the Scheme and will increase overall consumer protection.
- It makes sense for SIPPs to be offered an additional level of protection.
- We agree that the corporate trustee of a SIPP should be allowed to complain. This would address situations where the pensioner is ill or otherwise incapable of complaining. However we believe that the trustees should not be allowed to complain to the exclusion of other parties e.g. the individual investor who's SIPP it is and/or who is a co-trustee. A colleague has mentioned that there used to be a problem if an individual took advice in his/her capacity of trustee and not in their personal capacity and wonders if this problem has already been addressed.
- It is a fair and reasonable approach for consumers.
- In some cases, an individual member of a SIPP is also a trustee of that SIPP (with a body corporate as the other trustee) and possibly able to qualify as a complainant for the

purposes of the dispute. But it might be that the supplier of the financial service at issue provided that service under contract to the body corporate as trustee rather than the individual member (co-trustee) in such cases.

- To make it fairer on members of such pension schemes so that the FSOS can deal with complaints for all pension scheme members even where a corporate trustee is the complainant.
- I think some degree of protection should be afforded to save potential legal bills.
- This is a growing area of business and with changes proposed to pensions legislation there will probably be even more corporate bodies appointed. It also seems unfair that an individual could be penalised for using a corporate body where they might reasonably expect that they are offered greater protection as they are using an institution.
- The intention of Tynwald was to provide an alternative to the High Court route. An individual is too restrictive. A trustee even though a professional will similarly seek advice as an individual will. In the circumstances this is a sensible and appropriate proposal.
- Yes but this is because I have personally gone through the setting up of my own scheme which arose through my exit twenty years ago from an employee to self-employed.
- I agree that paragraph 1(1)(a) of Schedule 4 to the Financial Services Act 2008 should be amended to allow a body corporate acting as trustee of self-invested personal pension to qualify as a "complainant" for the purposes of the Financial Services Ombudsman Scheme subject to the following. (Comments made in response to other questions raised in the consultation).
- We do not agree that this modification should be made. Corporate bodies appointed as trustees have a clear duty in respect of their activities and the service they supply to their clients. To allow a consumer who has invested in a SIPP, involving a corporate body as a trustee, to avail themselves of the services of the FSOS would set a dangerous precedent for the inclusion of corporate bodies in the future (irrespective of whether the pension is a SIPP or not) where they provide trustee services.
Additionally where the subject matter of any complaint relates to service, it would be difficult to identify if any perceived failings related to the corporate trustee of the product provider.
- A corporate body appointed a trustee of a SIPP is a regulated institution and should therefore have the necessary experience to invest their customer's pensions. Should there be a situation where the corporate body need to complain to another financial institution and deadlock is reached. Then it should be for the courts to decide and not the Ombudsman. The Ombudsman should primarily be concerned with individuals and not licenced corporate bodies.

OFT Response

We are pleased to note the broad support for the proposal. We do, however, note the two reasoned objections. Whilst the Ombudsman Scheme is, rightly, about individuals the reality of failure in services provided to the SIPP leads to a loss by an individual not the corporate trustee. The limitation on the value of an award under FSOS to £150,000 will also mitigate against major corporate issues being referred to the Scheme; and also the OFT has the ability to decline to act under paragraph 2(1)(f) (matters more appropriately dealt with by a Court).

Question 3

Do you consider that the term Self Invested Personal Pension is sufficiently clear and understood?

Answer	Number	Percentage
Yes	11	39%
No	2	7%
No comment	15	54%

- There is no denying it is jargon, but it has been around for many years. Given you need a certain level of wealth to own a SIPP I think it is good enough. It certainly does what it says on the tin.
- We believe that the term has been in circulation for a long enough period of time to ensure it is widely understood and consequently sufficiently clear.
- We do not support using the term 'SIPP' undefined. We believe that the regulations should be proof against somebody coming up with a similar new product and arguing that this new product is not a SIPP.
We note that the proposed definition says "*Self-Invested Pension Scheme*" which is not further defined (and the acronym for this would actually be SIPS as it does not contain "personal").
We also note that the introduction to the consultation says "*personal pension scheme where the investment is directed by the member*" which we suggest might be (the basis of) an adequate definition.
Additionally, page 4 of the consultation says "*a personal pension in which one or more members (or a person related to the member) is able (directly or indirectly) to direct, influence or advise on investments by the pension scheme.*" which may also be used in the definition.
- In some cases, an individual member of a SIPP is also a trustee of that SIPP (with a body corporate as the other trustee) and possibly able to qualify as a complainant for the purposes of the dispute. But it might be that the supplier of the financial service at issue provided that service under contract to the body corporate as trustee rather than the individual member (co-trustee) in such cases.

OFT Response

Whilst there is wide agreement on this point overall the OFT believes that there is sufficient level of well-argued concern to merit the introduction of a definition into the draft Order. Such a definition will, however, need to be carefully drafted because we are addressing SIPPs from a variety of jurisdictions which use financial services providers from the Island. This point is also picked up in the responses to Q4 and we have considered those responses here rather than in our response to Q4.

Question 4

Do you have any general comments on the proposed wording of the Order as set out in Appendix 3?

19 respondents did not comment on the Order. The comments of the remaining 9 are set out below:-

- All scenarios should be considered that will involve an individual e.g.
 - The individual may be a trustee along with a corporate trustee
 - The individual may be a trustee along with multiple corporate trustees
 - There may be numerous individuals as trustees
 - There may be a corporate trustee but the individual is not a trustee. The individual would still be in charge of the investment strategy in this case.

All options should be considered carefully when defining the term 'complainant' in the proposed wording. The current wording that has been proposed may only cover a scheme with one corporate trustee.

OFT Response

We appreciate the point – use of the word “the” in article 3 before “trustee” can be read as limiting the provision to a SIPP with a single corporate trustee which was not the intention. Replacing “the” with “a” would make it clearer.

- The proposed wording and commencement date are clear.
- The wording appears appropriate.
- A minor comment - we believe the correct wording in the preamble should be “... Schedule 4 **to** the Financial...”
In article 4, we believe the legislation should allow for someone to complain some time (years) after an act or omission occurs, due to the nature of the matters concerned. This is because it may be many years after the act/omission that the problem becomes apparent. We therefore think it would be beneficial to insert words such as “or becomes apparent” after “occurs”.

OFT Response

Whilst we recognise the point made; the time limits are laid down in the Financial Services Act 2008 so cannot be changed in this Order.

- In the Explanatory Note, we suggest:
 - a. the point above about “becoming apparent” should be added;
 - b. After the first mention of “bodies corporate” it is important to clarify that this relates to their role “as a potential complainant”, so these words should be added; and
 - c. The body corporate is the “trustee”, not the “manager” of a Self-Invested Pension Scheme.

OFT Response

The Explanatory Note will need adjustment following any other amendments so we will bear these comments in mind.

- The term SIPP needs to be tightly defined in any Order so that we, who will have to make the calls, know exactly what will fall within and out with the Scheme remit as should the clients /providers.

OFT Response

(See q3)

- **Enabling provision**
“Financial Services Act 2008” should be in italics.
- **Article 2**
Should the stated requirement for Tynwald to approve the Order be referred to as a footnote (section 45(3))?

OFT Response

The draft Order has been prepared by a Legislative Draftsperson in HMAG to meet current standards

- **Article 3**
Would a better alternative title be “**Amendment of paragraph 1(1)(a) of Schedule 4 to Financial Services Act 2008**”?
“Financial Services Act 2008” should be in italics.
Would the following inserted text be better – “*or body corporate which is the trustee of self-invested personal pension scheme where the dispute is in relation to that scheme*”?

OFT Response

The suggested change is unnecessary because in the context the complaint can only relate to a SIPP.

- **Article 4**
Would article 4 be better simply titled as “Application” and appear as article 3 – and article 3 as 4?
The wording is long and slightly complicated. Is this better?

"This Order applies to a financial services dispute arising from an act or omission which occurred on or after the date this Order comes into operation."

OFT Response

The draft Order has been prepared by a Legislative Draftsperson in HMAG to meet current standards.

➤ **Missing interpretation provision**

I think "self-invested personal pension" needs to be defined. Perhaps the one in [regulation 3 of SI 2001/117?](#)

Perhaps then, the inserted text could read *"or body corporate which is the trustee of self-invested personal pension scheme (within the meaning of regulation 3 of the Personal Pension Schemes (Restriction on Discretion to Approve) (Permitted Investments) Regulations 2001) where the dispute is in relation to that scheme"*? even if it is a bit long.

OFT Response

(see Q3).

➤ **Explanatory note**

Perhaps the first sentence would read better as *"This Order amends paragraph 1 of Schedule 4 to the Financial Services Act 2008 with the effect that a body corporate which is the trustee of self-invested personal pension scheme can be a complainant for the purposes of a financial services dispute under that Schedule.* The second sentence is probably unnecessary.

Rather than state "where a body corporate is the trustee managing a Self- Invested Pension Scheme" I suggest "where that body corporate is the trustee of a Self-Invested Personal Pension Scheme".

There is no need to say the trustee is managing the SIPP

The name or definition of SIPP should be clear.

OFT Response

The Explanatory Note will need adjustment following any other amendments so we will bear these comments in mind

- I believe the Order might usefully contain a definition of "Self-Invested Pension Scheme". Page 4 of the Consultation document says there is no definition of a SIPP in Isle of Man law. It seems to me that the term might be defined substantially in the terms set out in the first paragraph of the relevant section on page 4 which I set out below for ease of reference.

"In this document a SIPP refers to a personal pension in which one or more members or a person related to the member) is able (directly or indirectly) to direct, influence or advise on investments by the pension scheme."

In fact I question if there is any need to refer to “self-invested pension scheme” at all and refer instead to “retirement benefit scheme within the meaning of the Retirement Benefit Schemes Act 2000”. This should be still expressly limited by the need for the member being able to influence etc. This will allow occupational schemes to fall within the definition also which seems appropriate as many occupational schemes are set up to benefit just one or a very few members (often employee member and spouse) where the employee member is able to influence etc.

OFT Response

(see Q3). The point about possibly including small occupational pension schemes goes beyond the scope of this consultation. The OFT will consider the idea and if it is decided to progress the inclusion of such schemes under FSOS this will be subject to specific consultation.

- Paragraph 4 of the Order might need some minor re-drafting so it reads-
“This Order only applies in relation to financial disputes where the Complainant is a body corporate within the meaning of paragraph 4 of this Order and the act or omission the subject of the dispute occurs on or after the date this Order comes into operation.”

OFT Response

The draft Order has been prepared by a Legislative Draftsperson in HMAG to meet current standards. We will discuss this suggestion with the drafter.

Question 5

Do you agree that an Order should be made under paragraph 12 of Schedule 4 of the Financial Services Act 2008 to include insurance intermediaries in the definition of financial service and thus enable the FSOS to apply.

Answer	Number	Percentage
Yes	18	64%
No	0	0%
No comment	10	36%

- We would agree to the inclusion of Insurance Intermediaries within the definition of ‘financial services’ in the Financial Services Act 2008. We concur that disputes relating to acts or omissions by insurance intermediaries should be brought within the remit of the Scheme.
- Where intermediaries are providing advice or services to personal customers then there is the risk that the advice is misleading or poor therefore individuals should have the ability to take their complaint to the Ombudsman.
- It is a sensible change to bring insurance intermediaries within the definition and for the FSOS to apply.
- Yes we agree with adding insurance intermediaries to the definition of “*financial services*”. We consider that the addition is in the spirit of the Ombudsman scheme.

However we think it should apply in respect of all insurance intermediaries operating in or from the Isle of Man, irrespective of whether they are “registered” with the IPA. Thus it should also apply to insurance intermediaries that are subject to an exemption from registration (e.g. an exemption due to them being authorised in the UK) – exemptions should not exclude them from qualifying as suppliers under the FSOS. We believe that the qualification for being suppliers of financial services under the FSOS should be based on what activity the business is undertaking and not whether they are subject to an exclusion or exemption.

- It should be fair and equitable.
- The light touch regulation of these businesses is no longer appropriate, in my view. They should definitely be included in the FSOS so that customers are treated fairly.
- We agree that insurance intermediaries should be included within the definition of “financial services” as they are an integral part of many transactions that involve advice and administration which can ultimately lead to a consumer purchasing a financial product.
- They are involved on the process.
- I do not see why they should be exempt from the legislation.

OFT Response

The OFT notes the broad support for the proposal. The intention was to bring regulated insurance intermediaries within the ambit of FSOS. It was not the intention to include insurance intermediaries who are exempt. We will review the draft to ensure that it reflects this intention.

The suggestion that FSOS ought to be extended to also cover exempt insurance intermediaries (e.g. a travel agent selling travel insurance) is a separate policy issue which is outside the scope of this consultation. In developing future policy, the OFT will consider this possible change carefully, in the light of any views from the IPA and the potential resource implications. Any proposal which the OFT may decide to put forward would need to be the subject of a separate formal consultation.

Question 6

Do you have any comments on the draft of the proposed Financial Disputes (Definition) (Amendment) Order 2014 as set out in Appendix 5 of the consultation document?

- We are satisfied that the definition of Insurance Intermediary is suitably explained in Part 10, Chapter III of the Insurance Act 2008 which is referenced in the document.
- We suggest that the proposed addition could be shortened by removing the reference to Part 10, Chapter III, as insurance intermediary is only defined once in the Act. However, we think it is important to ensure that exempt insurance intermediaries are caught as well as those that are registered. To address this, we suggest including in article 4 (either after “intermediary” or after “2008”) a phrase based on (e) of Appendix 4. For

example, this could be "... a business that would be an insurance intermediary if the person carrying it on were not an exempt person".

One other minor comment: we believe the correct wording in the preamble should be "... Schedule 4 **to** the Financial..."

- No issues the wording is clear and unambiguous.
- Not sure whether the Order wording would include or exclude those intermediaries who are currently exempted by the IPA and hence not regulated e.g. travel insurance providers, home removal insurers etc...

My view is that the Scheme is not a regulator and should not become one by default which I believe would happen if we included the 'exempted' intermediaries in the Scheme remit.

- The reference in Article 4 to activity might be amended to "any activity of a person falling within the definition of "insurance intermediary" contained in section 54 of the Insurance Act 2008".

I am thinking here that part of the definition is by reference to the holding of an appointment and the suggested amendment would cover the activities of that person to the extent they were not within the other part of section 54.

Paragraph or Article 5(2) says that paragraph 2(2) of Schedule 4 should be read subject to paragraph (1) of this Article. I do not think that secondary legislation (which this Order is) can provide for the construction of primary legislation (which Schedule 4 is) but I think what is intended by Article 5(2) of the Order would follow anyway. Also with respect to Article 5(1) I suggest "OFT" should have a definition or its name be set out in full.

OFT Response

The issue of exempt insurance intermediaries is covered in q5. The OFT agrees that it should not become a 'regulator' by default for exempt insurance intermediaries, by setting standards. Equally the FSOS would struggle in an environment where standards do not exist. It necessarily follows that if the FSOS were, at some future date, to be extended to exempt insurance intermediaries there would need to be a degree of regulation by the IPA.

Additional Comments

- We would also like to propose the inclusion of another category of complainant namely small local businesses. I have discovered that the UK's scheme applies to some small / micro enterprises, albeit with levels that would probably not be appropriate here. The relevant provisions are in the FCA's Handbook DISP 2.7.3, which allows an eligible complainant to be (in summary) a consumer, micro-enterprise, charity or trustee. A consumer is generally a natural person and a micro-enterprise employs fewer than 10 people and has a turnover below €2m.

To make the provisions suitable for IoM, perhaps you could draw on a definition derived from tax and customs legislation: [Income Tax \(Rates of Income Tax\) \(Resident and Non-Resident Corporate Taxpayers\) Order 2013](#): "if, in any accounting period of a corporate

taxpayer, the taxable income in respect of the retail business does not exceed the small company limit....” Where “‘small company limit’ is £500,000” although it would need to be widened to allow for non-retail businesses, e.g. per Value Added Tax Act 1996: **Schedule 2 para 1(1)** “... a person who makes taxable supplies but is not registered under this Act becomes liable to be registered under this Schedule (a) at the end of any month, if the person is Island-established and the value of his taxable supplies”

S.3 and 4 of the VAT Act 1996 define *taxable person* and *taxable supply*:

3(1) A person is a taxable person for the purposes of this Act while he is, or is required to be, registered under this Act.

4(1) VAT shall be charged on any supply of goods or services made in the Island, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him. (2) A taxable supply is a supply of goods or services made in the Island, other than an exempt supply.

OFT Response

The suggestion that FSOS ought to be extended to also cover small businesses is a separate policy issue which is outside the scope of this consultation. In developing future policy, the OFT will consider this possible change carefully. Any proposal which the OFT may decide to put forward would need to be the subject of a separate formal consultation.

- The two inclusions made are sensible and clearly benefit the consumer. We would like to see a more ‘user friendly’ approach adopted more widely though. There are recent cases of the 2 and 6 year cut offs for complaints and the investment limit not we believe being carefully considered and applied in the best interests of the consumer.

OFT Response

The time limits are set out in the Financial Services Act 2008 and cannot be varied by an Order.

- The limit for claims is too low. £100,000 is not much of a pension pot. Bearing in mind that the only alternative is Court action, this is an expensive and high risk remedy. I would suggest that setting the amount at £500,000 would grant an annuity of £18,000 for a joint life 50%, 3% escalation, no guarantee, both aged 65. The OFT could set an amount by reference to an annuity to be gained from the lump sum than an arbitrary cash pot.

OFT Response

The limit is £150,000 not £100,000; and this is a cap on the value of an award under FSOS not on the value of the investment. The original limit of £100,000 was set in the Financial Services Act 2008 and in 2012 the OFT made an Order (laid before Tynwald) which increased that sum to £150,000. The FSOS can, and does, deal with issues involving larger investments where the loss alleged is within the limit.

The principle that FSOS should cover smaller investments by individuals is embodied in Schedule 4 to the Financial Services Act 2008. The view at the time appears to have been that larger losses were better dealt with by Courts. The OFT is aware the DHA are undertaking a wide review of the

justice framework and any change to the underlying principle might usefully be considered in that context.

- The sum able to be awarded should be the sum available at the time of award, not the time of the claim.

OFT Response

This is set out in the Financial Services Act 2008 and is repeated in the Order for the avoidance of any doubt.