

Complaints Handling Guidelines



FINANCIAL SERVICES AUTHORITY

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INTERPRETATION

“Authority” means the Financial Services Authority established under the Financial Services Authority Act, 2013;

“commercial dispute” means any issue arising out of a contractual or business arrangement between individuals or entities within their private and/or personal business capacity, and falling outside of the regulatory scope of the FSA.

“Competent Authority” as defined in section 3 of the Financial Consumer Protection Act, 2022;

“complaint” means a complaint lodged through the Authority’s formal complaint form informing the Authority of an instance or series of instances when:

- (a) Expression of dissatisfaction by a financial consumer in respect of the products or services provided by the financial services provider, or the conduct of the financial services provider in provisioning of products or services, and where the response or resolution is expected by the financial consumer.
- (b) Employees of the financial service provider have not performed their duties sufficiently, professionally, transparently, efficiently, or fairly.
- (c) 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.

“frivolous complaint” means a complaint that lacks merit and is not grounded in fact or law.

“vexatious complaint” means a complaint filed with the intent to harass, annoy or cause trouble to the other party rather than for a legitimate legal purpose.

“vulnerable consumer” means an individual who, due to personal circumstances or market conditions, is at increased risk of harm, exploitation, or disadvantage in commercial transactions.

“financial crime” means illegal activities that involve the unlawful conversion of property or money for personal gain, which includes but not limited to money laundering, financing of terrorism, offences relating to misconduct in, or misuse of information relating to, financial markets and offences involving fraud or dishonesty

“licensees” means a company or an individual holding a licence under the regulatory legislations under Part 1 of Schedule 1 of the FSA Act;

“privity of contract” means a common law principle which provides that a contract cannot confer rights or impose obligations upon any person who is not a party to the contract.

1. INTRODUCTION

- 1.1. The Complaint Handling Guideline (“Guideline”) has been prepared by the Financial Services Authority (“Authority” or “FSA”) to assist individuals and entities wishing to lodge a complaint with the Authority regarding matters within the Non-Bank Financial Services (“NBFS”) sector. It aims to ensure that complaints are handled in a fair, transparent, and timely manner, while safeguarding consumer interests and maintaining confidence in the NBFS sector.
- 1.2. While these guidelines are aimed to provide an understanding of the complaint handling procedures of the Authority, the Authority emphasizes that it is not a judicial body. Court rules and procedures do not apply to the decisions that it makes. The Authority makes administrative decisions in accordance with the powers vested in it, as set out in the legislation it administers, as per Schedule 1 of the FSA Act and the relevant sections of the Financial Consumer Protection Act.
- 1.3. Furthermore, section 46 of the Financial Consumer Protection Act gives any person aggrieved by a decision of a Competent Authority made under specified sections of the Act the right to file an Appeal before the Supreme Court. In addition, in accordance with the FSA Act, an aggrieved person may also appeal such a decision to the Appeals Board established under the Act.
- 1.4. These guidelines shall provide the steps by which a determination is made vis-à-vis complaints received. Each stage includes a number of distinct steps that are collectively designed to ensure that the final decision taken is one that:
 - (a) the Authority is empowered to take;
 - (b) is made in accordance with statutory obligations imposed on the Authority within the scope of principles of natural justice; and
 - (c) is proportionate and reasonable based on all relevant information presented before the Authority at the time.
- 1.5. Given its responsibilities as outlined in the FSA Act and the Financial Consumer Protection Act, the Authority carries out a statutory administrative function. This involves acting in the best interests of the public while also ensuring fairness towards licensees, designated entities, and the wider public.

2. SCOPE

- 2.1 This Guideline is issued in accordance with section 33(1) of the FSA Act and section 14 of the Financial Consumer Protection (Complaint Handling) Regulations. This Guideline intends to establish the procedures that the Authority will follow upon receiving a complaint against a licensee, any entity under the regulatory scope of the Authority, and complaints in respect to the manner in which the Authority has carried out its functions.

- 2.2 This Guideline sets out the procedures and standards to be followed by individuals or entities wishing to lodge a complaint with the Authority. It outlines the steps to take when submitting a complaint, the information required, and the process the Authority will follow in handling and assessing complaints.
- 2.3 The content of this guideline is neither intended to, nor should it be construed as an exhaustive treatment of the subject.
- 2.4 Before escalating complaint to the Authority, the complainant must first submit its complaint with the concerned entity and give the entity sufficient time (at least 2 business days for acknowledge and 21 business days) for determination.
- 2.5 When lodging a complaint with the Authority, the complainant must complete the Complaint Form and submit all supporting documents relevant to the complaint, in line with the requirements set out in this Guideline and any other applicable legislation or guidance.

3. ROLE OF THE AUTHORITY

- 3.1. The role of the Authority in relation to complaints is to ensure that any written complaint received against a licensee, in relation to the conduct of its business, is appropriately dealt with and recorded accordingly. The purpose of this is to ensure that a licensee is dealing fairly with its clients and is performing all regulated activities competently. Should there be any indication of a licensee's failure to comply with the terms and conditions as granted under its license or failures under the Financial Consumer Protection Act and its regulations, the Authority may require an explanation from the licensee and subsequently take relevant actions and/ or appropriate enforcement action under the relevant act.
- 3.2. The Authority endeavors to maintain a comprehensive complaint management framework to provide a clear structure for receiving, assessing, recording, responding to, reporting on, and using complaints to improve services to the public. The Authority's management framework is guided by three broad underlying principles: prevention, management and accountability.
- 3.3. In accordance with section 33(1) of the FSA Act and, the Authority may, after consultation with such persons or bodies as appear to be representative of the interests concerned, revise these Guidelines by revoking, varying, amending or adding to its provisions.
- 3.4. The Authority has no obligation to disclose any actions undertaken against licensees to third parties, including the complainant, except in accordance with the FSA Act and the Financial Consumer Protection Act.

4. INSTANCES WHEREBY THIS GUIDELINE WILL NOT APPLY

4.1. The below are circumstances in which this guideline would not be applicable:

- (a) an application has already been made to the court or when a decision has been made by any court vis-à-vis the complaint;
- (b) the Authority has determined that the matter relates to a commercial dispute with the reasons cited for same;
- (c) the Authority has determined that the matter does not fall within its regulatory scope; and
- (d) Where the Authority has determined that the complaint is considered as frivolous, vexatious or it is already under consideration of the financial services provider (the complainant needs to give the financial services provider at least 21 business days for a determination before escalating the complaint to the Authority)

4.2. Before lodging a complaint with the Authority, complainants should first attempt to exhaust all possible recourse with the Financial Service Providers in respect of a complaint in accordance with the Financial Services Providers Complaint Policy and assessable on their website. The Authority will consider attending to a complaint only where it is clear that the complainant has already raised the issue with the concerned parties, and those efforts have not resulted in a resolution acceptable to both parties.

4.3. Where the Authority receives complaints relating to financial crime, which does not fall within its regulatory scope, the complaint may be forwarded to or assistance sought from the relevant authority (i.e. Seychelles Police) and the complainant shall be informed of the referral accordingly. Once referred, the matter falls under the jurisdiction of the relevant authority, and the complainant should thereafter liaise directly with the relevant authority regarding the progress of the case.

5. COMPLAINTS THAT ARE WITHIN THE REGULATORY SCOPE OF THE AUTHORITY

5.1. The following matters may be submitted to the Authority:

- (a) complaints about conduct or service – expressions of dissatisfaction that may relate to:
 - i. Customer Service
 - ii. Quality of Service: The product does not meet expected standards
 - iii. Advertising: misleading or unclear promotions
 - iv. Failure to provide information or disclosure associated with the products or services
 - v. Competence or conduct of staff
 - vi. Errors of judgement or misinterpretation of information
 - vii. Decisions being unfair, unreasonable or lacking in merit
 - viii. Poor administrative processes
 - ix. Poor business practices
 - x. Fees charged unknowingly or without prior agreement

- xi. Unfair contract terms and language
- xii. Breach of contract/agreement
- xiii. Vulnerable consumer concerns
- xiv. Waiver of responsibility: the licensee avoids accountability for issues they should handle

(b) Complainants requesting a review about how a complaint was handled by a licensee, inclusive of but not limited, unfair treatment or dealing with the complaint or unsatisfactory resolution.

5.2. Please note that a financial services provider has 2 business days to acknowledge receipt of a complaint and 21 business days to provide a determination to the complainant from the date of receiving the complaint before the complainant escalates the complaint to the Authority.

6. PROCEDURES FOR LODGING A COMPLAINT

6.1. The escalation of a complaint to the Authority, the complaint must be submitted using the Authority's official Complaint form, which is available on the FSA website. The completed form may be lodged with the Authority by:

- (a) Email – to the dedicated Complaints Handling email address published on the website.
- (b) Submission through the online form on the website.
- (c) Post – addressed to the Authority
- (d) In person – at the Authority's office

Refer to the cover page for the email address, website and address of the Authority.

6.2. All complaints must be made in English, French or Creole in a clear and legible manner. Complaints submitted in a language other than English, French or Creole must be accompanied by an English, French, or Creole translated document. Complaints that include offensive language will not be registered or processed by the Authority.

6.3. All complaints should be accompanied by a copy of all relevant documentation and/or any correspondence between the parties with visible date and email address of all parties. All submissions that are not in English, French or Creole must be accompanied by the relevant English, French or Creole translations.

6.4. All mandatory fields indicated on the form must be completed.

6.5. Upon receipt of a complaint, the Authority shall register and review the complaint received. The complainant will be provided with a written acknowledgement confirming receipt of the complaint and a reference number under which the complaint has been registered. The Authority shall be in contact with the complainant should additional information be required.

6.6. After reviewing the complaint received, if the Authority is satisfied that the complaint form is complete, the case shall be referred to the relevant department of the Authority for investigation.

- 6.7. On a case-by-case basis, depending on the circumstances of the individual complaint, 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.
- 6.8. 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. A complainant will be informed of its right to seek alternate recourse, either by appealing the decision to the Appeals Board of the Authority in accordance with the FSA Act or by pursuing legal action should it so wish.
- 6.9. The Authority will seek to resolve a complaint within 30 business days from the date of receiving a complaint, inclusive of the investigation and provision of a determination on such a complaint. However, where the 30 day period is not practicable or the complaint proves complicated and or requiring further investigation and scrutiny, the Authority shall advise prior to the expiration of the aforementioned timeline, as to the new anticipated timeline within which the determination of such a complaint is anticipated to be delivered onto a complainant or provide an indication as to when the Authority reasonably believes to conclude the investigation.
- 6.10. In attending to complaints received, the Authority shall conduct its enquiries whereby it shall request information from all relevant parties in order to establish the facts of the complaint.
- 6.11. By lodging a complaint, it is given that consent has been provided for the Authority to relay necessary information to relevant parties in order to conduct its enquiries.
- 6.12. In the event that the Authority requires additional information from the complainant, this shall be requested accordingly, with a specific timeframe to provide a response. Where a complainant fails to provide the requested information by the specified timeframe, the Authority shall issue a total of two (2) reminders. Should no response be received, the Authority shall infer that the complainant no longer wishes to pursue this matter and proceed with closing the complaint and informing the complainant of such in writing.
- 6.13. Where at any stage, it is determined that no further action is required or the complaint has been resolved by all parties involved, the Authority shall immediately close the complaint.
- 6.14. No determination shall be made by the Authority with regards to a complaint unless the concerned parties are granted an opportunity to be heard.
- 6.15. In each case, a complainant is advised that, the fact that the Authority accepts a complaint and/or initiates an investigation into the matters alleged is not an admission of any fault, wrong-doing, error, or legal liability on the part of the Authority, or licensee/entity.
- 6.16. In all cases, following a decision made by the Authority vis-à-vis a complaint received, the complainant may appeal against the decision of the Authority by lodging a Notice of Appeal to the Appeals Board of the Authority within ninety (90) days from the date of the Authority's final response, or by taking the matter to court in the event that the complainant considers that the decision is unreasonable having regard to all the circumstances within thirty (30) days of that decision.

- 6.17. In the event that a complainant wishes to withdraw a complaint lodged, a letter notifying the Authority of such is required to be submitted. However, should the Authority establish that the complaint relates to a breach of any relevant financial services legislation, although a complaint has been closed, the Authority may independently continue its enquiries in the matter.