

Subsidiary Legislation made under s.625A.

Financial Services (GFSC Complaints) Regulations 2020

LN.2020/022

Commencement

15.1.2020

ARRANGEMENT OF REGULATIONS.

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Financial Services

2020/022 Financial Services (GFSC Complaints) Regulations 2020

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In exercise of the powers conferred on the Minister by section 625A of the Financial Services Act 2019, the Minister has made these Regulations.

Title.

1. These Regulations may be cited as the Financial Services (GFSC Complaints) Regulations 2020.

Commencement.

2. These Regulations come into operation on the day of publication.

Complaints handling arrangements.

3.(1) The GFSC must have in place at all times a procedure for the handling and consideration of complaints in accordance with these Regulations (a “complaints handling procedure”).

(2) The complaints handling procedure must be such as to ensure that complaints are dealt with fairly, quickly and transparently.

(3) The complaints handling procedure and any revision of or amendments to it must be approved by the Minister.

(4) The GFSC must—

- (a) publish its complaints handling procedure in a manner that will ensure reasonable publicity for it; and
- (b) ensure that its complaints handling procedure appears at a clear and prominent location on its website.

Complaints.

4.(1) A complaint to the GFSC may be about any matter reasonably connected with the exercise of its functions, including complaints alleging—

- (a) a mistake or lack of care;
- (b) unreasonable delay;
- (c) unprofessional behaviour;

- (d) bias; or
 - (e) lack of integrity.
- (2) The following complaints are excluded from the scope of these Regulations–
- (a) a complaint about any matter in respect of which the complainant has or had a right of appeal under the Financial Services Act 2019 or any other enactment;
 - (b) a complaint about any matter–
 - (i) relating to a GFSC employee’s contract of employment; or
 - (ii) arising from the complainant’s employment relationship with the GFSC;
 - (c) a complaint in respect of a contractual or commercial dispute involving the GFSC which is not directly related to the exercise of its regulatory functions;
 - (d) a complaint about which the complainant has commenced legal proceedings;
 - (e) a complaint arising out of the GFSC’s alleged failure to comply with a data subject request under the Data Protection Act 2004; or
 - (f) a complaint in relation to the performance of the GFSC’s functions–
 - (i) as the Gibraltar Resolution Authority (including the FSRCC’s exercise of any resolution functions); or
 - (ii) in respect of the deposit guarantee scheme (including the FSRCC’s exercise of any functions in respect of the scheme).
- (3) The GFSC may refuse to investigate a complaint, which it reasonably considers–
- (a) is frivolous or vexatious;
 - (b) amounts to no more than dissatisfaction with–
 - (i) the GFSC’s general policies, codes or guidance; or
 - (ii) the exercise of, or failure to exercise, a discretion,

where no unreasonable or improper conduct is alleged; or

- (c) concerns a matter that was the subject of a previously determined complaint and in respect of which no new evidence has come to light.

Complainants.

5.(1) A complaint may be made by any person who is directly affected by the way in which the GFSC has carried out its functions, or by such a person’s legal representative.

(2) In sub-regulation (1) “legal representative” means a barrister or solicitor admitted and enrolled under the Supreme Court Act.

(3) In these Regulations any reference to a complainant includes a reference to a complainant’s legal representative.

Time limit for making a complaint.

6.(1) Subject to sub-regulation (2) a complaint must be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint.

(2) Where a complaint that would otherwise have been investigated by the GFSC is made after the expiry of the period specified in sub-regulation (1), the GFSC may investigate the complaint if it considers that–

- (a) having regard to all the circumstances, the complainant had good reasons for not making the complaint within that period; and
- (b) despite the time that has elapsed it is still possible to investigate the complaint effectively and efficiently.

GFSC action on receiving a complaint.

7.(1) A complaint must be made in writing and addressed to the GFSC’s complaints manager.

(2) The GFSC must–

- (a) appoint a complaints manager as part of its complaints handling procedure; and
- (b) publish the complaints manager’s contact information as part of that procedure.

(3) The GFSC must acknowledge receipt of a complaint not later than five working days after the day on which it receives it.

GFSC investigation of complaints.

8.(1). The GFSC must–

- (a) investigate any complaint it receives to the extent that it considers necessary and in the manner which appears to it most appropriate to resolve it fairly, quickly and transparently; and
- (b) take appropriate steps to keep the complainant informed about the progress of the investigation.

(2) Investigations must be conducted by–

- (a) a senior member of GFSC staff; or
- (b) a suitably qualified person appointed by the GFSC who is not a GFSC employee,

who has not previously been involved in the matter which is the subject of the complaint and the GFSC must inform the complainant of the identity of the person who is to conduct the investigation within seven days of that person being appointed to do so.

(3) The GFSC may request that the complainant provide the GFSC with any additional information and documents that it may reasonably require in order to enable the GFSC to investigate the complaint including, in particular, information and documents supporting the complaint or clarifying its nature or scope.

(4) The GFSC must seek to conclude an investigation and provide the complainant with a response under regulation 9–

- (a) not later than 20 working days after the day on which it was received;
- (b) where that is not possible, within such reasonable period not exceeding two months as the Chief Executive of the GFSC may specify; or
- (c) where it is not possible to provide a response within two months, within such longer period as the Minister may, on the application of the GFSC, permit.

(5) Where the GFSC–

- (a) refuses to investigate a complaint on any ground in regulation 4(3); or
- (b) decides not to investigate a complaint on the ground that it was not made within the period specified in regulation 6;

it must, not later than 20 working days after the day on which the complaint was received, send a notice to the complainant which sets out the reasons for its decision and informs the complainant of the right to request that the Minister review the decision under regulation 10.

GFSC's response.

9.(1) The GFSC must prepare a written response to any complaint it has investigated, which—

- (a) summarises the nature and substance of the complaint;
- (b) describes the investigation carried out under regulation 8; and
- (c) summarises its conclusions.

(2) Where the GFSC concludes that a complaint is well founded, the response must also—

- (a) sets out the steps which the GFSC proposes to take, which may be one of more of the following—
 - (i) an apology;
 - (ii) an explanation; or
 - (iii) corrective remedial action; and
- (b) inform the complainant of the right to request that the Minister review the decision under regulation 10.

(3) Where the GFSC concludes that a complaint is not well founded, the response must also—

- (a) set out the reasons for its decision; and
- (b) inform the complainant of the right to request that the Minister review the decision under regulation 10.

Review by the Minister.

10.(1) In any case where—

- (a) the GFSC has—
 - (i) refused to investigate a complaint on any ground in regulation 4(3);
 - (ii) decided not to investigate a complaint on the ground that it was not made within the period specified in regulation 6;
 - (iii) not concluded an investigation in the period specified or agreed under regulation 8(4); or
 - (iv) appointed to investigate a complaint a person who, contrary to regulation 8(2), has previously been involved in the matter which is the subject of the complaint; or
- (b) a complainant is not satisfied with the GFSC's response to a complaint,

the complainant may refer the matter to the Minister and request that the Minister review the GFSC's handling and consideration of the complaint and its outcome.

(2) A request under sub-regulation (1) must be made in writing, in the form and manner that the Minister may specify, not later than 14 days after—

- (a) the day on which the complainant received notice under regulation 8(4), in a case to which sub-regulation (1)(a)(i) or (ii) applies;
- (b) the day on which the specified or agreed period expired, in a case to which sub-regulation (1)(a)(iii) applies;
- (c) the day on which the complainant received notice under regulation 8(2), in a case to which sub-regulation (1)(a)(iv) applies; or
- (d) the day on which the complainant received the GFSC's response, in a case to which sub-regulation (1)(b) applies.

(3) The Minister, as soon as reasonably practicable after receiving a request under sub-regulation (1), must—

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- (a) assess the nature and substance of the request and the complaint to which it relates; and
- (b) notify the complainant and the GFSC as to whether the Minister has decided–
 - (i) to take no further action;
 - (ii) to give directions to the GFSC as to the action it must take to resolve the complaint; or
 - (iii) to appoint an independent investigator to investigate the complaint further in accordance with regulations 12 and 13 .

(4) The GFSC must–

- (a) provide the Minister with any information and documents that the Minister may reasonably require; and
- (b) answer any questions appearing to the Minister to be relevant,

for the purposes of the Minister’s review of the complaint.

(5) A notice of decision under sub-regulation (3)(b) must include the Minister’s reasons for the decision.

(6) For the purposes of this regulation, the Minister may distinguish one part of a complaint from another and make different decisions in respect of those different parts.

Independent investigator.

11.(1) The Minister may appoint a person (an “independent investigator”) to conduct investigations in accordance with regulation 12.

(2) The Minister may appoint as an independent investigator any person that the Minister considers to be a suitably qualified and competent, on such terms and conditions as the Minister considers appropriate, other than a member or employee of the GFSC.

(3) An independent investigator is not liable in damages for anything done or omitted in the discharge, or purported discharge, of functions in relation to the investigation of a complaint under these Regulations, unless the act or omission is shown to have been in bad faith.

Investigation by independent investigator.

12.(1) The independent investigator may conduct an investigation in whatever manner the independent investigator considers appropriate, having regard to the need to ensure that complaints are dealt with fairly, quickly and transparently.

(2) The GFSC must–

- (a) provide the independent investigator with any information and documents that the independent investigator may reasonably require; and
- (b) answer any questions appearing to the independent investigator to be relevant,

for the purposes of the independent investigator’s investigation of the complaint.

(3) The GFSC must cooperate with any investigation which is being conducted by the independent investigator, but is not prevented by that investigation from continuing to take any action that it considers necessary in respect of any matter which is related to the complaint or the complainant.

Report of investigation.

13.(1) The independent investigator must, as soon as reasonably practicable, prepare a written report of any investigation which–

- (a) summarises the nature and substance of the complaint;
- (b) describes the investigation and summarises its conclusions including
 - (i) any findings of fact;
 - (ii) the independent investigator’s opinion of those findings; and
 - (iii) the reasons for that opinion; and
- (c) recommends what action the Minister should take under regulation 10(3)(b)(i) or (ii) in respect of the complaint.

(2) The report may also include suggestions which the independent investigator considers would assist the GFSC to improve its services or avoid similar complaints.

(3) The independent investigator must send a copy of the report to the Minister.

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- (4) The Minister must send a copy of the independent investigator's report to—
- (a) the complainant; and
 - (b) the GFSC.

(5) The Minister may publish the independent investigator's report (or any part of it) or require the GFSC to do so, if the Minister considers that the report (or the relevant part) should be brought to the attention of the public.

Evidence.

14. In the investigation of a complaint by the GFSC, the Minister or an Independent Investigator, any finding of fact of—

- (a) a court of competent jurisdiction (whether in Gibraltar or elsewhere); or
- (b) any other tribunal established by legislative authority (whether in Gibraltar or elsewhere),

which has not been set aside on appeal or otherwise, must be treated as conclusive proof of the facts so found, and any decision of that court or tribunal must be treated as conclusive.