

STATES OF JERSEY



DRAFT FINANCIAL SERVICES OMBUDSMAN (JERSEY) LAW 201- (P.9/2014): SECOND AMENDMENT

**Lodged au Greffe on 18th March 2014
by Deputy G.P. Southern of St. Helier**

STATES GREFFE

DRAFT FINANCIAL SERVICES OMBUDSMAN (JERSEY) LAW 201- (P.9/2014):
SECOND AMENDMENT

PAGES 42 AND 43, ARTICLE 11 –

- (a) in paragraph (1)(a) for the words “1st January 2010” substitute the words “1st January 2005”;
- (b) in paragraph (5)(a) for the words “6 years” substitute the words “10 years”.

DEPUTY G.P. SOUTHERN OF ST. HELIER

REPORT

I am concerned that the remit of the powers contained in the Draft Financial Services Ombudsman (Jersey) Law 201- is too restrictive, in that the adoption of the timings outlined by the Minister for Economic Development would cause many cases of mis-selling to be timed out.

The contents of a series of questions on the subject of the introduction of the Financial Ombudsman to provide a remedy for the mis-selling of financial instruments and, in particular, in this case, payment protection insurance (PPI) are given in the attached **Appendix**.

I have highlighted several passages of the answers that indicate the following –

- (a) there is no recourse presently to enforce repayment on mis-selling on some Jersey companies;
- (b) the UK authorities have no powers in Jersey;
- (c) the Minister has no evidence of a problem in pursuing PPI claims against Jersey companies;
- (d) the Minister does not know the size of the problem, and has refused to investigate how many claims may be involved;
- (e) the Minister is aware only of a small number of successful claims;
- (f) the Minister offers no evidence to support his choice of timing and is not prepared to extend the timing conditions for eligibility.

I believe that there is ample evidence that PPI mis-selling has been going on for many years, certainly at least the past decade. Browsing the UK Ombudsman's site reveals many PPI mis-selling cases, some of which date back to 2005. A decade ago, there was not a great deal of awareness of potential mis-selling problems, and only following the economic crash of 2008 did the behaviour of the banks come under greater scrutiny. To set the date of 2010 as the condition for eligibility will surely eliminate a large number, if not the majority of potential claims. I have successfully assisted a constituent to pursue a case where the first mis-selling of a protection policy started in 2005. To rule out any cases prior to 2010 would deprive many victims of proper redress.

In amending Article 11 to take cases dating from 2005 (not 2010 as currently drafted) and extending the general time limit from 6 years to 10 years, has no impact on the case for retrospectivity on pages 17 and 18 of the report. I am sure that "a convincing public interest case for retrospection where there was no prior consumer protection" would remain valid with these extended time limits. This has been confirmed by the Law Officers.

Financial and manpower implications

Extending the time limits on cases that may be brought to the Financial Ombudsman may have a significant impact on the volume of complaints and the staffing required. However, in the light of the confidence of the Minister that the volume of complaints will be low, and that we will only know what the level of complaints will be when the Ombudsman is in place, it is difficult to estimate what that impact might be.

From the States Sitting of 10th July 2012**2.11 Deputy J.A. Martin of the Minister for Economic Development regarding the repayment of Payment Protection Insurance in Jersey:**

Will the Minister advise on the situation regarding the repayment of Payment Protection Insurance in Jersey and confirm that anyone who was mis-sold a policy is able to reclaim their payments?

Senator A.J.H. Maclean (The Minister for Economic Development):

Anyone who believes that they have been mis-sold Payment Protection Insurance is advised to write to the institution enclosing evidence of mis-selling. I understand that some refunds are being made on a case-by-case basis although to some extent are reliant upon the approach adopted by individual financial institutions. Where issues with P.P.I. (Payment Protection Insurance) have arisen in the Island they are covered by remediation and compensation arrangements that have been put in place by the U.K. banking groups. However there is currently no regulatory regime to ensure Jersey financial institutions refund in clear cases of mis-selling, although a Financial Services Ombudsman Scheme is being progressed for introduction in early 2014.

2.11.1 Deputy J.A. Martin:

I think the Minister may have unwittingly misled the House because the big banks in the U.K. are just a phone call away from refunding mis-sold P.P.I. Jersey, which say we have a head office in the Isle of Man, the U.K. courts only said P.P.I. that was mis-sold in the U.K. must be repaid and banks have stated they will not repay it. But then again, would the Minister agree that this really does not touch the Financial Commission because it is only hundreds of thousands of pounds owed to little people in Jersey who have had a £100 loan or a £1,000 loan and they will not be seeing any of their money back. What is the Minister going to do about it? [11.12.12]

Senator A.J.H. Mclean:

The question started in a very nice and pleasant way and ended not quite in the same frame, but nevertheless I think the final point in my opening answer clearly clarifies what we are doing about it and that is the introduction of a Jersey Financial Services Ombudsman. That is the most appropriate route in order to ensure that local people can get proper compensation and a proper hearing in cases of alleged mis-selling. I should point out that of the cases that have gone to the U.K. Financial Ombudsman, 25 per cent of those or thereabouts have not been upheld, so not all cases are upheld, *but I do accept there is a problem and in the case of Jersey institutions there is no recourse as we stand today although some of those institutions are choosing of their own volition to repay where the case is proven.*

2.11.2 Deputy M.R. Higgins:

Can the Minister tell us why it is that in the *Alternate* case, other than the fact it went through a court and the court said there had been mis-selling and other actions, why it is the Minister has taken no action on the mis-selling issue and why, for example, with P.P.I., Mr. George Burrows and others, is the department proving to be totally ineffective. What was so special about *Alternate* that does not apply to these other cases?

Senator A.J.H. Mclean:

Quite simply, that went to the court and a restitution order was successful. That was the differential in that particular case. To say that nothing is being done is not the case. I have already pointed out and Members are aware that a Jersey Financial Services Ombudsman is being put in place and that is an absolutely appropriate step to take in order to ensure the local consumers are protected.

2.11.3 Senator A. Breckon:

Is the Minister aware that U.K. banks operating in Jersey are recognising the Financial Ombudsman questionnaire? They are investigating cases within 8 weeks and they are, in fact, paying out to Jersey residents.

[11:15]

Senator A.J.H. Mclean:

I thank the Senator. Yes, I am aware of that, I did mention it in the opening answer to the question but thank you very much to the Senator for re-clarifying it.

2.11.4 Deputy J.A. Martin:

Yes, it does really annoy me when Ministers have it both ways. On the other case we are waiting to see on the interest scandal what the U.K. courts will do *and the U.K. courts have done something but it does not cover Jersey*. I do not see the little people getting any money back. These banks are exactly the same with interest, bank charges the same. They operate exactly the same as they do in the U.K. except that P.P.I. is not going to be given back to the people who really need this money. I cannot see the Minister, whatever his promise... unless they can speak to the banks. Why are we not covered by the U.K.? Why can we not take the banks to court like the U.K. Government did?

Senator A.J.H. Mclean:

I did think I had made this clear, that where there is a case of mis-selling that involves a U.K. banking group that is operating in the Island, those cases are being dealt with, as I understand it. If the Deputy, who is shaking her head, has knowledge to the contrary then please enlighten me with it.

Deputy J.A. Martin:

If you would just give way a moment, yes, *I phoned the head office, which is in the Isle of Man, of one of our big banks in Jersey and they are absolutely fundamental that no, it does not cover offshore bank accounts and we are classed as offshore; P.P.I. no repayments.*

Senator A.J.H. Mclean:

That is not as I understand it but I am more than happy to look into the matter if the Deputy would kindly give me the details. Drop me an e-mail, I will look into it and circulate Members of the outcome just to clarify it but, as I say, I understand the U.K. banking groups are assisting.

From the States Sitting of 21st January 2014

4.10 Deputy G.P. Southern of the Minister for Economic Development regarding the ability of local residents to pursue potential claims in respect of locally mis-sold Payment Protection Insurance:

I will try and keep it a short question. Will the Minister update Members on the ability of local residents to pursue potential claims in respect of P.P.I. (Payment Protection Insurance), mis-sold on loans taken out through Island-based financial services companies?

Senator A.J.H. Maclean (The Minister for Economic Development):

The first step that any local resident should take is to pursue the complaints mechanism of their financial services provider. This is the first requirement of any ombudsman scheme in any event. The overwhelming majority of complaints are resolved this way. Most of the Jersey-based financial services companies resolve complaints regarding allegations of mis-selling of P.P.I. locally using the same criteria employed in the United Kingdom. Yesterday, I lodged the Draft Financial Services Ombudsman (Jersey) Law which establishes an ombudsman scheme covering financial services in or from Jersey. Once operational this year, the ombudsman has the power to determine complaints against various providers of financial services that remain unresolved once the provider's complaints procedure has been exhausted. I would add that the lodging of the Financial Services Ombudsman Law is, in my view, a major step in enhancing consumer protection.

4.10.1 Deputy G.P. Southern:

Can the Minister firstly indicate to Members when he thinks the financial ombudsman will be in place and operating? How long will it take?

Senator A.J.H. Maclean:

As I have mentioned to Members previously, the intention is for a Channel Islands ombudsman service. I am pleased to say, as Members probably are aware, that Guernsey approved the progress of that particular model, the Channel Islands ombudsman, in their Assembly in November of last year. The intention is that the Channel Islands ombudsman will be operational by the summer of this year.

4.10.2 Senator S.C. Ferguson:

Is the Minister aware that certain organisations have been sheltering behind the fact that they are subsidiaries and not branches of U.K. organisations and therefore the U.K. ruling on P.P.I. does not apply to them?

Senator A.J.H. Maclean:

The Senator raises an interesting point. *What I am not aware of, and what I do not have is any evidence of local companies, that may be branches or acting in whatever other capacity within Jersey, not pursuing the role and determination process and criteria that is followed in the U.K. I have no evidence to that effect at all.*

4.10.3 Senator A. Breckon:

Is the Minister aware that Jersey residents can use the services of the U.K. financial ombudsman service when such disputes occur and they are treated similarly by some organisations as if they were U.K. residents?

Senator A.J.H. Maclean:

I do understand that is the case and has been done by a number of residents.

4.10.4 Deputy G.P. Southern:

The Minister in his written answer to question 6 says: "I am not aware that there is a widespread problem." *Will the Minister investigate the size of the problem of claiming alleged P.P.I. mis-selling from local companies and will he return to the House informing Members what number of companies this affects and which are ducking their responsibilities, and how many cases there are so that we can be confident before the ombudsman arrives that the Minister knows the size of the problem?*

Senator A.J.H. Maclean:

No, I will not undertake that, or would not suggest it is prudent to do so. We will have an ombudsman in place this year, as I have already stated. The ombudsman is tooled-up and we are confident that where there are complaints and where there are complainants that have been waiting for some time for this ombudsman to be put in place, *that is when we will find out the extent of the problem and the ombudsman has the capability to deal with it.* It is at that point that we will be able to answer the Deputy's question rather than wasting money doing research that is difficult to determine beforehand. I have already answered questions in this area. We know, for example, Trading Standards in the last 5 years have had 20 complaints. The Jersey Financial Services Commission does not record the number of complaints, but they have described them as low. There is no other easy way to determine the level, apart from when the ombudsman is in place later in the year, then we will know the facts.

4.10.5 Deputy G.P. Southern:

Does the Minister not consider that he is abrogating his responsibility?

Senator A.J.H. Maclean:

No, I do not, because as far as a complainant is concerned, once the ombudsman is operational, it can determine, and will determine, cases going back to 1st January 2010 and in some cases it will be prior to that, depending on the individual case.

**WRITTEN QUESTION TO THE MINISTER FOR ECONOMIC
DEVELOPMENT
BY DEPUTY G.P. SOUTHERN OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 21st JANUARY 2014**

Question

What progress, if any, has the Minister made, in the absence of a financial ombudsman, in persuading locally based financial service providers, whether subsidiaries or branches of UK institutions, to agree to accept claims locally for the mis-selling of Payment Protection Insurance (PPI) policies, and if none, what steps will he take to ensure the establishment of a mechanism by which such claims can be pursued?

Is the Minister aware of any successful claims having been pursued locally and, if so, is he in a position to release details?

Answer

The Financial Services Ombudsman (Jersey) Law 201- will be lodged later this week. The introduction of the Ombudsman is, outside of the Royal Court, the most effective means of redress for an individual who remains dissatisfied at the response to a complaint from their financial services provider. *I am aware of a small number of successful claims against local providers of financial services.* I am unable to release details of specific cases. I am not aware there is a widespread problem as far as unresolved PPI claims are concerned but those individuals who remain unhappy will have recourse to the Ombudsman if adopted by the States Assembly in due course.

**WRITTEN QUESTION TO THE MINISTER FOR ECONOMIC
DEVELOPMENT
BY DEPUTY G.P. SOUTHERN OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 4th FEBRUARY 2014**

Question

Further to his responses in questions of 21st January 2014 in relation to Payment Protection Insurance (PPI) mis-selling in the Island, will the Minister agree to produce and publicise lists of companies –

- (i) operating as branches of UK financial services lending institutions who can be pursued by complainants through the UK ombudsman, and
- (ii) operating as local subsidiaries of UK financial services lending institutions who can only be pursued locally?

If not, will he state, in light of the limitation contained in Article 11 of the Draft Financial Services Ombudsman (Jersey) Law 201- (FSO) that complaints to that office will be treated as premature if respondents have not been given 3 months to respond to the complaint first?

Is the Minister aware that some loan companies have recently agreed to investigate complaints locally when previously they would not and, if so, will he agree to publicise this change to assist residents in pursuing claims? Will he agree to extend the 'general time limit' of 6 years on claims contained in Article 11 of the draft Law and, if not, why not?

What is the timetable for bringing the FSO Law into force?

Answer

Ombudsman jurisdiction is determined by examining all the facts of a complaint, complaints will be transferred to/from the UK Financial Services Ombudsman, where appropriate.

Under Article 12(1) and Article 11(1) a complaint will be rejected as premature if the respondent has not had, in the opinion of the Ombudsman, a reasonable opportunity to deal with it. Article 11(2) states the Ombudsman must not treat a reasonable opportunity as extending beyond 3 months after the date, in the opinion of the Ombudsman, that the respondent first had sufficient information to start investigations or, if sooner, as extending beyond the date on which the respondent notifies the complainant that no further action will be taken on the complaint. In plainer English the reasonable opportunity must not be more than 3 months, unless the respondent has earlier notified the complainant that they will take no further action on it. Also if a complaint is rejected as premature, it can be later referred to the Ombudsman once it is no longer premature.

I am aware that, in some specific circumstances, complaints can be re-evaluated by the financial services provider. However, I am not aware there is an across the board 'change' in need of publicising. I would encourage anyone who feels they have a valid complaint against a financial services provider to make contact with them.

Complaints to the Ombudsman must concern acts occurring on or after 1st January 2010; complaints must not be premature (meaning respondent must have had a reasonable time to deal with them) **and** complaints must be referred to the Ombudsman before the expiry of the relevant time limit. If a respondent meets certain conditions in their handling of a complaint the relevant time limit is abbreviated to 6 months after the respondent notifies the complainant they have completed their handling of the complaint, in all other cases the general time limit is the later of 6 years after the act to which the complaint relates or 2 years after the complainant should have been aware they had cause to complain. Even if the general time limit was extended, the act would still need to have occurred after 1st January 2010. That date was chosen as the 'starting point' of the scheme as it was the start of the year closest to the date States members voted to establish an Ombudsman and so enables consideration of complaints about events from the start of the year after the decision. I fully expect the Financial Services Ombudsman to commence its work in 2014.