



**FINANCIAL CONSUMER PROTECTION  
(COMPLAINTS HANDLING) REGULATIONS**

**October 2022**

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## 1.0 INTRODUCTION

Consumer recourse, which is the ability to raise grievances and have them heard and redressed, irrespective of location, is in many ways at the heart of Consumer Protection. As advocated by FinMark Trust in the results of the Financial Literacy Baseline Survey conducted in 2016, Consumer Protection and the ability of consumers to seek recourse should be an area of focus. In line with this, the 2011 commitments under the Maya Declaration on Financial Inclusion, endorsed by the Alliance for Financial Inclusion (AFI) acknowledged consumer protection and empowerment as “key pillars of financial inclusion efforts to ensure that all people are included in their country’s financial sector.” The development of the Financial Consumer Protection Act (FCPA), which is jointly administered by the Central Bank of Seychelles (CBS) and the Financial Services Authority (FSA) (hereafter referred to as the Competent Authorities) serves to provide consumers with protection in the financial sector as well as avenues for recourse should it be required.

This paper sets out to lay the foundation for the Complaints Handling Regulations which will be issued under the FCPA. The Regulations will firstly cover the complaint handling process which must be abided to by all Financial Service Providers (FSPs) under the purview of the Competent Authorities (“CA”) and secondly will set out the manner in which complaints should be handled by the CA.

## 2.0 CURRENT COMPLAINT HANDLING LANDSCAPE

### 2.1 Current Environment at CBS

CBS currently handles and supervises the handling of complaints by FSPs as per the Financial Institutions (Complaints Handling) Regulations, which was issued under the Financial Institutions Act in 2008. The current Complaints Handling Regulations specifies the rules, procedures and timeframes within which complaints need to be acknowledged, handled and reported by FSPs, and makes mention of the complaint handling mechanism at CBS without providing details on the procedure or timeframe. The aforementioned Regulations are also limited in scope in view that they cover solely Banks and Bureaux De Change (BDCs), and not Non-Bank Credit Institutions (NBCIs) e.g the Development Bank of Seychelles (DBS) and the Housing Finance Company (HFC). The new Regulations will have coverage of all the aforementioned institutions in order to ensure access to redress for all financial consumers.

The Complaints handling responsibility rests with the Market Conduct Section of the Financial Inclusion and Market Conduct Division (FIMCD). Complaints are received verbally either in person or by telephone, or in written form through email or letters. Once complaints are received, it is ascertained that the complainants have lodged their complaints to the FSPs first, and have received responses which they are unsatisfied with or 21 days have passed since lodging their complaints and they have not received responses. The aforementioned are the criteria for CBS to handle complaints as required by the Financial Institutions (Complaints Handling) Regulations. Once it has been determined that CBS may handle the complaints, the cases are put to the attention of the respective FSPs in order to gather more information and to understand their stance on the cases. Once feedback is received from FSPs, CBS then makes a final decision taking into consideration the facts, relevant laws and experience with previous cases.

## 2.2 Current Environment at the Financial Services Authority

The FSA currently does not have any Regulations specialising in complaints handling. Nonetheless, they have published a set of Complaints Handling Guidelines in accordance with section 33(1) of the Financial Services Authority Act, 2013 to establish the procedure that the Authority will follow upon receiving a complaint against a licensee and any other specified entities under its regulatory scope, as well as any complaints received in respect to the way in which the Authority has carried out its functions. Currently at the FSA, complaints are processed by Corporate Communication Unit, subject to the necessary investigations and analysis carried out by the respective technical sections of the FSA.

## 3.0 SCOPE OF THE REGULATIONS

The FCPA applies to FSPs supervised by the CA, hence the Regulations should apply to all Supervised Institutions, including banks and non-bank financial institutions as provided under Schedule 1 of the FCPA.

Section 35(2) of the FCPA states that, *“every financial services provider shall implement and maintain such procedures for the Complaint Handling Unit in such manner as the CA may prescribe...”* In line with the provisions for internal handling complaint process, this paper sets out to provide the basis for the Regulations which define the procedures which shall be

established by Financial Service Providers (FSPs) so as to create a level playing field across the FSPs whilst ensuring the fair treatment of customers.

Further to this, Section 36 (1) of the FCPA which provides for the handling of complaints by the CA also sets out that “*The Competent Authority shall, establish a complaint handling mechanism by Regulations.*” This paper also sets the basis for a section of the Complaints Handling Regulations which will set out the Dispute Resolution process for the CA, including the use of Alternative Dispute Resolution.

Moreover, Principle 9 of the G20 high-level principles on Financial Consumer Protection states that, “Jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient. Such mechanisms should not impose unreasonable cost, delays or burdens on consumers. In accordance with the above, financial services providers and third parties acting on behalf of FSPs should have in place mechanisms for complaint handling and redress.” Hence, having in place Regulations which define the minimum requirements when it comes to Complaint handling will effectively provide equal access to redress for all financial consumers.

#### **Recommendation**

In order to ensure consistency in the complaint handling process, it is recommended that one consolidated legal instrument is issued prescribing the requirements around this process. Therefore, it is recommended that the Financial Institutions (Complaint Handling) Regulations is repealed under the Financial Institutions Act and new Regulations are issued under Part IX of the Financial Consumer Protection Act. These Regulations are to be known as the Financial Consumer Protection (Complaint Handling) Regulations. With regards to FSA, the Complaint Handling Guidelines is not a statutory document, and as such once the Regulations come into force, the guidelines will be revised to be aligned with the Regulations and where applicable might provide guidance on sector specific issues, not inconsistent with the Act or regulations.

## **4.0 DEFINITION OF A COMPLAINT & A COMPLAINANT**

The Financial Institutions (Complaint Handling) Regulations defines a complaint as “*any expression of dissatisfaction or concern about a service or product provided by a financial institution.*”

Similarly, as per the FSA’s Complaints Handling Guidelines, a complaint is defined as “*a formal, written document, informing the Authority of an instance or series of instances when;*

- a. its employees have not performed their duties sufficiently, professionally, transparently, efficiently, or fairly.*
- b. a person has expressed dissatisfaction with a licensee or entity in the conduct of its business, in the performance of all regulated activity of the licensee/entity, or the failure of the licensee/entities to comply with laws etc.”*

However, there is a clear lack of understanding in the financial sector as to what can be categorised as a complaint, as evidenced by the Market Conduct Supervision Bi-annual Report whereby some FSPs report inquiries as complaints. As a consequence, this tends to distort the complaints statistics and the conclusions that can be drawn from it, thereby undermining the risk-based supervision approach of the CA.

As per the World Bank Technical note on Complaints Handling within Financial Service Providers<sup>1</sup>, it is important that minimum requirements are set out on how FSPs should handle consumer complaints and that these requirements should define the threshold standards that FSPs must achieve to have effective structures, processes, procedures, and systems for lodging, resolving, and reporting on complaints referred by consumers. As a first step to instituting these requirements, the Technical note recommends setting out definitions for certain terms, which includes setting out the definition of a complaint. The Technical note further adds that complaints should be distinct from inquiries, which can be considered as consumer requests for information or other types of assistance.

The definition of complaints varies across international bodies/authorities. The below table provides examples of these definitions.

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<sup>1</sup> <http://documents1.worldbank.org/curated/en/773561567617284450/pdf/Complaints-Handling-within-Financial-Service-Providers-Principles-Practices-and-Regulatory-Approaches-Technical-Note.pdf>

**Table 1: Displaying varying definitions of Complaints across international bodies/authorities**

International body/authority	Definition
<b>G20/OECD</b>	A statement of consumers' dissatisfaction with the action, service, or product of a financial services provider or an authorized agent. A request for information or clarification or a request for an opinion, which does not also contain an expression of dissatisfaction or deficiency in service, is not considered to be a complaint.
<b>The Australian Securities and Investments Commission (ASIC)</b>	An expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected
<b>Financial Conduct Authority in UK</b>	Any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service or a redress determination, which: (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and (b) relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products, which comes under the jurisdiction of the Financial Ombudsman Service.

### Recommendation

Based on the above definitions, it is recommended that a complaint is defined as, “any expression of dissatisfaction with service or product provided by an FSP, or the conduct of an FSP in the performance of any regulated activities, where a response or resolution is explicitly expected.” As defined by the FCPA, eligible complainants shall be any party who acquires or intends to acquire financial services or products from an FSP.

## 5.0 COMPLAINT HANDLING AT FSPs



## 5.1 Complaints Handling Unit of FSPs and Proportionality

Section 35 (1) of the FCPA states that, “*every financial services provider shall establish an internal Complaints Handling Unit to receive consumers’ complaints, either in person or in writing, via telephone, e-mail, webpage or other similar method*”. In addition, provisions under clause 35(6) of the FCPA links the need for the establishment of a Complaints Handling Unit to proportionality. This is also supported by the World Bank’s 2017 Good Practices for Financial Consumer Protection which notes that the requirements prescribed by the CA should be flexible enough so that small providers with less complex operations can also comply with them without incurring disproportionate costs.

The table below compares the practice internationally when it comes to requirements set by regulatory authorities for the setting up of complaints handling units.

**Table 2: Comparing the requirements for setting up complaints handling units across jurisdictions**

Jurisdiction	Name of Authority	Requirements for setting up a complaint handling unit
<b>United Kingdom</b>	Financial Conduct Authority	The processes in place to comply with Internal Dispute Resolution requirements takes into account the nature, scale, and complexity of the FSP’s business, including, in particular, the number of complaints it receives
<b>Brunei Darussalam</b>	Monetary Authority of Brunei Darussalam	FSPs with 30 staff or more are required to set up a complaints handling unit. For FSPs with less than 30 staff are required to appoint a complaint handling officer.
<b>Indonesia</b>	Financial Services Authority	The decision to establish a unit or appoint an officer takes into consideration matters that include but are not limited to: <ul style="list-style-type: none"> <li>a. type of the products and/or services offered;</li> <li>b. type, number and distribution of Consumers, both retail and corporate;</li> <li>c. value of transactions by these Consumers; and</li> </ul>

		d. organisational structure and distribution of operations, including geographic distribution.
<b>Fiji</b>	Reserve Bank of Fiji	FSPs are required to have a unit, or function established specifically or combined with other duties in each branch with designated staff to handle and resolve complaints lodged by customers or authorised customer representatives.

In regards to the size of FSPs in Seychelles, at the CBS, the Financial Surveillance Division collects data on the number of employees each Bank has on a yearly basis. This information is not presently gathered from BDCs, however it is proposed that it is collected going forward. From the data gathered from banks as at December 2019, the largest employer in the Banking Sector had 282 employees, and the employer with the smallest number of employees had a total of 5 employees. In comparison, there are some BDCs who often have one or two employees. Based on complaint returns, BDCs often do not record complaints at all during the year or record 1-2.

In the local context, it is recommended that the main criteria used to determine whether a separate unit should be set up is the number of employees, where FSPs with 30 employees or more are obligated to set up a separate Complaints Handling Unit, whereas those with less than 30 employees can have staff carrying out other functions also handle complaints. Alongside this however, it is also proposed that Regulations allow for the CAs to instruct FSPs to establish a separate unit for complaints based on other criteria e.g. the complexity of products and services offered, structure, economic significance, risk profile and business model of the FSP.

#### **Recommendation**

Drawing from the above, it is recommended that a similar approach is adopted to that of Brunei Darussalam where an FSP with 30 staff or more are required to have a complaints handling unit. For FSPs with less than 30 staff, they may appoint a complaints staff. Notwithstanding this, it is proposed that the CAs may at their discretion instruct FSPs with less than 30 staff to also establish a separate unit based on their assessment using other criteria e.g. the complexity of products and services, economic significance, risk profile and business model of the FSP.

In the case where a complaints staff is to be appointed rather than the FSP setting up a Unit, the staff member may be one who is already carrying out another function e.g a compliance officer, and who can take on the additional responsibility for handling complaints. This will ensure accountability when it comes to the complaint handling process and promote such a function within the FSPs whilst also reducing compliance burden relating to the FCPA.

This Unit/staff should be governed by a proper structure, policies, procedures and systems. It should be tasked with applying effective filing procedures and handling, resolving, and reporting data on complaints referred by consumers as well as bringing about the following benefits –

1. It can help FSPs maintain healthy relationships with their consumers and mitigate their reputational risks and costs that can arise from lengthy legal actions.
2. Complaints-related data analysis and reporting should also be undertaken by FSPs as part of their internal control and management processes to identify not only issues in their business conduct but also emerging risks and root causes. This information should be used by FSPs in their review of processes, procedures and product design, terms, and conditions, and as a mechanism to prevent potential litigation and reputational risks.
3. It can provide the CA with important complaints-related data to help them prepare evidence-based policy and prioritize their supervisory activities by identifying systemic problems with products, providers, channels, or systems.<sup>2</sup>

## 5.2 Requirement to have an internal complaint procedure/policy

Safeguarding of customers' interests is a fundamental requirement in the financial system. Without an appropriate feedback mechanism to channel customer complaints, these interests could be undermined. Furthermore, unresolved complaints that are not handled using proper established procedures may result in losses for customers for FSPs, leading to reputational damage and the erosion of public confidence in the financial system.

Section 4(1) of the Financial Institutions (Complaint Handling) Regulations, 2008 addresses the need for FSPs to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints. Sub-regulation 2 further adds that sub-regulation 1 shall allow for complaints to be made by any reasonable means. The term “any

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<sup>2</sup> Complaint Handling within Financial Services Providers, Technical Note, World Bank <https://documents1.worldbank.org/curated/en/773561567617284450/pdf/Complaints-Handling-within-Financial-Service-Providers-Principles-Practices-and-Regulatory-Approaches-Technical-Note.pdf>

reasonable means” here is not specific, and the channels through which complaints may be lodged to the FSPs as well as to the CA should be clearly listed out.

The below table summarises the practice regarding complaint handling procedures across jurisdictions.

**Table 3: Summary of complaint procedures across jurisdictions**

Jurisdiction	Name of Authority	Details on Complaint Handling Procedures
<b>Mauritius</b>	Central Bank of Mauritius	<p>The guidelines on Complaints Handling Procedures Financial institutions should have in place appropriate and effective internal procedures for handling customer complaints.</p> <p>Internal complaint handling procedures should be in writing and their scope should include at least of the following:</p> <ul style="list-style-type: none"> <li>(i) receiving complaints;</li> <li>(ii) responding to complaints;</li> <li>(iii) the appropriate investigation of complaints;</li> <li>(iv) the availability of redress and compensation, in appropriate circumstances.</li> </ul>
<b>Malaysia</b>	Bank Negara	FSPs are required to have in place proper processes, and well-documented procedures for complaints and claims handling, including clearly identified contact points for the proper handling of complaints and claims from financial consumers. The procedures should be clear, easily understood and readily accessible by financial consumers.
<b>Australia</b>	Australian Securities and Investments Commission (ASIC)	<p>Requires FSPs to document Internal Dispute Resolution procedures including:</p> <p>The procedures and policies for -</p> <ul style="list-style-type: none"> <li>1. receiving complaints or disputes;</li> <li>2. investigating complaints or disputes;</li> <li>3. responding to complaints or disputes within appropriate time limits;</li> <li>4. referring unresolved complaints or disputes to an</li> <li>5. recording information about complaints or disputes;</li> <li>6. identifying and recording systemic issues;</li> </ul> <p>(b) the types of remedies available for resolving complaints or disputes; and</p> <p>(c) internal structures and reporting requirements for complaint or dispute handling.</p>
<b>Ghana</b>	Central Bank of Ghana	Provides broad guidance to FSPs on complaint mechanisms but also indicates its authority to review and issue recommendations on the internal policies established by FSPs.

## Recommendation

It is recommended that the Regulations make it mandatory for all FSPs to have in place appropriate and effective written internal procedures for the handling of complaints, and that these procedures should be made known to all their staff and published publicly so that their customers are also aware. The procedures should at a minimum include but should not be limited to:

1. A clear mandate for complaints management and resolution within the FSP;
2. Roles and responsibilities;
3. Delegation of complaints authority;
4. Confidentiality;
5. Conflict of interest;
6. Record keeping;
7. Right of appeal; and
8. Medium through which complaints may be lodged.

It is additionally recommended that the procedures should be reviewed on a yearly basis or as the need arises, and any necessary changes to the procedures should be reflected in the document. Customers should be informed of any changes. As is the case at the Bank of Ghana, the Regulations should allow the CA to review and propose recommendations to these procedures/policies.

### 5.3 Training of Staff to Handle Complaints

Considering the sensitive nature of complaints, FSPs should ensure that their complaints handling staff are trained to handle these complaints in an efficient and professional manner.

The complaints handling Regulations of the Central Bank of Solomon state that “*FSPs must ensure that their complaints handling staff are adequately equipped and trained to properly conduct their role. All staff should be well versed with the complaints handling process, including the approved complaints handling policies and procedures.*”

The Guidelines for Complaints Handling set out by the Bank of Mauritius state that “Financial institutions should make available the resources needed to ensure the efficiency and

effectiveness of a complaint management system. Resources comprise staff, appropriate training and technology.”

**Recommendation:**

It is recommended that the Regulations state that FSPs should ensure that the complaints handling staff have access to training (at least once a year or more frequently if the need arises) or resources so as to ensure that the Complaints Handling Process remains efficient and effective. It is further recommended that to ensure that the process remains transparent, complaints handling staff should declare any conflict of interest that arises pertaining to complaints received. The Regulations should further state that FSPs should have a mechanism in place e.g. a form or mechanism whereby the employee may declare the conflict of interest. In these cases, where possible, another employee should be appointed to handle the case. In cases where the employee with the conflict of interest is the only one available to handle the complaint, or has to eventually approve decisions made in relation to the complaint, the employee may still handle the matter as long as the conflict of interest is properly declared.

#### 5.4 Confidentiality and Conflicts of Interest

In order to safeguard the integrity of the Complaints Handling Process, FSPs should ensure that complaints are not investigated by employees who are directly involved in the matter which is the subject of the complaint. At present, neither the Financial Institutions (Complaints Handling) Regulations, 2008 nor the FSA Complaints Handling Guidelines cater for capacity building, and conflicts of interest.

As per the Reserve Bank of Fiji’s Policy Guideline on Complaints Management, FSPs should implement and maintain proper procedures to maintain confidentiality of all complaints they receive from customers, or authorised customer representatives. The Guidelines further state that information privacy should be observed when collecting, storing, using and disclosing personal information obtained in the complaint handling.

**Recommendation:**

In line with the above, it is recommended that the Regulations set out that as part of the complaints handling procedures of FSPs, the topic of confidentiality should be addressed, where it is made clear that confidentiality around complaints received from customers or persons acting on behalf of customers should be maintained at all times.

## 5.5 Method of lodging a complaint

Financial consumers should have the right to lodge a complaint through various channels or mediums. As promoted by the FCPA, these channels should also take into consideration the various level of literacy of the FSPs clients as well as those which can be categorised as vulnerable. The Financial Conduct Authority defines a vulnerable customer as “someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care.” It is proposed that this definition is adopted for the purpose of these Regulations.

Channels used to submit complaints can include telephone, email, portals on websites, mobile phone apps, letters and in person. To the extent possible and employing a proportionate approach, FSPs should consider implementing mechanisms such as call back services which may make the complaints handling team more accessible

In the local context, the clients and even regulators face a lot of challenges when it comes to calling the normal telephone number of banks which often rings without an answer. This may be seen as a restrictive practice as detailed in the proceeding section of this memo. This therefore calls for the requirement for certain larger FSPs (with 30 staff or more) to have a dedicated telephone line and a dedicated email address for complaints. In line with the recommendation under point 5.1 regarding the setting up of a dedicated Unit for complaints handling, it is proposed that the main criteria to have a dedicated telephone line and email address for complaints commensurate with the number of employees. Despite this the CAs may at their discretion instruct certain FSPs to have a dedicated phone line and email based on their assessment against criterion such as, complexity or products and services offered, economic significance, risk profile and business model of the FSP. This will be decided upon by the two CAs upon their assessment of FSPs.

### **Recommendation**

In consideration of the above, FSPs should allow clients to lodge complaints through a variety of reasonable mediums. The Regulations should also mandate that certain FSPs with 30 staff or more, or as may be determined by the CAs, should have a dedicated number and email address for lodging of complaints available. This should not be the general telephone

number/email to reach the FSP. It is recognised that some FSPs use a general number which then provide options to lodge a complaint. Nonetheless, the requirement for the direct number to that option stands. It is also noteworthy that the proposed Regulation does not specify that this requirement should be on “each” FSP. This is in a bid to allow certain categories of FSPs to join together and set up a call centre should it be preferred. This will allow multiple channels through which customers/complainants can lodge complaints without encountering any barriers. Moreover, for smaller FSPs with 30 staff or less, it is recommended that they have a dedicated email address for complaints, however they are not required to set up a telephone line only for complaints.

### 5.6 Prohibition of restrictive practices for lodging complaints

Considerations should also be given to the way consumers are required to lodge complaints, such that FSPs do not impose unreasonable and burdensome formal requirements that effectively limit access to complaints handling. Some examples of this type of restrictive formality include requiring that complaints be made exclusively in writing, by using a specific form, or accompanied by extraneous documentation or documentation that is easily available to the FSP<sup>3</sup>. A practice, which is important to note, is very prominent domestically. The issue identified here is that FSPs would prefer to have evidence of the complaint which may be used later to substantiate same, or for monitoring purposes. For such cases, it is important that FSPs remain flexible so as to accommodate different circumstances. In practical terms this could be in the form of solutions e.g use of a form on their websites to compliment a phone call, or scheduling physical appointments. What is essential however, is that the investigation into the matter commences as soon as the issue is reported, and whilst this is ongoing, the necessary can be done to ensure details of the complaints are well documented.

#### **Recommendation**

FSPs shall be prohibited from employing burdensome and unnecessary formalities for lodging complaints. As stated above, FSPs should be encouraged to offer flexible ways in which they can substantiate complaints, which can be in the form of online forms which are completed after phone calls, or even physical appointments made. In order to ensure that the Complaints Handling Mechanism is efficient, it is important that a complaint is investigated immediately,



whilst the necessary can be done to substantiate the complaint whilst the investigation is ongoing.

### 5.7 Information to be provided to consumer upon filing a complaint and communication during the assessment process

Effectively providing information to complainants is key to fostering confidence in the complaint handling mechanisms provided by FSPs. As per the WB Technical Note “The first step in investigating a consumer complaint is verifying eligibility and accepting the complaint. This step requires FSPs to have procedures in place to provide complainants with immediate written acknowledgment of receipt of the complaint in a durable medium (that is, a hard-copy written document or other form that the complainant can store). Complainants should be informed of the expected timing for processing the complaint, including the maximum period within which the provider will give a final response, along with the expected medium of response.” The Technical Note also adds that, “As receipt is confirmed, the FSP should assign each complaint a unique tracking number that is communicated to the complainant, who should have a way to follow up on his or her complaint, having easy access to the current stage of the complaint’s resolution.”

To add to the above, the Model Law on Financial Consumer Protection recommends that when acknowledging the complaint, the complainant should be informed of the name and contact person responsible for handling the complaint.

Internationally, as per the <sup>4</sup>Consumer Protection Code of Ireland, FSPs are required to acknowledge receipt of a complaint on paper or on another durable medium within five business days of the complaint being received.

In the local context, Clause 7 of the Financial Institutions (Complaint Handling) Regulations 2008 states:

*A financial institution on receipt of a verbal or telephonic complaint which is not resolved within one working day, or a written complaint shall-*

*(a) log the complaint so it can be reported to the Central Bank;*

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<sup>4</sup> Consumer Protection Code of Ireland  
<https://www.centralbank.ie/docs/default-source/tns/contact/codes/tns-5-3-2-consumer-protection-code.pdf?sfvrsn=4>

*(b) within two' working days, send to the complainant a written acknowledgement of receipt of the complaint and an assurance that it is being dealt with;*

*(c) Ensure the complainant is kept informed thereafter of the progress or the measures being taken for the resolution of the complaint.*

### **Recommendation**

Taking into account the guidance from the Technical Note, and the fact that FSPs in Seychelles have a much smaller customer base compared to FSPs in Ireland, it is recommended that the two working day deadline to acknowledge a complaint in writing is maintained, and that as part of the acknowledgement, complainants should be advised on the timeframe for receiving a response. Moreover, each complaint should be assigned a unique tracking number and details of a designated contact person which will allow for the complainant to follow up on the status of their complaint at any point.

In addition, should the FSP not be able to meet the deadline to provide a response, the Regulations state that same should be communicated to the complainant and that they should be advised on a deadline by when a response will be provided. Additionally, in line with the guidance from the Technical Note, and the practice in Ireland, it is proposed that the acknowledgement of complaints should be on paper or on another durable medium with the ability to be stored, including digital means.

### **5.8 Time Frame for FSPs to Handle Complaints**

As stated above, FSPs under the purview of CBS are obligated to take one of the following courses of action based on the existing complaint handling Regulations by the end of 21 business days from the day of receipt of a complaint.

FSPs may either send the complainant-

1. A final response; or
2. A written response which explains why the financial institution is not in a position to make a final response and indicate when it expects to provide one.

Once the complainant has been provided with a response, or if the complainant is unsatisfied with the response that they have been provided with by the FSP, they may then refer the complaint to the CBS.

FSA does not currently have in place a timeframe for FSPs to handle complaints, but rather ensures that complainants have exhausted all means of resolving their complaints directly with FSPs prior to handling complaints as per their Complaints Handling Guidelines.

When comparing practices in international jurisdictions, they have varying number of days for FSPs to handle complaints. Table 2 below compares the complaint handling time limits across multiple jurisdictions. As may be observed, time frames vary greatly across jurisdictions, and the determination of an ideal timeframe would have to be made based on analysis of the nature of complaints recorded in the local context.

**Table 4: List of timeframes for FSPs to handle complaints across various jurisdictions**

Jurisdiction	Name of Authority	Number of days FSPs are provided to handle complaints
<b>United Kingdom</b>	Financial Conduct Authority	40 days from the date the complaint is received
<b>Canada</b>	Financial Consumer Agency of Canada	90 days from the date the complaint is received
<b>Solomon</b>	Central Bank of Solomon	30 days from the date the complaint is received
<b>India</b>	Reserve Bank of India	30 days from the date the complaint is received
<b>Nigeria</b>	Central Bank of Nigeria	14 days

### **The Chargeback Process**

Complaints or queries regarding the chargeback process are received fairly regularly by CBS. This is due to fact that chargebacks sometimes take up to 180 days.

A chargeback refers to the process by which a cardholder requests for the reversal of a charge on their debit and credit card. The request is made to the customer's card issuing bank, and the validity of the claim is then determined. In the case of Visa, this can take up to thirty days. When the validity is ascertained, the claim is sent to the merchant's acquiring bank, which then notifies the merchant for investigation. Merchants should provide any evidence which they have in their defence to the issuing bank within seven days of receiving the claim. Following this, the issuing bank then reviews the evidence received, and a decision is taken on the claim. Visa limits this review process to thirty days; however, some card companies allow for a longer

review process. The decision is relayed back to the cardholder and acquiring bank, following which, any necessary actions are taken.

The process described above is fairly lengthy, and does not fit within the usual timeframes to resolve complaints as set out in table 4. Hence FSPs find it challenging to meet the 21-day complaint resolution requirement under the current Complaint Handling Regulations of 2008. It should be noted that Visa allows for only one round of pre-arbitration, following which, if the case is unresolved, the matter is brought to Visa for arbitration. In comparison, card companies e.g Mastercard and American Express allow for two pre-arbitration rounds, and a final arbitration round. With this being the case, it is recommended that the Regulations allow FSPs with longer periods of time to resolve card disputes. Additionally, given that the rules of card companies are usually updated on a yearly basis, it is recommended that the period is not specified in the Regulations, however the Regulations could refer to the latest version of the rules issued by the card company. This will accommodate for any changes in the local context whereby cards from other card companies aside from Visa, Mastercard, UPI could be issued as well.

**Recommendation:**

Based on analysis of the number of days FSPs usually take to handle complaints locally, as well as taking into account examples from international jurisdictions, the Regulations should provide FSPs with 21 business days to provide a response to the complainants related to the domestic market and 30 days for complaints related to the international market. For complex cases including chargebacks, FSPs should inform customers in writing where they will not be able to meet the deadline, and that the resolution period will need to be extended. The timeframe by when complainants can expect to receive a response should be communicated to them.

### 5.9 Assessment of complaint and remedies

Principle 9 of the G20 High level principles for Financial Consumer Protection principles on Complaints Handling and Redress states that FSPs should offer complaint handling services which are accessible, affordable, independent, fair, accountable, timely and efficient. Additionally, it is proposed that such mechanisms should not impose unreasonable cost, delays or burdens on consumers. The above principle lays out clearly the expectation when it comes

to complaint handling services offered by FSPs locally as it is through these types of services that confidence in the products and services offered by FSPs will grow.

In addition to the above, it is also expected that when complaint assessments are carried out, the root cause of the issue should be identified, as this could assist in remedying recurring issues, helping to mitigate technical issues with the system, or identify areas where existing policies, procedures or products need to be improved.

Furthermore, the World Bank Technical Note on Complaint Handling within FSPs also advises that assessments of this nature should include an analysis on whether consumers are being offered products or services that suit their needs and profiles. This is an issue which has arisen through complaints received locally. It has been identified that often consumers approach FSPs to request certain products or services, and these are usually provided with minimal guidance as to whether the requested products/services appropriately suit the needs of customers or whether there may be other products or services which may better suit their needs.

It has been observed that the above guidance has been included in the Consumer Protection Code of Ireland, and it is opined that same is relevant to Seychelles, and should be included in the Regulations.

Besides the above requirements, whilst undertaking complaint assessments, FSPs should consider remedies provided for by the FCPA, and proactively take appropriate remedial measures where required. This is likely to reduce the level of complaints escalated to the CA, and increase the percentage of complaints resolved at FSP level.

**Recommendation:**

As stated above, it is recommended that the Complaint Handling Regulations states that FSPs should offer complaint handling services which are:

1. Accessible
2. Affordable
3. Independent
4. Fair
5. Accountable
6. Timely

## 7. Efficient

Additionally, FSPs should be mandated to carry out a root cause analysis on complaints received so that larger issues may be identified and addressed.

Besides the above, FSPs should also be required to consider remedial actions set out by the FCPA, and where applicable, apply the remedial measures to resolve issues to solve complaints, rather than allowing them to escalate to the CA.

### 5.10 Information to be provided after assessing the complaint

As per the World Bank's Technical Note on Complaint Handling within FSPs, complaint resolutions must be delivered in plain writing in a durable format such as a letter or email to the complainants. It is imperative that a complainant clearly understands the position of the FSP, and the reasons why the FSP has taken such a position. The language to be used should be one of the 3 official languages, English, French or Creole as applicable.

The Technical Note proposes that the following is also communicated to the complainant after a complaint has been assessed:

1. If a complaint has been refused, the FSP should provide the complainant with a reason as to why the complaint was refused.
2. If compensation is offered as a resolution, the terms of the proposed settlement must be explained clearly. This is so that the complainant can clearly understand the value of the proposed compensation; additionally, the offer should be quantified in monetary terms.
3. Clear instructions should be provided to the complainant regarding the actions to be taken to accept or refuse the proposal, along with a reasonable timeframe for the complainant to decide on the compensation offer (for example, a minimum of 10 working days).
4. Responses should also clearly inform complainants of their rights and how they can further pursue the matter should they be dissatisfied with the resolution provided by the FSP.

Similar to the above list, the Consumer Protection Code of Ireland states that within five business days of closing a complaint, FSPs must advise complainants either on paper or another durable medium of:

1. The outcome of the investigation;
2. Where applicable, the terms of any offer or settlement being made;
3. That the complainant can refer the matter to the relevant Ombudsman;
4. The contact details of such Ombudsman.

In the local context, Regulation 8 of the current Complaint Handling Regulations states:

(1) A financial institution shall, by the end of twenty-one days from the day of receipt of a complaint send to the complainant-

- a) A final response
- b) Or a written response which explains why the financial institution is not in a position to make a final response and indicate when it expects to provide one.

(2) Upon the issuing of the final response, the financial institution shall inform the complainant of the right to request the financial institution to further take the complaint to the Central Bank on the complainant's behalf.

Similarly, Section 5 of the FSA's Complaint Handling Guidelines states:

5.5) On a case by case basis, depending on the circumstances of individual complaints, if the Authority concludes that a complaint has merit, it will advise the complainant in writing what steps or actions it proposes to undertake to remedy the matters of the complaint.

5.6) If the Authority concludes that a complaint has no merit, it will explain its reasons in writing to the complainant and the complaint will be closed thence.

When comparing the guidance of the Technical Note, and the conditions set out in the Consumer Protection Code of Ireland, to the requirements in the current Regulations used by CBS, it may be observed that the current Regulations do not set out the minimum requirements for what the final response to the complainant should include. However, based on previous complaints received, this final communication is rather important as complainants should understand why FSPs are taking certain positions, and in the event that they do not agree, the options that they have to contest this. It is hence recommended that minimum requirements for the final response are set out in the new Regulations.

**Recommendation:**

In line with the above, it is recommended that within two business days of closing a complaint, written communication should be sent to the complainant with the following minimum requirements:

1. An Overview of the complaint
2. Points which have been considered
3. The outcome of the investigation
4. Any applicable remedies and the minimum timeframe for customer to revert with agreement on the remedy.
5. Reference to the Competent Authority including the provision of telephone, email, and postal contacts

#### 5.11 Maintaining a record/file of each complaint and relaying of information to the Competent Authorities when requested

As per section 11(1) of the FCPA, *“every financial services provider shall maintain physical records of all transactions and correspondences between him and the financial consumer for a period of not less than seven years from the date of the last transaction.”* In line with this, the Complaints Handling Regulations should provide details as to the type of records which should be kept in relation to complaints, so as to ensure that all pertinent information is available for further investigation if necessary.

The Model Law on Financial Consumer Protection upholds that FSPs must maintain records pertaining to each complaint, including records of how the complaint was resolved for the period established by the CA.

As per the World Bank’s Technical Note on Complaint Handling within FSPs, it is recommended that at a minimum, the below details are recorded in relation to each complaint:

1. Assigned reference number of the case
2. Name of the complainant and her/his contact details
3. Date when the complaint was lodged
4. Means of communication by which the complaint was lodged
5. Type of product, service, issue
6. Demographics (for example, gender, age,



7. Subject and description of the complaint
8. Classification of the complaint (as per an internal classification system)
9. Assigned FSP staff person(s) responsible for handling of the complaint
10. Investigations carried out by the FSP
11. Steps undertaken by the FSP to resolve the complaint
12. Response provided to the complainant
13. Resolution, if or if not achieved
14. Date of resolution, if or if not achieved

Having the above information on hand, will enable a smooth handover of information to the CA should the complaint be escalated to the regulators. Moreover, it will allow for such information to be provided to FSPs in a timely manner. Given that FSPs would already have records for each complaint detailed, it is recommended that information related to complaints is provided within 24 hours of receiving the request through digital means.

**Recommendation:**

It is recommended that FSPs should retain records for each complaint for a period of at least 7 years, with the minimum standards set out above. Moreover, it is recommended that the Regulations require FSPs to submit complaint related information within 24 hours of receiving the request from the CA through digital means.

### 5.13 Reporting Requirements

Under the current complaint handling regulations, FSPs are required to provide CBS with a report of complaints received on a bi-annual basis. The first report is submitted not later than 15 days after the end of June, and the second report is submitted not later than 15 days after the end of December. This current system has worked well thus far, and has allowed for an appropriate level of monitoring of complaints. Once the reports are submitted, CBS then produces a bi-annual Market Conduct report based on the complaint statistics. From this Market Conduct Report, issues or trends identified as highlighted and recommendations are put forward.

The same standard is also applied by the Financial Conduct Authority in the UK, whereby complaint statistics are reported every six months.

**Recommendation:**

**Commented [PM1]:** Removed given that Section 8 of the FCPA already obliges such a report to be made. Communication between the FSP and their Board of Directors will remain at the discretion of the FSP.

Based on past experience, FSPs submitting complaint reports on a bi-annual basis is sufficient to monitor the number and nature of complaints, hence it is recommended the frequency of report submissions by FSPs remains the same.

#### 5.14 Consumer Awareness

The Financial Institutions (Complaint Handling) Regulations, 2008 make provision for consumer awareness of the Complaints Handling procedures/policies that FIs have in place.

Despite this, as per the Assessment on the Remittance Market study conducted by Sarah Langhan and Associates in 2016, there was little evidence of FSPs abiding to the Financial Institutions (Complaints Handling) 2008 Regulations when it comes to consumer awareness. One aspect which stood out most prominently from the study was that FSPs were not displaying information on how to lodge complaints either at their premises, on receipts or email correspondence. As such, customers are unaware of the measures they may take to lodge a complaint, and how the complaint handling process works.

One aspect from the Guidelines for Complaints Handling set out by the Bank of Mauritius, which may be adopted in Seychelles is that Financial Institutions provide all new customers with their complaint handling procedures at the time of the establishment of a business relationship with them.

#### **Recommendation:**

In light of the above, it is recommended that the Regulations state that all new FSP customers should be provided with the complaints handling procedures upon establishment of a business relationship with them. Additionally, where applicable the procedures should be published on the websites of the FSPs and available on the premises of the FSP e.g through leaflets, QR Code etc.

### 6.0 COMPLAINTS TO THE COMPETENT AUTHORITIES

As per an agreement with the Fair-Trading Commission (“FTC”), the Competent Authorities have been handling consumer complaints that arise out of the financial sector for a significant number of years now. However, this is being implemented on a basis of moral suasion given the lack of adequate legal instruments to enable the Competent Authorities to properly and

effectively discharge this function. Whilst moral suasion has been successful in certain cases, there have been cases where the CA have lacked sufficient power under the law to be able to properly address issues which have arisen out of complaints. With the enactment of the FCPA, the intention of the CA is to strengthen the Financial Consumer Protection framework in Seychelles to ensure that consumers are adequately protected.

### 6.1 Complaints which will be investigated by the Competent Authorities

Currently, the CA have certain limits on the nature of complaints which are accepted, e.g cases which have been heard by the court already will not be considered. However, there are very few of these limits in place, and the CA often dedicate time and resources in resolving complaints which for instance may be considered of a frivolous nature, which then takes away from the effort which could have been used to resolve more important complaints. In light of this, the CA need to adopt specified parameters when it comes to complaints handling, whereby complaints have to meet detailed criterion if they are to be considered.

The AFI Complaint Handling in Central Bank Framework<sup>5</sup> lists out various types of complaints which should not be considered by a Central Bank. Several relevant points have been selected from the list:

- 1 A complaint which is not within the ambit of the Financial Consumer Protection legal framework
- 2 A complaint with insufficient information to allow for an investigation
- 3 A complaint which is awaiting resolution or has already been resolved by any other institution, such as a Court of law;
- 4 Complaints on an institution not regulated by the CA
- 5 A complaint that involves the exercise by an FSP of its commercial judgments on lending policy, for example refusal to give a loan, unless there was failure on the part of an FSP to follow the correct procedures and this unfairly affected the complainant.

Moreover, in the handling of complaints, the CBS has received requests for handling complaints anonymously. Such requests usually result in complaints not being efficiently dealt with considering the case of the particular customer cannot be discussed with the FSP, but rather the matter may be tackled on a general level. In addition, despite taking precautions to

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<sup>5</sup> [https://www.afi-global.org/wp-content/uploads/2020/07/AFI\\_CEMC\\_framework\\_AW\\_digital-v3.pdf](https://www.afi-global.org/wp-content/uploads/2020/07/AFI_CEMC_framework_AW_digital-v3.pdf)

not provide FSPs with particular details of a customer, there is always a risk that this may occur, and this may bring about reputational risks for the CA. On the part of FSA, Clause 5.2 of the Complaints Handling Guidelines states that “Anonymous complaints will not be accepted.”

In light of the challenges which handling complaints anonymously has brought about in the past on the part of CBS, it is recommended that a point related to this is included in the above list as well, to state that anonymous complaints will not be accepted. The CAs can however take note of these complaints as part of their Market Conduct Mandate.

In addition to the above points, it is also recommended that the CA do not accept frivolous or vexatious complaints. Frivolous complaints are considered to be complaints which have no serious purpose or value, where investigating the matter would be considered out of proportion compared to the seriousness of the issues complained about.

On the other hand, vexatious complaints are those where it is apparent that the complainant is pursuing the matter without merit, with the intention of causing inconvenience, harassment or expense to the FSP.

Internationally, frivolous or vexatious complaints are considered as grounds for dismissal of complaints.<sup>6</sup> This may be seen in Section 3.3.4 of the Financial Conduct Authority’s (FCA) handbook on complaint handling procedures.

**Recommendation:**

It is recommended that the above list of the types of complaints that will not be considered by the CAs be adopted for the purpose of the Complaints Handling Regulations.

## 6.2 Information to be requested from Complainants

In order to standardise the procedure for information collected from complainants, it is important that the Regulations set out the minimum standards for collection of information by the CA. Based on the nature of the case, additional information may also be requested to allow for complete investigation. It is hence being recommended that the below details are collected:

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<sup>6</sup> <https://www.handbook.fca.org.uk/handbook/DISP/3.pdf>

1. Name of the complainant and her/his contact details
2. Date when the complaint was lodged at the FSP
3. Means of communication by which the complaint was lodged
4. Type of product, service, issue
5. Demographics (for example, gender, age)
6. Subject and description of the complaint
7. Assigned FSP staff who were responsible for handling of the complaint
8. Investigations carried out by the FSP
9. Steps undertaken by the FSP to resolve the complaint
10. Response provided to the complainant
11. Resolution, if or if not achieved
12. Date of resolution, if or if not achieved

### 6.3 Details of communication with the Complainant.

The Anti Money Laundering Act, 2020 requires that reporting entities carry out customer due diligence to confirm the identity of customers. To align with this as much as possible, it is recommended that staff handling complaints ensure a copy of the complainant's Identity Card/other means of confirming identity is obtained. This can be submitted through digital means e.g by WhatsApp or email, through portals on the CAs websites, and any apps which may be developed in the future. In cases where the complainant does not have access to such facilities, a form of identification can be submitted in person. It is advantageous to collect as much relevant information on the complainant as possible.

Moreover, there are occasions when complaints are made on behalf of other individuals e.g relatives of an elderly person. Internationally, for example at the Australian Financial Complaints Authority, such complaints are accepted. It is important that more details are requested from the person lodging the complaint in such cases. This includes, but is not limited to the below list:

1. Identification of both the person lodging the complaint on behalf of an aggrieved customer and aggrieved customer. This is only applicable whereby the person lodging the complaint on behalf of a customer does not have proxy on the account.
2. The relationship with complainant,
3. The reason why the aggrieved person cannot lodge the complaint themselves

For such cases, it is recommended that a signed approval is submitted by the aggrieved customers themselves, giving authorisation for the person to lodge a complaint on their behalf.

Whilst the above will not completely eliminate the possibility of such practices taking place, the requirements may act as a barrier to people who lodge complaints on behalf of others, either without their consent or without their approval given that in the past, the CBS has received a complaint on behalf of a customer who did not wish to make a complaint.

It should be noted however that there are vulnerable groups e.g. the elderly where providing written consent may prove a challenge. In such instances, the best approach should be decided on a case by case basis given that in the past there have been initiatives undertaken by certain agencies/authorities whereby it was necessary for the signature of elderly persons to be obtained before proceeding with any steps.

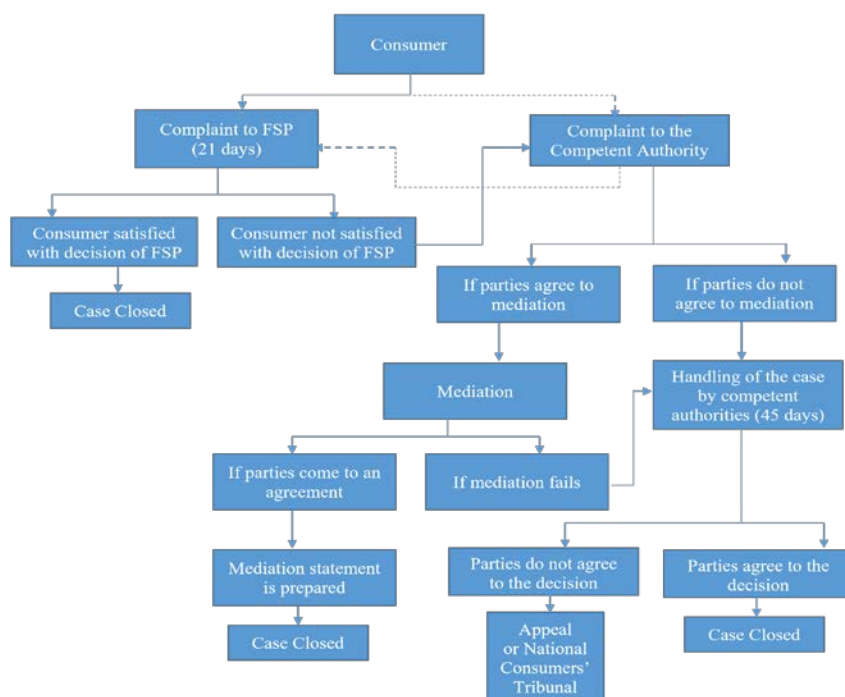
**Recommendation:**

It is recommended that as much information is collected from the complainant and people complaining on behalf of complainants (with the exception of customers that have proxies on their accounts) in order to ensure that their identities are confirmed, and that information collected is correct and relevant. In this regard, it is recommended that the above list is used to guide staff handling complaints regarding information which should be collected.

#### 6.4 The overall Complaint Handling Process

Section 36 of the FCPA makes provision for the establishment of complaint handling mechanisms for the CA. As such it is pertinent that the CA have internal procedures in place for dispute resolution. The procedures should be made available to the public so that they are also aware of the procedures when submitting complaints to the CA.

As per the policy paper for the FCPA, consumers should be offered a clear and systematic process for handling of complaints as depicted in Figure 2 below:



**Figure 2: Flowchart depicting proposed Complaints Handling Process**

Whilst the above chart covers the responsibility of the FSPs vis-a-vis complaints handling, it also covers the responsibilities of the CA.

**Recommendation:**

In line with the above, it is recommended that the CA have in place procedures for dispute resolution, and that these procedures are made available to the public.

In keeping with the standard set for FSPs, the proposed Regulations should at a minimum include the below:

1. A clear mandate for complaints management and resolution within the FSP;
2. Roles and responsibilities;
3. Delegation of complaints authority;
4. Confidentiality;
5. Conflict of interest;

6. Record keeping.
7. Right of appeal
8. Medium through which complaints may be lodged

### 6.5 Mediation

As per Figure 2 above, one of the avenues for dispute resolution which was proposed in the policy paper for the FCPA was the use of mediation. The World Bank defines mediation as a flexible process, conducted in confidentiality, in which a neutral third party actively assists disputants in working towards a negotiated agreement of a dispute or difference. Mediators do not have the authority to decide issues; they simply assist the parties in reaching an acceptable settlement by probing the motivation and concerns of the parties in an effort to find a basis for resolving the parties' dispute. Once the parties have come to an agreement, the details of the agreement should be clearly set out in writing and both parties should sign that they have agreed.

In the local context, the Ministry of Employment handles grievances between employees and their employers. Upon registration of the grievance, the Competent Officer under Section 61 (1A) of the Employment (Amendment) Act 2008 endeavors to bring a settlement of the grievance through the use of mediation. If a party however, breaches the mediation agreement, the agreement shall be enforced by the Employment Tribunal.

If the Competent Officer is unsuccessful in the mediation he or she will issue a certificate to the parties as evidence that mediation steps have been undergone by such parties, as required under Section 61 (1D) of the Employment (Amendment) Act 2008. The parties may then choose to move their case towards litigation.

Since the issuance of the FCPA policy paper, further consideration has been given to whether mediation should be offered by the Competent Authorities. Table 5 below summarises points considered with regards to mediation.



**Table 5: SWOT Analysis on the use of mediation**

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>• Mediation allows for matters to be explored below the surface of the initial issue, and can be described as an interest-based resolution.</li> <li>• Having the Competent Authorities mediate conflicts brings conflict resolution to a deeper level and can increase the chances of resolving the complaint, thereby lessening the frequency with which such cases end up in court.</li> <li>• It is an additional step which can be provided by the Competent Authorities to ensure that consumers are well protected, without them having to go the extra step and spending money in court.</li> </ul>	<ul style="list-style-type: none"> <li>• If the proposal is to train staff internally, this would be an additional strain on resources within the competent authorities.</li> <li>• If the proposal is to source external mediators, there are only a few qualified mediators in Seychelles hence this may be a challenge.</li> <li>• Both training staff internally, as well as sourcing external mediators comes at an additional cost to the Competent Authorities. In view that the present Complaints Handling system is working fairly well, and will be further enhanced going forward with the new regulations, there may not be a need at present to offer mediation services.</li> <li>• Mediation is not always appropriate, and is voluntary. The Competent Authorities could spend money on training staff or sourcing external mediators, when the number of complainants opting to undergo the process of mediation could be minimal. In effect, consumers often want a speedy resolution to their issues. The complaints handling services offered by the Competent Authorities currently already provides this opportunity.</li> </ul>
Threats	Opportunities
<ul style="list-style-type: none"> <li>• If mediation is to be handled by the staff of the Competent Authorities, the amount of time spent on complaints would increase, and therefore take time</li> </ul>	<ul style="list-style-type: none"> <li>• Exploring issues to a deeper level through the use of mediation can also bring to light more deep-rooted issues with certain FSPs which can be addressed. Whilst the whole mediation process is confidential and information regarding the dispute</li> </ul>

away from the time that would otherwise have been spent on other tasks.	<p>and agreed way forward cannot be disclosed, other Market Conduct issues could be identified and addressed by the Competent Authorities.</p> <ul style="list-style-type: none"> <li>Globally, Central Banks and other ADR bodies are shifting towards the use of mediation for conflict resolution. This would be an opportunity to align the practice in Seychelles with the international practice. That being said, consideration needs to be given to the local context and the scarcity in trained mediators.</li> </ul>
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### **Recommendation:**

In view of the above analysis, it is recommended that mediation is not a service that can presently be offered by the Competent Authorities. It is clear that the drawbacks associated with this method of dispute resolution outweighs the potential benefits. Although mediation is being adopted globally, when considering our local context, and the way our complaints handling mechanisms has been working at the Competent Authorities, it is opined that it is not necessary at present. That being said, with developments that take place in the future and the vision that the complaint handling role will eventually lie with an independent financial ombudsman, e.g. there may come a time where it will be necessary to consider mediation once more e.g. in the case of an increase in complaints which cannot be solved through the usual Complaints Handling Channel, where the Competent Authorities may consider revising this position. In light of this, it is recommended that in the interim this issue is brought to the forefront on a national level, whereby emphasis may be placed on training such mediators. Additionally, at the level of the CA, this should be a training opportunity, where staff is empowered to take on such roles in the future, and as such it is proposed that internal discussions are initiated on this subject matter.

### **6.6 Handling of Complaints by the Competent Authorities**

In the same manner that the complaints handling process has been set out in the above, it is necessary to also ensure well-functioning complaints handling mechanisms within the Competent Authorities. As such the next section will list recommendations in this regard for the Competent Authorities.

## 6.7 Timeframe for Competent Authorities to handle complaints

Whilst the Financial Institutions (Complaints Handling) Regulations, 2008 covers some aspects of the complaints handling function at CBS, there are no time frames for handling of complaints set out for CBS.

On the other hand, Section 5.7 of the FSA Complaints Handling Guidelines states that the Authority will seek to resolve complaints within four weeks from the date of receiving all information following enquiries undertaken. In cases where this is not possible, the FSA has the responsibility to write to the complainants within four weeks and to advise on the progress made, and the expected time-frame as to when the investigation will be completed.

The below table compares the practice in various jurisdictions:

**Table 5: Table comparing the number of days Competent Authorities take to handle complaints**

Jurisdiction	Name of Authority	Number of days for Competent Authorities to handle complaints
<b>Mauritius</b>	Central Bank of Mauritius	A written reply should be provided to the complainant within 3 months from the date the complaint is referred to it or from the date it receives requested information from FSPs.
<b>United Kingdom</b>	Financial Ombudsman	Complainants should receive a response within three months of lodging the complaint. For complex cases, this deadline can be extended.
Non-Bank Financial Services		
<b>Isle of Man</b>	Financial Services Ombudsman	The complexity of the case is assessed
<b>Mauritius</b>	Financial Services Commission	Complaints should be resolved within 30 working days of the date of filing.
<b>The British Virgin Islands</b>	Financial Services Commission	A final response to the complaints should normally be given within 30 days of the acknowledgement.

The Competent Authorities should be granted a maximum period of 45 business days to investigate and make a determination on a complaint, with the option to extend this in the case

of grossly complicated issues. For complaints related to parties who reside internationally, then consideration should be given to the fact that such complaints may take much longer to handle. As such, it is recommended that for such cases the Competent Authority should handle the matter within 90 days, with the possibility to extend this in the case of grossly complicated issues.

The World Bank Technical Note on Complaints Handling within FSPs advocates that internal dispute resolution mechanisms which FSPs have in place should have a shorter timeframe to provide a resolution compared to external dispute resolution mechanism (as offered by the Competent Authorities). This is primarily to attract complainants to lodge their complaints with the FSP first given that they are in the best position to resolve the matter, and provide a speedy response.

It is intended that the complaints handling process will work as per Table 6 below. It should be noted that the amount of time the Competent Authorities takes to handle the complaint will apply as from the date that all documents from the complainant have been received, and will apply to working days only:

**Table 6: Displaying the process for complaints handling**

Process	Number of business days
All documents received are analysed, and if necessary additional documents are requested and research is undertaken into the matter. Recommendations on the way forward are made.	20 days
The case and recommendations undergo internal review, and presented to any internal committees/senior management if necessary	15 days
Amendments are made and submitted for final review	10 days
A response is provided to the complainant	45 <sup>th</sup> day after having received all documents from the complainant

Whilst carrying out investigations related to complaints, the FCPA policy paper also advocates that the Competent Authorities should be granted the power to request assistance from FSPs or to request that FSPs submit related documents and materials. The paper also adds that the FCPA should place the onus on FSPs to submit requested information within 24 hours (applicable to business days). This should be reflected in the Complaints Handling Regulations.

**Recommendation:**

Considering that for some cases, the information gathering and investigative process may be lengthy, especially in cases where information has to be sought from overseas, it is therefore recommended that the Regulations states that the Competent Authority should within 45 business days of receiving the complaint where the parties operate locally, investigate and make a determination with the option of extending this in the case of grossly complicated issues. For such cases, the Regulations should state that the Competent Authority is required to inform complainants accordingly.

The Regulations should also make specific provisions for the Competent Authority to be granted 90 business days to investigate and make a determination in regards to complaints, where parties operate internationally, with the possibility to extend this period for an additional amount of time, for grossly complicated issues. Should the CAs not be able to meet the deadline, it is important this is communicated to the consumer.

Moreover, the Regulations should place the onus on FSPs to assist and submit requested documents related to an investigation to the CA when requested within 3 business working days.

## 6.8 Complaints Handling Staff and Training

Given the complaints handling service which the CAs are offering, there should be staff dedicated for attending to complaints from the public. In view that complaints received by CAs are less than those received by FSPs, it is not required that a specific unit is set up solely for complaints handling, however there can be staff allocated with this task within a particular section, and that these staff members receive regular training for the handling of complaints.

**Recommendation**

It is recommended that the CAs have staff dedicated to receiving and handling complaints, and that they are trained on this aspect on a regular basis.

#### 6.9 Method of lodging complaints

An effective complaints handling service is one which is accessible. Therefore, similar to point 5.4, CAs should also accept complaints through various channels or mediums. Channels used to submit complaints can include telephone, email, submission portal on the CA's websites, mobile phone apps, and in person.

##### **Recommendation:**

Financial consumers aggrieved by the decisions of FSPs should have an easily accessible avenue for recourse through various channels or mediums. Channels used to submit complaints can include telephone, fax, email, submission on the CA's websites, mobile phone apps, and in person. It is also recommended that the CAs have in place a dedicated line and email address solely for complaints.

#### 6.10 Information to be provided to consumer upon filing a complaint and communication during the assessment process

In line with the standard being proposed for FSPs, the communication aspect is highly important for complainants lodging complaints with the CAs. It is equally as important that complaint resolutions provided by CAs are delivered in plain writing and in a durable format such as a letter or email to the complainants. The response should clearly state the position of the Authority, and the reason why such a position has been taken.

##### **Recommendation:**

In line with the above, it is recommended that within five business days of closing a complaint, written communication should be sent to the complainant with the following minimum requirements:

- 1) An overview of the complaint
- 2) Points which have been considered
- 3) The outcome of the investigation
- 4) Any applicable remedies

### 6.11 Confidentiality

In order to ensure the integrity of the complaints handling function at FSPs and at the CA, confidentiality should be maintained at all stages of the process. This means that information related to any complaint should not be disclosed to anyone other than those who necessarily have to be involved in the process. Moreover, the information obtained whilst handling complaints should not be used for any other purpose for which it was obtained.

The consumer recourse mechanism guidelines for FSPs by the Central Bank of Ghana states that “all information related to the complaint and complainant shall be treated confidentially. Information provided by the complainant shall be used only for the purpose for which it was obtained.”

In addition to the above, FSPs and the CA alike should be required to ensure that the information stored related to complaints is secure. This entails verifying that IT systems are secure.

#### **Recommendation:**

In line with the above, it is recommended that the Regulations state that FSPs and the CA should ensure that the confidentiality of complaints data is kept at all times and that the information obtained should not be used for any other purpose other than that for which it was obtained. Furthermore, the Regulations should place the onus on FSPs and the Competent Authorities to ensure that the IT systems/databases that the data is being stored on is secure.

## 7.0 APPEALING AGAINST THE DECISION OF THE COMPETENT AUTHORITY

The Model Law upholds that financial consumers should have access to a process of appeal if a complaint is not resolved in their favour by an FSP. Such appeal process may be a further review within the FSP, or an external process that could involve third-party arbitration or appeal to a resolution mechanism established by the Competent Authorities.

To this end, there is already a procedure in place for financial consumers to file their complaints with the Competent Authorities and this is a mechanism which will remain within the Competent Authorities. Thus, in the arena of complaint handling, financial consumers already

have an avenue to appeal the decision of the FSP. Therefore, it is opined that a determination by the Competent Authorities vis-à-vis complaints should be conclusive on the parties, and if the complainants remain aggrieved, then it is within their rights to lodge a case in Court.

Research carried out (Annex 1) indicates that decisions in various jurisdictions made vis-à-vis complaints are binding on the FSPs, whereas consumers have the right to appeal. FSPs have the funds, time and necessary experience in dealing with complaint cases, and can afford to go through a lengthy court procedure. It will almost always be the case that the FSP will appeal the case if the Competent Authorities do not rule in their favour. Thus, in jurisdictions such as Armenia and Germany, decisions are binding on the FSP. On the other hand, Ireland only allows decisions to be appealed to a high court, and in the UK, all decisions may only be judicially reviewed by the High Court.

**Recommendation:**

It is opined that appealing to the Competent Authorities is already a form of recourse provided to complainants as an alternative to the court. Allowing complainants to further appeal the decision of the FSP to an appeals mechanism of the CAs would be a strain on resources and may be deemed providing too many appeal opportunities. Hence, in line with the FCPA, aggrieved parties have the option of lodging their complaints in court should they remain unsatisfied with the resolution provided by CBS or FSA.

## **8.0 PENALTIES**

### **8.1 Non-resolution of complaints within prescribed timelines**

Trust in the complaints handling system in place by financial service providers will enhance confidence in the financial sector. It is important that the timelines stipulated in these regulations or in rules governing a particular product/service are abided to. In the event that these cannot be met, then communicating to the complainant regarding the delay is important so as to manage expectations.

**Recommendation**

Should the complaint remain unresolved and no communication on the delay and expected resolution date has been provided to the complainant, it is recommended that FSPs are charged an administrative penalty of SCR10,000. As and where the resolution remains within the FSPs



control and is not addressed, an FSP may be charged an additional penalty of SCR1,000 for each day that the contravention continues.

## **9.0 CONCLUSION AND RECOMMENDATIONS**

To conclude, Complaints Handling has been widely recognised as a key pillar of financial consumer protection. With developments in the nature of complaints received across the financial sector, and with emphasis being placed on ADR methods and the right for decisions to be appealed globally, the need has arisen for the current Complaints Handling Regulations to be enhanced to better protect consumers. The above points are being submitted for your consideration. Moreover, your approval is sought to repeal the Financial Institutions (Complaints Handling) Regulations 2008, and issue the new Regulations as detailed above under the FCPA.