



**Financial Services  
Commission**

# **Consultation Paper Complaint Handling**

Date of Paper : 9 August 2013  
Version Number : V1





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## Introduction

The purpose of this consultation paper is to set out a proposed Guidance Note on Complaint Handling (the "Guidance Note") for stakeholders to consider.

The Guidance Note aims to provide additional guidance and clarity of the complaint handling processes the Gibraltar Financial Services Commission ("FSC") expects licensees to have in place.

## Executive Summary

The proposed Guidance Note will apply to;

- All firms licensed by the Gibraltar Financial Services Commission under the;
  - Financial Services (Investment and Fiduciary Services) Act,
  - Financial Services (Markets in Financial Instruments) Act,
  - Financial Services (Alternative Investment Fund Managers) Regulations 2013;
  - Financial Services (Banking) Act, and
  - Financial Services (Collective Investment Schemes) Act.
- Firms to whom the below stated conduct of business requirements apply;
  - Financial Services (Consumer Credit) Act
- All branches carrying on in Gibraltar;
  - Insurance mediation,
  - Banking services,
  - Investment services, and
  - Payment services

The basis of the proposed Guidance Note is the premise that regulated firms should have in place adequate and efficient complaint handling processes which benefit both the firm and its customers.

These processes should be such that they ensure that complaints are adequately recorded and investigated, whilst maintaining the complainant updated regarding the position or current status of the complaint. Firms should also ensure that all communication with complainants is clear, understandable and not misleading.

Complaint handling procedures and controls should encompass a process of analysis to ensure that complaints are analysed in order to identify any root causes, which subsequently allows these root causes to be addressed and mitigated, where possible.

The purpose of the proposed Guidance Note is to set out minimum standards regarding the above areas. The Guidance Note also sets out clear timescales for the handling of complaints.

## Basis of consultation

The consultation paper contains the proposed Guidance Note in full followed by the questions being posed to stakeholders. It is therefore expected that



responses to these questions will be received from the industry. However, the FSC welcomes any other comments and / or observations which the industry may have in respect of any points contained in the Guidance Note.

Following the end of the consultation period, the FSC will consider the responses. The Paper will then be submitted to the Minister with Responsibility for Financial Services for his consideration. Where comments are received during the consultation process with which the FSC does not concur, these will also be advised to the Minister together with the FSC's reason for not accepting them.

All responses to the Consultation Paper will be made available for inspection, at Government's disposal, or on the FSC's website, unless there are particular reasons not to do so or confidential information that needs to be protected.

Feedback on the consultation paper should be addressed to:

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Head of Banking and Investment Services Supervision  
Financial Services Commission  
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To reach her by no later than close of business on 8 November 2013.

To view the FSC policy on public consultation, please see  
<http://www.fsc.gi/firms/consultation.htm>

## Guidance Note – Complaint Handling

### 1 Introduction

Firms are expected to have an adequate and effective complaint handling policy in place for the reasonable and prompt handling of complaints.

This Guidance Note provides guidance as to the processes and procedures the FSC expects firms to have in place.

**Complaint definition:** An oral or written statement of dissatisfaction addressed to a regulated entity relating to the regulated entity itself or the services provided by the regulated entity.

### 2 Scope

This Guidance Note applies to;

- All firms licensed by the Gibraltar Financial Services Commission under the;
  - Financial Services (Investment and Fiduciary Services) Act,
  - Financial Services (Markets in Financial Instruments) Act,
  - Financial Services (Alternative Investment Fund Managers) Regulations 2013;
  - Financial Services (Banking) Act, and
  - Financial Services (Collective Investment Schemes) Act.
- Firms to whom the below stated conduct of business requirements apply;
  - Financial Services (Consumer Credit) Act
- All branches carrying on in Gibraltar;
  - Insurance mediation,
  - Banking services,
  - Investment services, and
  - Payment services

Firms licensed under the Financial Services (Insurance Companies) Act should refer to EIOPA's Guidelines on Complaint Handling by Insurance Undertakings, which can be found on the FSC's website.

### 3 Complaint Handling Rules

1. All staff should be aware of, and be able to readily access, the firm's complaint handling policy and procedures.
2. Complaints may be made to a regulated firm free of charge.
3. Firms should appoint an individual, who already carries out a governing function at the firm, with responsibility for oversight of the firm's compliance with complaint handling arrangements.



4. On receipt of a complaint, this should be acknowledged within the set timescales (see below), advising the client of the firm's complaint handling policy and procedures and the response timescales that can be expected.
5. Firms are expected to maintain appropriate and satisfactory communication with the complainant to ensure that he/she is kept informed of the progress of the complaint.
6. On receiving a complaint, a firm is expected to;
  - a. Communicate with the complainant in plain language which is clearly understood and not misleading;
  - b. Investigate the complaint and obtain any further information as is necessary; and
  - c. Assess fairly, consistently and promptly the matter of the complaint and determine any remedial action deemed appropriate.
7. Firms should ensure that complaints received are adequately closed by providing the complainant with a final response. The firm's final response should either,
  - a. Accept the complaint and offer remedial action,
  - b. Offer remedial action without accepting the complaint, or
  - c. Reject the complaint and provide the reason(s) for doing so.
8. If applicable, the firm, in its final response, should advise the complainant of any redress or out-of court procedures which he/she could follow.
9. Firms can consider a complaint closed once it issues the final response to the complainant, and should advise the complainant of such.
10. If the firm is not responsible for the complaint, and where responsibility falls on a broker/intermediary/agent, it should advise the complainant of such and direct the complaint to the relevant entity.

## 4 Timescales

1. Firms are expected to acknowledge receipt of a complaint within two weeks from the date the complaint is received.
2. The firm must send the complainant a written final response with the firm's resolution to the complaint, or a written response in which it advises why it cannot yet provide a final response, within twelve weeks of receipt of the complaint.
3. If a firm is unable to keep within the timescales set, for example, if it is unable to offer a final response within the timescales set, it should provide the complainant with a written response in which it provides an explanation of the reason(s) for the delay and when it expects to be able to provide a final response.

## 5 Provision of Information

### 5.1 Internal Information

1. Firms are expected to maintain a record of each complaint received and the measures taken for its resolution. This should include at least;

- a. Name and contact details of the complainant.
  - b. Subject of the complaint.
  - c. Services/activity to which the complaint relates to.
  - d. Audit trail of correspondence and communication with the complainant.
  - e. Investigation carried out and result/outcome.
2. Complaint records are required to be maintained for at least five years from the date the complaint was received.
  3. A firm should ensure that it periodically analyses complaints received in order to identify any recurring or systemic problems, and potential legal and operational risks. If any root causes are identified, the firm should ensure it implements appropriate measures to mitigate these.
  4. The firm's Board is ultimately responsible for the periodic review of complaints and ensuring that any mitigating actions are identified and carried out.

## 5.2 Information to be provided to Clients

1. A firm is expected to provide its clients with details of its complaint handling policy, and any other redress measures if applicable, prior to the conclusion of any business transaction. This should include;
  - a. Details on how to complain, including to whom to address complaints.
  - b. The information required to be submitted by the complainant.
  - c. Timescales for the handling of complaints.
  - d. The firm's policy and procedure for handling of complaints.
  - e. Details of any further redress or out-of-court procedures available.
2. The firm's complaint handling policy and procedures should be readily available to its clients at all times, either in paper format e.g. brochures or contractual documents, or be accessible online.

## 6 Redress or out-of-court procedures (if applicable)

Redress or out-of-court procedures are available in respect of;

- Insurance and Reinsurance intermediaries, Investment firms, and Payment Services Institutions licensed under the Financial Services (Investment and Fiduciary Services) Act;
- E-Money Institutions licensed under the Financial Services (Banking) Act; and
- Money Lenders licensed under the Financial Services (Money Lending) Act and regulated by the FSC through the Financial Services (Consumer Credit) Act.

### 6.1 Insurance Intermediaries and Non-MiFID Investment firms

1. Complainants who are dissatisfied with the firm's final response may make a complaint to the Complaints Authority.
2. The complaints authority is the Consumer Affairs Office of the Government of Gibraltar, or such other person or entity as the Minister may designate by regulations.

## 6.2 Payment Services Institutions, E-Money Institutions and licensed firms offering Consumer Credit

1. Any disputes arising between a firm and a complainant concerning rights and obligations may be heard and settled by an Official Referee, as provided for in Section 7 of the Arbitration Act.

## 7 Outsourcing

1. A firm is able, if it wishes, to outsource the handling of complaints.
2. If a firm outsources its complaint handling process it must ensure that;
  - a. The requirements set out in this Guidance Note are complied with at all times.
  - b. Senior management still exercises overall oversight and responsibility.
  - c. The requirements set out in the FSC's Guidance Note on Outsourcing have also been complied with.

**Disclaimer:** Where any conflict arises between FSC issued guidance and the European Supervisory Authority guidance, the latter has precedence.

- Q1. Do stakeholders consider the contents of the proposed Guidance Note useful?
- Q2. Do stakeholders have any additional comments / observations in respect of the proposed Guidance Note which should be brought to the FSC's attention?

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**Regulatory objectives and principles of good regulation – checklist**

<b>Which regulatory objectives are the proposals aimed to facilitate:?</b>	
(a) To promote market confidence;	Yes - firms are required to analyze complaints received and mitigate risks identified.
(b) The reduction of systemic risk;	Yes – by analyzing complaints received, firms will be able to identify any recurring issues that may give rise to legal or operational risks. Hence by then mitigating these root causes, the firm will reduce its systemic risk.
(c) To promote public awareness;	Not applicable
(d) The protection of the reputation of Gibraltar;	Yes - by having suitable processes in place and adequately identifying and mitigating risks, there is less likelihood of a firm failing and affecting Gibraltar’s reputation.
(e) The protection of consumers;	Yes – requires the analysis and mitigation of recurring risks which if not dealt with could adversely affect consumers
(f) The reduction of financial crime, including the funding of terrorism;	Not applicable
<b>Do the proposals accord with the following principles of good regulation?</b>	
1. The need to use our resources in the most efficient, effective and economic way;	Not applicable
2. The principle that the duty to manage a business falls upon the senior management of that business. The Directors of a licence holder, both executive and non-executive have ultimate responsibility for ensuring that the business is properly run and operates in accordance with regulatory requirements;	Yes. Senior management should have overall responsibility for the effective management of complaints and for addressing any issues arising from these complaints.
3. The principle that a burden or restriction which is imposed upon authorised firms should be commensurate with the benefits expected to result from such action, so ensuring that the Authority is striking the right balance between achieving the statutory objectives and ensuring that the impact on those being regulated is not such as to be counterproductive;	Yes. The expected complaint handling process is balanced - it will benefit the complainant by requiring firms to treat complaints adequately and efficiently but also the firm, as it requires firms to analyse such complaint to ensure any risks or problems identified are mitigated.



4. The desirability of facilitating innovation in connection with regulated activities;	Not applicable
5. The international character of financial services and markets and the desirability of maintaining the competitive position of Gibraltar; and	Not applicable
6. The need to consider the adverse effects of regulation on competition and consumer choice.	Not applicable
7. Does this match UK supervisory practices	Where relevant, does match UK supervisory practice.