

First-time scrutiny by Jersey Royal Court of decision of CI Financial Ombudsman

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The first ever challenge to a decision of the Channel Islands Financial Ombudsman has been heard by the Royal Court of Jersey. The court upheld the Ombudsman's decision that local mortgage broker and lender Future Finance pay two individuals over £63,000 in compensation.

The Ombudsman was established at the end of 2015. He has the power to investigate and determine individual customer complaints regarding financial services provided in both Jersey and Guernsey. He can award compensation up to a maximum of £150,000.

In this case the Ombudsman found that Future Finance had arranged an unsuitable, expensive private short-term bridging mortgage for the complainants having given the false impression that it was the best deal available. Future Finance had advised the complainants that no conventional mortgage lender would lend to them at the time. The Ombudsman described that as misleading advice: there was no evidence that Future Finance had made any reasonable effort to contact conventional mortgage providers to see if they would lend.

The court reiterated that the complaint procedure used by the Ombudsman is not a court of law but rather a more informal process. As such, the Ombudsman is not expected to descend into a legal analysis of the contractual position of the parties. He just has to reach a fair and reasonable decision in all the circumstances of the case.

The law establishing the Ombudsman does not provide for any right of appeal. As a result, challenges will have to be brought before the Royal Court by way of judicial review. Any applicant will need to make out that the decision was either illegal, irrational or tainted by procedural impropriety. The Royal Court helpfully emphasised that the Ombudsman's decisions are not to be scrutinised as if they were judgments of a court of law.

Individuals who make a complaint to the Ombudsman are promised that their identity will be kept confidential during that process but the law does not guarantee them anonymity should the matter lead on to court proceedings. However, the Court chose to maintain the complainants' anonymity once the matter came before it. It made orders to ensure that the identity of the complainants was not revealed and remained anonymous in the court's judgment. This approach is to be welcomed; a high probability that anonymity is assured right through until the end of the court process will ensure that complainants are not dissuaded from engaging with the Ombudsman for fear that their private financial affairs might risk being aired in public.

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