



Isle of Man Office of Fair Trading

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



Isle of Man
Government

Reilltys Ellan Vannin

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INTRODUCTION BY THE CHAIRMAN



The Financial Services Ombudsman Scheme is an important provision which offers consumer protection to customers of Isle of Man financial institutions. The Scheme, which is free to both consumers and financial service providers, is managed by and operates out of the Isle of Man Office of Fair Trading. It is established under Schedule 4 of the Financial Services Act 2008.

The Scheme is available to help resolve complaints made by individuals who are resident anywhere in the world, as long as the financial service which is the subject of the complaint is provided from the Isle of Man. The aim of the Scheme is to put the complainant in the position they would have been in had the relevant act or omission not occurred. It is not to seek betterment for the complainant or to punish the financial provider.

Where a complaint is found to be within the Scheme remit, case officers provide the first stage of complaint handling, offering a mediation service. The involvement of case officers with an impartial viewpoint can help the parties see the complaint in a different light and resolve the matter with mutual agreement. In cases where mediation of a complaint fails, it may be referred to an Adjudicator for formal investigation and determination.

The Isle of Man Appointments Commission nominates and maintains a panel of six Adjudicators who work independently from the OFT. As part of their consideration of the complaint, the Adjudicator will take into account the relevant law, statutory regulations, regulators' rules, guidance and standards and codes of practice. If the Adjudicator upholds the complaint, they can make binding awards of up to £150,000. If either party disagrees with the final determination of an Adjudicator they can ask for the complaint to be reviewed by the Senior Adjudicator, who will consider the complaint and either uphold the original determination or issue their own. If a complainant is dissatisfied with the determination of an Adjudicator, they cannot take their complaint to court. Awards made by the Adjudicators are binding on both parties, subject only to appeal to the High Court on a point of law.

Further details of the Scheme and the sorts of matters it addresses can be found in the various Annual Reports¹

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 that there are loopholes in the consumer protection afforded by the Ombudsman Scheme. The OFT is proposing to use its powers under the enabling legislation to extend the scope of the Scheme. Before reaching a final decision on whether to make the necessary Orders, we would like to hear the views of both the financial services industry and consumers.

The consultation is open until **5pm on Wednesday 10th September 2014** and we look forward to hearing your views which can be submitted via www.surveymonkey.com/s/FSOS2014. Alternatively paper copies are available from the OFT.

David Quirk MHK
Chairman, Office of Fair Trading

¹ <http://www.gov.im/oft/ombudsman/reports.xml>

LEGISLATIVE CONTEXT

Whilst the Financial Services Ombudsman Scheme was originally established under the Financial Supervision Act 1988, as amended by the Fair Trading (Amendment) Act 2001, the provisions were consolidated by the Financial Services Act 2008². The Scheme now operates under section 24 and Schedule 4 of the 2008 Act. For ease of reference, Schedule 4 which provides the operational framework is set out in **Appendix 2** to this consultation.

SELF-INVESTED PERSONAL PENSIONS

SIPP is a term which is in common usage in relation to a particular type of personal pension, although this is not defined in Isle of Man law. 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.

SIPPs provide consumers with a more flexible approach to investment selection than exists in other forms of personal pension arrangement.

With a personal pension scheme, the consumer (referred to as the member) pays into the fund of the scheme and the pension provider (the trustee where the arrangement is trust based, or the manager where the arrangement is contract based) invests the monies from all members into investments in accordance with the rules of the pension scheme. The fund attributable to the member is then used to pay benefits during retirement and/or on death.

Other than the initial decision as to which pension scheme to invest into, the consumer will have limited control over the range of investments available where that range is selected by the trustee. With a SIPP, the member directs, influences and sometimes advises on investments, often throughout the scheme's whole lifecycle.

In the Isle of Man, SIPPs are regulated as personal pension schemes and are supervised by our Insurance & Pensions Authority. The law requires that there must be trustees appointed and that they must be fit and proper to undertake the role of trustee. In practice therefore, a corporate body is typically appointed, which offers trustee services to pension schemes on a professional basis. The trustee stands possessed of the trust assets and will engage with third parties to secure investments. A trustee of a SIPP has the same responsibilities, including in the investment of scheme assets, as they would with any other type of pension scheme.

SIPPs in other jurisdictions (notably the United Kingdom and the Channel Islands) also use Isle of Man providers to provide financial services and these are subject to their own legislation.

A consumer who invests in a SIPP is at risk of professional failures in four ways:-

1. He or she receives poor advice to invest in a SIPP in the first place.
2. He or she receives poor advice in relation to investment decisions enacted within the SIPP.
3. There is maladministration of the SIPP.
4. The SIPP receives poor service from a third party financial provider.

² http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2008/2008-0008/FinancialServicesAct2008_2.pdf

As the law currently stands, a consumer who receives poor professional advice from a person regulated by the Financial Supervision Commission about going into a SIPP has access to the Financial Services Ombudsman Scheme. Where there is maladministration of a SIPP and the administrator or trustee is based on the Island, the consumer has redress through the Isle of Man Pension Ombudsman. However, where there is a corporate trustee, a complaint about poor professional advice in relation to investment decisions taken by trustees of the SIPP, or where a third party provides a poor service there is no access to either the Pension Ombudsman or the FSOS.

When the Branches of Tynwald passed the Financial Services Act 2008 into law, there was a clear intention to provide a straightforward method to facilitate dispute resolution between individual small investors and financial service providers without the need for expensive Court action. The Act achieved that intention in two ways – by limiting the scope to complaints by individuals and by capping the value of any award. As previously indicated, as part of the Governance arrangements for a SIPP, fit and proper trustees are required and where a trustee is a corporate body the complaint falls outside the scope of the FSOS. This is because the inclusion of a corporate body means that the complainant is not an individual as required by the 2008 Act.

The OFT is of the view that although, from a legal perspective, the trustee of a SIPP is not an individual, where a corporate body is appointed, the ultimate impact of bad investment advice or poor service within such an arrangement falls upon the member who is an individual. The OFT believes that the exclusion of this class of complaint from the Ombudsman Scheme is inappropriate and intrinsically unfair on the individual affected.

The limitation of access to the FSOS to individuals is provided by paragraph 1(1) of Schedule 4 of the Financial Services Act 2008 which states:-

*1(1) A “financial services dispute” is a dispute between —
(a) an individual (“the complainant”); and
(b) a person who, in or from the Island, has supplied the complainant with financial services (“the supplier”),
where the dispute relates to those services.*

Sub-paragraph (4) of paragraph 1 goes on to provide that:-

(4) The OFT may by order amend sub-paragraph (1)(a) to include bodies corporate in such circumstances as may be prescribed.

The OFT is proposing to make an Order under paragraph 1(4) to modify paragraph 1(1) (a) to include a corporate body, where that body corporate is a trustee of a Self-Invested Personal Pension Scheme. A copy of the draft Order is set out in **Appendix 3**. It is intended that such an Order, which would require approval by Tynwald, would come into operation on 1st January 2015.

QUESTION 1

Do you agree that Paragraph 1(1) (a) of Schedule 4 should be modified to permit a corporate body appointed as trustee of a SIPP to be a complainant under FSOS?

Please give reasons

QUESTION 2

- a) Do you consider that the term 'Self Invested Personal Pension Scheme' is sufficiently clear and understood?
- b) Do you have any general comments on the proposed wording of the Order as set out in Appendix 3?

INSURANCE INTERMEDIARIES

Since the introduction of the Financial Services Ombudsman Scheme, the OFT has addressed complaints under the Scheme in relation to acts or omissions by insurance intermediaries. In the main, these matters, which were relatively few in number, were able to be settled through mediation between the parties, although one case was resolved by adjudication. During 2013/14, a complaint relating to an alleged act or omission by an insurance intermediary was referred to adjudication. The matter was considered by the adjudicator who made an award in favour of the complainant. However, the insurance intermediary which supplied the service exercised its right to refer the matter to the Senior Adjudicator for review. Having considered the matter, the Senior Adjudicator overturned the decision of the Adjudicator and dismissed the complaint on the basis that the financial service provided by the Supplier as an 'insurance intermediary' was not within the remit of the Scheme. The complainant did not exercise his right to appeal to the High Court on a point of law.

The decision of the Senior Adjudicator sets a persuasive precedent in relation to complaints relating to insurance intermediaries and the OFT currently has no option but to reject cases as outside the scope of the Scheme.

Notwithstanding the legal position, the OFT feels that straightforward dispute resolution in relation to insurance intermediaries has been a useful service to consumers and believes that it should continue to offer the service.

The definition of "financial services" is provided by paragraph 12 of Schedule 4 of the Financial Services Act 2008 which states:-

12. In this Schedule —

"financial services" means such regulated activity, insurance business, credit business, pensions business or other financial business as is specified in an order made by the OFT;

and the OFT has duly made the Financial Services Disputes (Definition) Order 2008, which it subsequently amended. The current definition of "Financial Services" is set out in **Appendix 4**.

In order to ensure that financial services disputes relating to acts or omissions by insurance intermediaries can continue to be dealt with under the FSOS, the OFT is proposing to use its powers under paragraph 12 of Schedule 4 of the Financial Services Act 2008 to make an Order further modifying the 2008 Order to include insurance intermediaries in the definition of "financial services". A copy of the draft Order is set out in **Appendix 5**. It is intended that such an Order, which would require to be laid before Tynwald, would come into operation on 1st January 2015.

QUESTION 3

Do you agree that an Order should be made under paragraph 12 of Schedule 4 in order to include insurance intermediaries in the definition of "financial services" and thus enable the FSOS to apply?

Please give reasons

QUESTION 4

Do you have any comments on the proposed wording of the Order as set out in Appendix 5?

RESOURCE ISSUES

Extension to include SIPPs

It is not anticipated that the inclusion of SIPPs will lead to a significant increase in the number of complaints received and the FSOS currently has the expertise to assess complaints involving SIPPs.

Extension to include insurance intermediaries

Up to the date of the ruling by the senior adjudicator in November 2013, case workers were taking in complaints against insurance intermediaries. It is therefore anticipated that the inclusion of complaints against insurance intermediaries will have little impact on resources.

CONSULTATION PROCESS

The OFT would welcome any comments you wish to make on the proposals for changes to the Financial Services Ombudsman Scheme. Electronic copies of the consultation document and a link to an online survey are available on the OFT's website³

Comments should be submitted no later than 5pm on Wednesday 10th September 2014 by using the online survey link www.surveymonkey.com/s/FSOS2014 or in writing by post, fax or email to:

Isle of Man Office of Fair Trading
Government Building
Lord Street
Douglas
Isle of Man
IM1 1LE

Tel: (01624) 686500
Fax: (01624) 686504
Email: iomfairtrading@gov.im

When submitting your comments, please indicate if you are responding on behalf of an organisation.

A list of direct consultees can be found at **Appendix 1** to this document. If there is anyone not on the list who you think should be consulted, please contact the Financial Services Manager, email pauline.wood@gov.im or telephone (01624) 686519.

To ensure that the process is open and honest and in line with the Government's Code of Conduct on Consultation, responses can only be accepted if you provide your name with your response. Any abusive or offensive responses will be disregarded. Unless specifically requested otherwise, any responses received may be published either in part or in their entirety. **Please mark your response clearly if you want it to remain confidential.** Confidential responses may be quoted in an anonymised form and will be included in any statistical summary.

Further information on the Isle of Man Government Code of Conduct on Consultation is available online⁴.

A summary of responses will be published within three months of the closing date for this consultation and will be made available on the OFT website⁵.

The purpose of this consultation is to gather information, views and evidence to enable informed decisions on the proposals to be made. It is not a referendum and the responses received do not guarantee changes will be made to what has been proposed.

³ <http://www.gov.im/oft/consultations.gov?menuid=16916&type=current>

⁴ <http://www.gov.im/about-the-government/government/government-consultations/>

⁵ <http://www.gov.im/oft/consultations.gov?menuid=16918&type=closed>

APPENDIX 1

LIST OF DIRECT CONSULTEES

- **Tynwald Members**
- **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**

APPENDIX 2

SCHEDULE 4 OF THE FINANCIAL SERVICES ACT 2008

SCHEDULE 4

MEDIATION AND ADJUDICATION

Section 24

Mediation in financial services disputes

1. (1) A “financial services dispute” is a dispute between —
 - (a) an individual (“the complainant”); and
 - (b) a person who, in or from the Island, has supplied the complainant with financial services (“the supplier”),where the dispute relates to those services.
 - (2) A financial services dispute may be referred to the Isle of Man Office of Fair Trading (“OFT”) by the submission of a completed complaint form by the complainant.
 - (3) The OFT shall seek to mediate between the parties to a referred financial services dispute by —
 - (a) inquiring into the circumstances and cause of the dispute; and
 - (b) offering the parties to the dispute its assistance (which may be by way of mediation or arbitration or by any other means) with a view to bringing about a settlement.
 - (4) The OFT may by order amend sub-paragraph (1)(a) to include bodies corporate in such circumstances as may be prescribed.

Cases where mediation not available or may not proceed

2. (1) The OFT may decline or cease to act under paragraph 1(3) where it appears to it that any of the following conditions is satisfied —
 - (a) the complainant has not suffered financial loss, material distress or material inconvenience;
 - (b) the complainant is not directly affected by the subject matter of the complaint;
 - (c) the supplier has already made an offer of compensation which is fair and reasonable in the circumstances;
 - (d) the dispute has been the subject of a decision on the merits in proceedings in any court;
 - (e) the dispute has been properly considered under any enactment or arrangement providing for the resolution of disputes or the investigation of complaints;
 - (f) the dispute would more suitably be dealt with by a court or under an enactment or arrangement referred to in sub-paragraph (e);

- (g) the dispute relates to the legitimate exercise of the supplier's commercial judgment;
- (h) the dispute relates to investment performance, except to the extent that the complainant alleges that the supplier has been negligent;
- (i) the complaint is frivolous, vexatious or is an abuse of the adjudication process;
- (j) the issues raised by the complaint are such that no reasonable benefit would arise from adjudication;
- (k) the complainant has not sought compensation under the internal complaints procedure of the supplier or has not exhausted that procedure;
- (l) that such a decision is consistent with a previous decision by an adjudicator to decline a referred complaint;
- (m) the manner in which the complaint is made or pursued by the complainant is abusive or offensive.

(2) The OFT shall decline or cease to act under paragraph 1(3) where it appears to it that the dispute was referred to it under paragraph 1(2) —

- (a) more than 2 years after the act or omission giving rise to it came, or ought reasonably have come, to the knowledge of the complainant; and
- (b) in any case, more than 6 years after that act or omission.

(3) Where, in any proceedings arising out of a financial services dispute, it appears to the High Court that the OFT is acting under paragraph 1(3) in relation to the dispute, the Court may stay the proceedings on such terms as it thinks fit.

(4) If it appears to the Treasury that other suitable arrangements have been made for the resolution of disputes with suppliers of financial services of any class or description, the Treasury may by order direct that this Schedule shall not apply to disputes which relate solely or mainly to services of that class or description.

Referral to adjudication

3. (1) Where —

- (a) the OFT has taken any action under paragraph 1(3) in relation to a financial services dispute; and
- (b) it appears to it that the dispute remains unresolved,

the OFT shall, subject to paragraph 8, on the written application of the complainant, refer the dispute to an adjudicator for investigation and adjudication.

(2) The senior adjudicator (see paragraph 4(1)) shall nominate the panel member who shall conduct the adjudication in any case.

(3) Where, in proceedings arising out of a financial services dispute, it appears to the High Court that the dispute has been or may be referred to an

adjudicator under sub-paragraph (1), the Court may give such directions as to the conduct of the proceedings, or of any action, by the adjudicator, as it thinks appropriate.

Adjudicators

4. (1) The Appointments Commission shall appoint and maintain a panel of not more than 6 persons (one of whom shall be designated “the senior adjudicator”) appearing to it to be qualified by experience or otherwise to act under this Schedule in relation to financial services disputes.

(2) But a person who is at that time engaged or employed, or has at any time within the 3 years preceding that time been engaged or employed, in any business consisting of or including the supply of financial services of the same kind as that to which the dispute relates shall not be qualified to act as an adjudicator in respect of such a dispute.

(3) The OFT shall make such arrangements —

- (a) as the Treasury may approve for the payment of remuneration and allowances to adjudicators who are acting under this Schedule; and
- (b) as the Civil Service Commission may approve for the provision of staff to assist such adjudicators.

(4) The OFT may by order amend the maximum number of members of the panel specified in sub-paragraph (1).

Adjudication

5. (1) The adjudicator who is nominated under paragraph 3(2) shall investigate and determine the dispute and shall comply with directions (if any) made by the High Court under paragraph 3(3).

(2) The Treasury may make rules with respect to —

- (a) the practice and procedure which is to be adopted in connection with the reference and investigation;
- (b) time limits for taking any step or undertaking any procedure in the course of an adjudication;
- (c) fees to be paid by the complainant and the supplier.

(3) Subject to sub-paragraph (1) and to any provision made by rules under sub-paragraph (2), the procedure for conducting such an investigation shall be such as the adjudicator considers appropriate in the circumstances of the case.

(4) For the purpose of investigating and determining a financial services dispute an adjudicator to whom it is referred shall give every party to the dispute an opportunity —

- (a) to make representations with respect to the dispute; and
- (b) to comment on any representations so made by any other party.

Determination and award by adjudicator

6. (1) The adjudicator may, if satisfied that the complainant has suffered loss or damage by reason of any wrongful or improper act or omission by the supplier, make such award within sub-paragraph (2) as the adjudicator considers proper.

(2) An award under sub-paragraph (1) may comprise either or both of the following –

- (a) a direction to the supplier, within such time as is specified in the award, to take such steps as the adjudicator considers appropriate to remedy the act or omission and are so specified, and
- (b) an award of compensation, to be paid by the supplier to the complainant, of such amount (not exceeding the applicable amount) as the adjudicator considers just and equitable and is specified in the award.⁹⁸

(2A) In sub-paragraph (2) “the applicable amount” is –

- (a) in respect of an act or omission occurring on or after the date of the coming into operation of this Schedule but before 1 April 2012, £100,000; and
- (b) in respect of an act or omission occurring on or after 1 April 2012, £150,000.⁹⁹

(3) Compensation under sub-paragraph (2)(b) may consist of or include an amount specified in the award as payable where a direction under sub-paragraph (2)(a) is not complied with.

(4) Subject to sub-paragraph (6), the determination by an adjudicator of a dispute, and any award made by the adjudicator under sub-paragraph (1), shall be final and binding on the complainant and the supplier but if an application has been made for a review under paragraph 7, the determination and award shall not be final and binding unless confirmed under paragraph 7(3).

(5) An award within sub-paragraph (2)(b) shall be enforceable as if it were an execution issued by the High Court.

(6) An appeal on a point of law shall lie to the High Court from the determination or award of an adjudicator at the instance of the complainant or the supplier.

Review by senior adjudicator

7. (1) The complainant or the supplier may by written application made within 21 days of a determination of a dispute or any award made by an adjudicator under paragraph 6(1) request that the senior adjudicator carry out a review of the determination and award.

(2) The review by the senior adjudicator shall be informal and such procedure may be adopted as the senior adjudicator considers to be appropriate but the procedure must afford a fair and equal opportunity to the parties involved.

- (3) On completion of a review the senior adjudicator may —
 - (a) confirm the determination or award in question; or
 - (b) make a new determination or award in place of it.

(4) Subject to sub-paragraph (6), the determination by the senior adjudicator of a dispute, and any award made by the senior adjudicator under sub-paragraph (3), shall be final and binding on the complainant and the supplier.

(5) An award under sub-paragraph (3) shall be enforceable as if it were an execution issued by the High Court.

(6) An appeal on a point of law shall lie to the High Court from a decision, determination or award of the senior adjudicator at the instance of the complainant or the supplier.

(7) The Treasury may make rules for the purpose of regulating and prescribing the practice and procedure to be followed by the senior adjudicator in conducting a review under this paragraph.

Cases where adjudication not available or may not proceed

8. (1) The OFT shall not refer a financial services dispute to adjudication where it appears to it that any of the conditions specified in paragraph 2(1) is satisfied.

(2) The OFT shall not refer a financial services dispute to adjudication where proceedings arising out of the dispute have been commenced in the High Court unless the Court —

- (a) gives leave (which may be given on such terms as it thinks fit), or
- (b) stays the proceedings under sub-paragraph (3)(a).

(3) Where, in proceedings arising out of a financial services dispute, it appears to the High Court that the dispute has been or may be referred to an adjudicator, the Court may —

- (a) stay the proceedings on such terms as it thinks fit;
- (b) cancel the reference, or direct that no reference be made, as the case may be.

- (4) An adjudicator may, at any time before determining a dispute —
 - (a) cease to investigate it; or
 - (b) decline to determine it,

where it appears to the adjudicator that any of the conditions specified in paragraph 2(1) is satisfied.

Investigation and adjudication: supplemental powers

9. (1) For the purposes of an investigation into a financial services dispute, an adjudicator may require —

- (a) the supplier of the financial services in question;

- (b) the complainant; and
- (c) any other person who, in the adjudicator's opinion is able to furnish information or produce documents relevant to the investigation,

to furnish any such information or produce any such documents.

(2) For the purposes of any such investigation an adjudicator shall have the same powers as a court of summary jurisdiction in respect of the attendance and examination of witnesses (including the administration of oaths and affirmations) and in respect of the production of documents.

(3) No person shall be compelled for the purposes of any such investigation to give any evidence or produce any document which that person could not be compelled to give or produce in civil proceedings before the High Court.

(4) If any person without lawful excuse refuses to comply with any summons issued by an adjudicator requiring that person to give evidence or to produce documents, the adjudicator may certify the refusal to a court of summary jurisdiction, which shall inquire into the matter and, after hearing any witnesses who may be produced and any statement that may be offered in defence, may deal with the person in accordance with section 102 of the *Summary Jurisdiction Act 1989* as if that person had disobeyed an order mentioned in that section.

Supplementary

10. (1) Subject to paragraph 8(3), nothing in this Schedule affects any right of action or liability of any party to a financial services dispute but no person may recover both damages in proceedings to enforce any such right or liability and compensation under this Schedule in respect of the same loss or damage.

(2) The *Arbitration Act 1976* shall not apply to any investigation, determination or award under this Schedule.

(3) If it appears to the Treasury expedient to do so having regards to any change in the value of money, the Treasury may by order amend paragraph 6(2A).

An order under this sub-paragraph may include any transitional or consequential provision that appears to the Treasury to be necessary or expedient.¹⁰⁰

Notice of mediation to customers

11. (1) The OFT may by regulations make provision requiring financial services suppliers to notify their customers of the availability of mediation and adjudication under this Schedule in such manner and at such times as may be specified in the regulations.

(2) Any person who contravenes regulations made under subparagraph (1) is guilty of an offence.¹⁰¹

Schedule 4: definitions

12. In this Schedule –

“financial services” means such regulated activity, insurance business, credit business, pensions business or other financial business as is specified in an order made by the OFT;

“financial services dispute” has the meaning given by paragraph 1.

APPENDIX 3

DRAFT OF THE PROPOSED FINANCIAL SERVICES DISPUTES (BODIES CORPORATE) ORDER 2014

Financial Services Disputes (Bodies Corporate) Order 2014

Article 1

Statutory Document No. XX/20XX

C

Financial Services Act 2008

FINANCIAL SERVICES DISPUTES (BODIES CORPORATE) ORDER 2014

Approved by Tynwald:

Coming into Operation: 1 January 2015

The Isle of Man Office of Fair Trading makes the following Order under section 24 and paragraph 1(4) of Schedule 4 of the Financial Services Act 2008.

1 Title

This Order is the Financial Services Disputes (Bodies Corporate) Order 2014.

2 Commencement

If approved by Tynwald, this Order comes into operation on 1 January 2015.

3 Addition of particular bodies corporate

In paragraph 1(1)(a) of Schedule 4 to the Financial Services Act 2008 after “an individual” insert «or body corporate where that body corporate is the trustee managing a Self-Invested Pension Scheme».

4 Limitation of effect

This Order applies in relation to financial disputes if the act or omission that is the subject of the dispute occurs on or after the date this Order comes into operation.

MADE

DAVID QUIRK

Chairman, Isle of Man Office of Fair Trading

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services Act 2008 to include bodies corporate where the body corporate is the manager of a Self-Invested Pension Scheme. This amendment applies only to acts or omissions occurring on or after 1 January 2015.

APPENDIX 4

CURRENT DEFINITION OF FINANCIAL SERVICES

The following activities and businesses are specified for the purpose of the definition of “financial services” in paragraph 12 of Schedule 4 to the Financial Services Act 2008 —

- (a) Any activity falling within Class 1 (deposit taking) of Schedule 1 to the Regulated Activities Order 2008 but only in relation to accounts held on the Island;
- (b) any activity falling within Class 2 (investment business) of that Schedule;
- (c) insurance business within the meaning of the Insurance Act 2008;
- (d) credit business within the meaning of Part II of the Moneylenders Act 1991;
- (e) a business which would be a credit business if the person carrying it on were not an exempt person (expressions in this sub-paragraph having the same meanings as in Part II of the Moneylenders Act 1991);
- (f) a business which relates to a collective investment scheme within the meaning of the Collective Investment Schemes Act 2008;
- (g) a business which relates to a pensions scheme within the meaning of the Pension Schemes Act 1995;
- (h) any activity falling within Class 8 (money transmission services) of Schedule 1 to the Regulated Activities Order 2009

APPENDIX 5

DRAFT OF THE PROPOSED FINANCIAL SERVICES DISPUTES (DEFINITION) (AMENDMENT) ORDER 2014

Financial Services Disputes (Definition)(Amendment) Order 2014

Statutory Document No. XX/20XX

C

Financial Services Act 2008

FINANCIAL SERVICES DISPUTES (DEFINITION)(AMENDMENT) ORDER 2014

Laid before Tynwald:

Coming into Operation:

1 January 2015

The Isle of Man Office of Fair Trading makes the following Order under section 24 and paragraph 12 of Schedule 4 of the Financial Services Act 2008.

1 Title

This Order is the Financial Services Disputes (Definition)(Amendment) Order 2014.

2 Commencement

This Order comes into operation on 1 January 2015.

3 Interpretation

In this Order –

“the Act” means the Financial Services Act 2008; and

“the Principal Order” means the Financial Services Disputes (Definition) Order 2008¹.

4 Amendment of SD 472/08

At the end of Article 2 of the Principal Order, add –

«and (i) the activity of acting as an insurance intermediary within the meaning of Part 10, Chapter III of the Insurance Act 2008.».

5 Limit of Application

(1) Any activity referred to in article 2(i) of the Principal Order (as inserted by article 4 of this Order) is only specified under paragraph 12 of

¹ SD 472/08 as amended by SD 940/08 and SD 460/10

Schedule 4 to the Act for the purposes of a dispute referred to the OFT under paragraph 1(2) of Schedule 4 to the Act which concerns an act or omission which occurred on or after 1st January 2015 (being the date on which this Order comes into operation).

- (2) Paragraph 2(2) of Schedule 4 to the Act is to be read subject to paragraph (1) of this article.

MADE

DAVID QUIRK

Chairman, Isle of Man Office of Fair Trading

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services Disputes (Definition) Order 2008 to reflect the addition of the services of Insurance Intermediaries to the activities and businesses which constitute 'financial services' for the purpose of Schedule 4 to the Financial Services Act 2008 which relates to mediation and adjudication in disputes relating to financial services.