

# STATES OF JERSEY



## DRAFT FINANCIAL SERVICES OMBUDSMAN (JERSEY) LAW 201-

---

Lodged au Greffe on 21st January 2014  
by the Minister for Economic Development

---

STATES GREFFE





Jersey

## **DRAFT FINANCIAL SERVICES OMBUDSMAN (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development, the provisions of the Draft Financial Services Ombudsman (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator A.J.H. Maclean**

*Minister for Economic Development*

Dated: 20th January 2014

# REPORT

---

## 1. Introduction

- 1.1 The Financial Services Ombudsman (Jersey) 201- will establish an Ombudsman to consider individual customer complaints regarding financial services provided in Jersey. This satisfies the political mandate made in an amendment to the States' Annual Business Plan 2010. The Ombudsman will have powers to investigate complaints and if upheld, make awards to put complainants back into the position they would have been in had the problem not occurred. The Ombudsman represents a suitable opportunity for pan-island co-operation, bringing likely benefits of improved consistency and efficiency for both customers and financial services providers in the 2 jurisdictions, as well as cost-savings.

## 2. Background

- 2.1 Ombudsman schemes offer independent complaint resolution as a more accessible alternative to the courts for most people. Schemes are usually free to the complainant, legal representation is not required, and the approach is inquisitorial with the Ombudsman investigating complaints. This is especially of value in the complex field of financial services, where there may be a great imbalance in knowledge and resources between the parties to a complaint. Determinations are made on the basis of what is fair and reasonable in the particular circumstances of the case, taking into account primary and secondary legislation, codes of practice and industry standards as appropriate. Ombudsman schemes do not alter the normal relationship between a service provider and the customer, but are available as a last resort, if the service provider has had a reasonable opportunity to deal with the complaint but it remains unresolved.
- 2.2 Currently, if a customer has a complaint about financial services provided in or from within Jersey, there is no body with official powers to take on the complaint, so legal action is the only route available for unresolved complaints and this can be costly and daunting.
- 2.3 In the autumn of 2009, the States Assembly voted to accept an amendment<sup>1</sup> to the Annual Business Plan 2010 to give legislative drafting time to a new Financial Services Ombudsman Law. Since then, the Economic Development Department has carried out a public consultation on the proposals for the financial Ombudsman scheme<sup>2</sup>; developed budget, funding and staffing plans; convened and received input on the funding proposals from a working group comprising representatives of different financial services sectors; worked closely with officers from the Commerce and Employment Department of the States of Guernsey; worked closely with the legislative draftsmen over the development of the legislation; and established good communications with the (British and Irish) Ombudsman Association (a professional association for

---

<sup>1</sup> *The relevant amendment to the Annual Business Plan 2010 was lodged on 8th September 2009 and adopted by the States on 5th October 2009*

<sup>2</sup> *Financial Services Ombudsman Scheme for Jersey and Guernsey consultation, Economic Development Department, 31/1/2011*

ombudsmen and complaint handlers, including the Crown Dependencies and Overseas Territories), the International Network of Financial Ombudsmen (INFO), and individual financial Ombudsman schemes in the UK, Ireland and Isle of Man.

- 2.4 Two separate briefing meetings were held on 10th October 2013 for the Bailiffs of Guernsey and Jersey on the establishment of a Financial Services Ombudsman, with the assistance of a highly experienced, senior Ombudsman from the UK Financial Ombudsman Service<sup>3</sup>.
- 2.5 It is intended that the Ombudsman will be set up by similar legislation in both Jersey and Guernsey, and that it is operated as a joint venture with shared staff, resources and premises; funded by the financial services industries in both jurisdictions. Guernsey published a States report on the Ombudsman in September 2013 seeking approval in principle for the establishment of a Financial Services Ombudsman and for the necessary legislation to be drafted. The report was on the Billet d'Etat for 30th October 2013 and was approved in debate on 27th November 2013.<sup>4</sup>
- 2.6 This legislation will establish an Ombudsman that satisfies the political mandate in Jersey for: “a Financial Services Ombudsman, not only to demonstrate that we are a quality finance centre but also to ensure that when things do go wrong for consumers we have an adequate, no cost, alternative dispute resolution process in place that is comparable with other jurisdictions”<sup>5</sup>; and that can be operated jointly in partnership with the States of Guernsey. Consideration has also been given to recognised standards such as the BIOA criteria<sup>6</sup> and European Commission recommendations and directives<sup>7</sup>.
- 2.7 The legislation will establish the Ombudsman, his/her procedures and powers, but the detail of the scope with respect to financial services covered will be set by Order. The funding arrangements will be set out in Regulations to be made under the Law, and the financial services industry will be consulted on the secondary legislation in March/April 2014. This document gives an overview of the primary legislation and outlines what will be proposed in the secondary legislation consultation.

---

<sup>3</sup> David Thomas: Lead Ombudsman (Strategy), UK Financial Ombudsman Service; Board member of the UK Legal Ombudsman; Committee Member of the International Network of Financial Services Ombudsman Schemes

<sup>4</sup> Commerce and Employment press release dated 19th September 2013

<sup>5</sup> States of Jersey Draft Annual Business Plan 2010 (P.117/2009): sixth amendment, lodged on 8th September 2009

<sup>6</sup> British and Irish Ombudsman Association, Schedule 1 to the Rules, Criteria for the recognition of Ombudsman Offices, last amended 12th May 2011

<sup>7</sup> Commission Recommendation 98/257/EC; Directive 2013/11/EU on Consumer Alternative Dispute Resolution

### **3. Overview of the Financial Services Ombudsman (Jersey) Law 201-**

#### **3.1 Establishment and general function of the Office of the Financial Services Ombudsman (OFSO)**

- 3.1.1 The primary responsibility of the Office of the Financial Services Ombudsman (OFSO) is to resolve complaints about financial services independently, effectively, quickly, with minimum formality and by the most appropriate means.
- 3.1.2 The legislation establishes the OFSO as a body corporate, with a Board of 3 to 5 members, including a Chairman. The intention is to have a Chairman plus 2 Board members at the outset.
- 3.1.3 The Minister appoints the Chairman and Board members on terms that secure their independence, and after seeking the views of the Jersey Appointments Commission (JAC). Board members are subject to a maximum of 10 years' service. The OFSO can determine the remuneration it pays to Board members, subject to any maximum directed by the Minister.
- 3.1.4 The Board will appoint ombudsmen on terms that promote their independence, maintain the independence of the OFSO generally, and act in the public interest. This will ensure the credibility of the Ombudsman scheme, so that all stakeholders have confidence in it and in the independence and effectiveness of the Ombudsman in investigating and resolving complaints<sup>8</sup>.
- 3.1.5 Under the legislation, the Minister can give directions or guidance to the OFSO on certain matters that will not compromise the independence of the OFSO.

#### **3.2 Arrangements with other jurisdictions**

- 3.2.1 The development of a Financial Services Ombudsman has presented a suitable opportunity for pan-Channel Island co-operation. While the legislation establishes a Financial Services Ombudsman for Jersey, it includes flexible provision for resource-sharing, co-operation or combining the schemes of Jersey and Guernsey. It will be advantageous to have one entity covering all financial services complaints in the 2 jurisdictions of Jersey and Guernsey, rather than 2 smaller ones. Staff will benefit from experience of a wider range of complaints and can share expertise internally, leading to a more consistent approach across the islands. There will also be economies of scale with a single operation covering both jurisdictions, requiring only one infrastructure to be set up, rather than duplicating.
- 3.2.2 It is planned that from the outset, the Ombudsman scheme will be established on a joint basis with a shared, single office in Jersey, with a shared staff and Board. This will have considerable benefits in terms of cost savings from a single infrastructure, and consistency in approach for complainants and financial services providers, irrespective of the island from which the financial services were provided.

---

<sup>8</sup> British and Irish Ombudsman Association, Guide to Principles of Good Governance, October 2009

3.2.3 As will be detailed later, there is rarely a need for complainants and other parties to be seen in person, as complaints are assessed by consideration of the information gathered during the investigation of a complaint. Complainants can reside anywhere in the world, so the actual location of the offices does not affect the accessibility of the Ombudsman.

### **3.3 Complaints volume and staffing**

3.3.1 As there is no comparable body handling financial complaints in Jersey and Guernsey, it is hard to draw reliable conclusions about the expected number of complaints the Ombudsman will receive. The budget and plans have been drawn up on the basis of the joint Ombudsman scheme receiving an anticipated 700 'mature' complaints per year, i.e. those that have already been considered by the financial services provider. As well as these mature complaints, there is also likely to be a high number of enquiries that will need to be handled, usually from complainants seeking information or advice at an earlier stage of a complaint.

3.3.2 To service this workload, the staffing proposal is for one part-time Ombudsman, supported by 5 staff to handle complaints, enquiries, administration and management. The Ombudsman will be a senior role, so it is cost-effective to have supporting staff carrying out much of the day-to-day work.

3.3.3 The aim is not to over-resource the office, but to have sufficient staffing and systems to handle complaints efficiently and effectively. Arrangements in the first year will need to be on a flexible basis, so that staffing can be adjusted in the event of any difference in the actual volume of complaints from estimates.

3.3.4 The staffing plan has been drawn up by evaluation of staffing at other Ombudsman schemes and with input from experienced Ombudsmen.

### **3.4 Remit of the Ombudsman**

3.4.1 Categories of persons eligible to refer a complaint to the Ombudsman include –

- individuals;
- small businesses, using the European Commission definition of a microenterprise<sup>9</sup>; and
- charities, trusts, foundations and other bodies as specified by Order.

3.4.2 The Minister for Economic Development can specify by Order any other category that relates to charities, trusts, foundations or other bodies that appears to be appropriate, taking into account that the Ombudsman should be primarily available to persons lacking the resources or expertise to use other means to resolve complaints (*see* Article 8(3)(ciii)). The intention, subject to the industry consultation, is that the Order should allow small charities, individuals acting as trustees of family trusts and individuals acting as trustees of their own pension arrangements, such as retirement annuity contracts, to be eligible complainants.

---

<sup>9</sup> Commission Recommendation (2003/361/EC)

- 3.4.3 The legislation also permits the Minister by Order to exclude subsets within those categories on the recommendation of OFSO; being persons that have the resources, expertise or other characteristics to use other means than the OFSO to resolve their complaints. This could be used in future to mirror the actions of the regulator; for example, if the Commission designated a certain group of persons as requiring less regulatory protection.
- 3.4.4 As well as being in one of the categories listed above in 3.4.1, a complainant also must not be a financial services provider and must, at the time of the relevant act, have had a sufficiently close relationship with the financial services provider in order to complain about its actions. This relationship could be as a client or potential client, or any other sufficiently close relationship. The Ombudsman must consult, develop and publish guidelines on relevant relationships. The intention is to allow complaints from appropriate complainants who may not have a client relationship with the entity complained about (the respondent), but who nonetheless can be affected by its actions. These could include an investor in a collective investment fund in respect of which the respondent carries on the relevant business, such as administration; or, for example, the intended recipient of a cheque that was intercepted by a fraudster and deposited into the fraudster's account held by the respondent.
- 3.4.5 The complainant can be resident anywhere, not just in Jersey or Guernsey.
- 3.4.6 The complaint must relate to an act in the course of relevant financial services business provided in or from within Jersey. The legislation defines relevant financial services business widely, in Article 9(1), with reference to financial services legislation, including the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, and also by defining pension and credit business in Schedules 3 and 4. The legislation then provides that the Minister must by Order exempt classes of business that are not appropriate to be covered by the Ombudsman, after consultation.
- 3.4.7 The Order must take account of ensuring the Ombudsman's services are primarily available to people lacking the resources and expertise to use other means to resolve the complaint, and must consider entities carrying on classes of business without requiring a permit or certificate or registration with the Commission. Consultation on the Order must include with relevant persons in Guernsey; this is so that the range of financial services covered can be as similar as possible in Jersey and Guernsey.
- 3.4.8 The financial services industry will be consulted on the Order in March/April 2014. The current policy intention is to exempt broadly the same areas as currently given exclusions/exemptions under financial services legislation, with some exceptions to be considered for those that it may be relevant to include, such as all providers of bureau de change services. (There is currently a turnover-related exemption.)
- 3.4.9 In addition, the current policy intention is for the Order also to exempt occupational pensions; certain types of fund business and most trust company business, except where it relates to relevant pension business. These exemptions can be monitored and reviewed over time, so that the scope can respond to new developments or to experience with complaints. The detail of



the proposed exemptions will be fully set out in the industry consultation exercise on the secondary legislation.

- 3.4.10 Complaints need to be within various time limits. In summary –
- 3.4.10.1 the act to which the complaint relates must have occurred after 1st January 2010 (the “starting point”);
  - 3.4.10.2 the financial services provider must have already been given a reasonable opportunity to consider the complaint; and
  - 3.4.10.3 the complaint must be referred to the Ombudsman within 6 years of the act to which the complaint relates, or 2 years after the complainant should have become aware of the cause for complaint. If the financial services provider meets set requirements in handling the complaint, this period can effectively be shortened to 6 months after the provider completed its handling of the complaint.
- 3.4.11 The starting point for the Jersey scheme is set at 1st January 2010 as the first start of the year after the States Assembly voted to introduce a Financial Services Ombudsman. This reduces the amount of retrospection from the full 6 years possible under the standard time limit in the legislation. Guernsey will have a different starting point. It will use the date of the States Report on the Financial Services Ombudsman, i.e. 2nd July 2013 (see 2.4).
- 3.4.12 The legislation sets a cap of 3 months as the maximum reasonable period for financial services providers to consider complaints, so a complainant will be able to refer their complaint to the Ombudsman if it is still unresolved 3 months after raising it with the provider, or before if they receive the provider’s final response on the complaint sooner and are still unsatisfied.
- 3.4.13 If financial services providers meet certain requirements when handling complaints, an abbreviated time limit of 6 months will apply within which a complainant must refer the complaint to the Ombudsman, after receiving a final response on the complaint from the provider. This time limit will be dependent on the provider having a procedure for handling complaints and giving appropriate notification to the complainant of the availability of the Ombudsman and the 6 month time limit. It will be in the interests of the industry to provide this information, so that the limited further period of 6 months applies within which the complaint can be progressed to the Ombudsman. This will give the industry greater clarity on the lifespan of complaints and on when they have run their full course.
- 3.4.14 These time limits apply equally to both regulated and unregulated entities and are in line with those applicable at other financial Ombudsman schemes. It is intended that the detail in the legislation can be referred to or used as part of standards in Codes of Practice developed for financial services providers. The Ombudsman scheme is not a replacement for effective complaints handling within providers, but will be available for what should be the minority of complainants that remain dissatisfied at the end of the process. The legislation allows for the OFSO to publish a model procedure for complaints handling, but cannot require any financial services provider to adopt it. The Ombudsman’s role is to handle individual consumer complaints and is distinct from that of the regulator.

### **3.5 Handling of complaints by OFSO**

- 3.5.1 Once a complaint is received by the Ombudsman it will be assessed as to whether it is within the remit of the scheme as outlined in 3.4 and rejected if not. It can also be rejected if the Ombudsman considers there are compelling reasons to do so, such as if the complaint has no real prospect of success; for example, where the complainant has not suffered compensatable loss; or if there is a more appropriate forum to consider the complaint. The legislation cites some of the reasons for rejection and requires the OFSO to publish its policy on rejection of complaints.
- 3.5.2 The Ombudsman will then investigate the complaint as he or she sees fit, and will have powers to require information and documents that are considered necessary or useful for the investigation and determination of the complaint to be provided. These are specified in Part 5, Article 19. Parties to the complaint will be given the opportunity to provide information and to comment on evidence considered by the Ombudsman to be material to the determination.
- 3.5.3 Complaints will normally be considered on the basis of the documentation and information provided by the complainant and the financial services provider, without a hearing, unless the Ombudsman considers it necessary. Where appropriate, attempts can be made to mediate the complaint and bring the parties to agreement on a solution.
- 3.5.4 If a complaint is not suitable for mediation or fails to be resolved by that route, the Ombudsman will determine the complaint. In practice, the stages of gathering information on a complaint, initial consideration of the issues and attempts to resolve the complaint through mediation can be delegated to a case handler. However, only an Ombudsman may make a formal determination of a complaint.
- 3.5.5 The Ombudsman will determine a complaint by reference to what is fair and reasonable in all the circumstances of the complaint, and must take into account the relevant law; any relevant direction, Code of Practice or regulation; and if appropriate, what the Ombudsman considers to be good practice at the time of the act leading to the complaint. Before issuing a determination, the parties to the complaint will be given a preliminary view on the dispute or draft determination to give them a further opportunity to comment, disagree or put forward views.
- 3.5.6 Once a complaint has been determined, the Ombudsman will give the parties to the complaint a written statement of the determination. As the Ombudsman is intended to be the final arbiter on a complaint, if the complainant accepts the determination, it is binding on the financial services provider and the complainant. No further legal action can be taken on the same subject matter once a determination becomes binding. No provision is made for an appeal in the Law, so judicial review is the only available option for reviewing determinations of the Ombudsman.
- 3.5.7 If the Ombudsman upholds the complaint in favour of the complainant, the determination may include an amount of money to be paid by the financial services provider to the complainant to compensate their financial loss and also material distress or inconvenience, where appropriate. The determination can also require the provider to take such steps in relation to the complainant as the Ombudsman considers fair and reasonable.

3.5.8 The legislation sets the maximum amount that can be awarded at £150,000, which is in line with financial Ombudsman schemes in other jurisdictions such as the United Kingdom and the Isle of Man.

3.5.9 Awards are enforceable by the complainant as a debt due from the financial services provider. The legislation also gives the Ombudsman discretion to assist the complainant, if warranted, in recovering an award. (Other Ombudsman schemes, such as the Legal Ombudsman in the UK, allow this.)

### **3.6 Interaction with other bodies and publishing of information**

3.6.1 While there will be restrictions on information disclosure, the Ombudsman can disclose information to the Commission or other statutory bodies to assist them to carry out their duties. Data from the Ombudsman on complaints can be useful for regulators, both for supervisory purposes and for developing regulation. A memorandum of understanding will be drawn up with the Commission describing how the bodies will co-operate in the carrying out of their respective duties.

3.6.2 The Ombudsman will publish an annual report on its operations, which will include information on the caseload and the Ombudsman's approach in deciding complaints. Giving this feedback to the financial services industry can be useful to inform future complaints handling.

3.6.3 Good communications have been established with existing financial Ombudsman schemes, and the scope of the Channel Islands' Ombudsman will dovetail with that in other jurisdictions to avoid duplication.

### **3.7 Budget**

3.7.1 The set-up costs for the joint Financial Services Ombudsman are estimated at £183,317, with operating costs for the first year of £582,626.

3.7.2 The scheme will perform a quasi-judicial role, with powers to make binding determinations, so it needs to be resourced sufficiently to fulfil that role. Experts at other Ombudsman schemes have reviewed the budget figures and the aim has been to produce realistic estimates for running the service.

### **3.8 Funding**

3.8.1 The provisions in the legislation ensure that the funding for the establishment and operation of the OFSO will come from financial services providers and that the service will be free to complainants. The OFSO's annual accounts must be independently audited and submitted with a report on its operations to the Minister for Economic Development for presentation to the States.

3.8.2 OFSO will secure its funding through levies on financial services providers generally, and also through case fees on providers in respect of complaints against them. The Law sets out that the fees and levies must raise sufficient income to enable the OFSO to carry out its functions and to provide sufficient reserves. The States are given powers to make Regulations to provide for case fees and levies.

3.8.3 As the Ombudsman is intended to be a pan-island scheme, it will be funded by the financial services industry in both jurisdictions of Jersey and Guernsey. At the outset it will be on a 50:50 basis between the islands. Over time, this can

be revised to reflect the actual ratio of complaints from each on a 'user pays' basis. A funding model has been developed with the assistance of industry working groups and from assessment of existing mechanisms in other Ombudsman schemes. The planned industry consultation on the secondary legislation will set out more detail on funding, but broadly it will be sought from all providers in Jersey and Guernsey with relevant customers and conducting financial services business within the scope of the Ombudsman (the 'funding population').

3.8.4 A start-up fee will be charged to cover the initial set-up costs of the Ombudsman scheme and to start building up reserves. An annual levy and case fees on complaints taken on by OFSO will be charged to cover operating costs and to bring reserves up to the desired level.

**Secondary legislation to follow:**

- Order to be made by the Minister under Article 8(3)(c) to specify charities, trusts, foundations or other bodies that can be eligible complainants
- Order to be made by the Minister under Article 9(4) to exempt classes of business that are not appropriate to be covered by OFSO
- Regulations in relation to Case Fees to be debated by the States and made under Schedule 2, paragraph 3(1)
- Regulations in relation to Levies to be debated by the States and made under Schedule 2, paragraph 4(1).

**Financial and manpower implications**

The set-up costs will be split 50/50 between the Economic Development Department and Commerce and Employment of the States of Guernsey, and will be fully reimbursed by OFSO once it has the power to levy the industry. The Law allows the collection of the levy at the earliest opportunity to ensure the amount is repaid as soon as possible.

**Human Rights**

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### Human Rights Notes on the draft Financial Services Ombudsman (Jersey) Law 201-

These Notes have been prepared in respect of the draft Financial Services Ombudsman (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law proposes to establish an Ombudsman service charged with handling complaints about financial services independently, quickly, informally and fairly, so as to offer an alternative to court proceedings that is more accessible for complainants. The draft Law engages the ECHR in a number of aspects, which are addressed below.

#### **Article 6 ECHR – The right to a fair trial**

Article 6(1) ECHR (the right to a fair trial) is applicable to the draft Law in a number of respects. Its requirement that, in the determination of civil rights and obligations, everyone is entitled to a fair hearing by an independent and impartial tribunal is engaged by the draft Law in how it is envisaged that Ombudsman determinations of complaints under Part 4, and terminations of appointments by the Minister pursuant to Schedule 1 paragraphs 4 and 5, are to be reviewed. A person aggrieved with a decision of the Ombudsman or the Minister in this regard would be required to seek judicial review of the original decision before the Royal Court.

#### **Reviewing determinations of the Ombudsman**

The protections afforded by Article 6(1) ECHR are relevant in cases which are determinative of pecuniary issues and have been deemed applicable in the context of ombudsmen services. The Ombudsman’s determination of complaints of this nature will be open to judicial review before the Royal Court. The judicial review position in Jersey is broadly similar to that applied in the English legal system, requiring a decision which goes beyond merely being unreasonable and becomes a decision to which no reasonable decision-maker could have come, i.e. the classic ‘Wednesbury unreasonableness’ standard.

The capability for judicial review to provide the necessary Article 6 ECHR compliant review stage is assessed having regard to the subject-matter of the decision under review, the manner in which that decision was arrived at, and the content of the dispute, including the grounds on which the decision is contested. In general terms, it is considered that while traditional judicial review grounds would provide a sufficient review standard in some cases, in others there may be a need for a more expansive scope to ensure compatibility. This is due to nuances in the operation and practical elements of the Ombudsman scheme; for example, in some cases complex questions relating to financial services may be engaged, whereas in others only factual aspects may be relevant; public and oral hearings may be required to determine complaints in some cases but in others written submissions may be enough to enable the Ombudsman to determine matters. The scope of complaints entertained by the

Ombudsman will mean that, in practice, there will be an undulating nature to the manner in which the Ombudsman will handle the initial complaint.

As a consequence, the Royal Court will be required to be sufficiently accommodating in the scope of its judicial review jurisdiction. In other words, the Court must be open to adjusting the usual parameters of judicial review so that it is able to consider the merits or factual elements of the referred decision where necessary, not simply the traditional legal or rationality questions. Considering the Royal Court's obligations under the Human Rights (Jersey) Law 2000 (the "**Human Rights Law**") to ensure human rights compliance, it is considered that the Court would be capable and willing to develop its judicial review jurisdiction expansively to include a fact-determining role where a more intensive mode of review was required to safeguard the Article 6 ECHR rights of aggrieved persons.

#### Reviewing a Minister's decision to terminate an appointment

The draft Law includes the power for the Minister to terminate appointments of the OFSO Chairman and board members for reasons, amongst others, that the relevant person is 'unable or unfit' to discharge their functions (Schedule 1, paragraphs 4 and 5). As noted above, an aggrieved person would be required to seek judicial review of the Minister's decision to terminate an appointment.

The termination of an appointment by the Minister engages the civil rights and obligations of the aggrieved person, and the protections afforded by Article 6(1) ECHR become relevant as a result. It is considered that, for reasons similar to those expressed above, the judicial review jurisdiction of the Royal Court would provide a sufficient review standard for Article 6(1) ECHR purposes in these circumstances.

On balance, the issue to be determined by judicial review in this context, i.e. whether the Minister had good reason to determine that the aggrieved person was unfit to discharge his or her functions, is a question of fact. Such issues, which might not necessarily require professional knowledge or experience to determine, will mean that a traditional scope of judicial review, which concerns itself with law and irrationality, may be insufficient from an Article 6 ECHR perspective. Moreover, it is likely that the Minister will make the termination decision unilaterally, without a formal hearing, so the judicial review stage must impose a more expansive review scope so that the full body of the referred issue can be assessed. Taken together, these factors point to a requirement for the Royal Court to apply a more intensive, full merits and facts scope of review than it would under its traditional jurisdiction.

As noted above, the influence of human rights obligations on the Royal Court and modern perspectives of the judicial review jurisdiction would suggest that the Royal Court, in practice, would adopt a judicial review scope that includes a fact-determining role. The application of this progressive review standard, where required, would make the determination of termination cases compatible with Article 6(1) ECHR.

#### Eligibility criteria and handling of complaints

Article 6 ECHR is a relevant consideration in assessing the eligibility criteria for complaints and the manner in which complaints are initially handled under Parts 3 and 4 of the draft Law. In essence, those provisions have the potential to limit the access of certain aggrieved persons to redress before the Ombudsman (for example, where a complaint is deemed 'frivolous or vexatious'). The right of access to a court or tribunal is not absolute and may be subject to limitations but, in order to comply

with Article 6 ECHR, those restrictions must pursue a legitimate aim, and comply with the principles of proportionality and legal certainty.

The Ombudsman scheme is intended as an alternative means of redress for those who, by reason of resources, expertise or other characteristics, might deem the courts an unattractive option. Article 6 ECHR is not prescriptive in terms of what nature of legitimate objective comes within its scope but ensuring that aggrieved consumers are able to seek effective redress for their complaints will be considered a legitimate aim. Restricting access in this manner would also be both proportionate and sufficiently certain, making it justifiable from an ECHR perspective. Indeed, it has been held that rules governing vexatious litigants are compatible with Article 6 ECHR providing they are fairly applied.

#### Complaint hearings

The draft Law provides that the Ombudsman may determine complaints in public or private and with or without a hearing (Article 13(4)(c)). The requirement for an oral and public hearing is a fundamental principle enshrined in Article 6(1) ECHR, however, that principle does not translate into an absolute obligation to hold a hearing in every case. It has been held that it is inappropriate to impose a strict rule requiring an oral hearing in every case due to the variety of cases with which an ombudsman must deal. Certain cases can best be decided fairly and reasonably on the basis of written submissions whereas others will require a hearing – the decision as to which route is preferred must be made in light of the ECHR.

Furthermore, the European Court of Human Rights (“**ECtHR**”) has, in cases concerning ombudsmen, implicitly enunciated procedural steps for determining disputes on the basis of written submissions in a manner that would be deemed compatible with Article 6. For example, this would require affording the complainant “ample opportunities” to make its case and the draft Law envisages that the Ombudsman can invite submissions from parties to a complaint at stages (see for example Article 13(4)(e)) where it considers it necessary. Overall, by enabling flexibility in the approach to hearing a complaint, and with a requirement on the Ombudsman to implement procedural matters in a manner that accords with ECHR principles, the draft Law would be considered compatible with Article 6 ECHR.

#### Publication of Ombudsman determinations

The ECtHR has recognised that the publicity of legal proceedings contributes to the achievement of the aim of Article 6(1) ECHR, and there must be a compelling reason to withhold an ombudsman’s decision from the public domain. The power for the Ombudsman to publish information about determinations is provided by Article 22(1)(c) and it is anticipated that the Ombudsman will exercise that power in a manner that is both sufficient for, and compliant with, ECHR principles. An ancillary point here is the fact that Article 16(11) of the draft Law provides that any copies of a determination disclosed by the Ombudsman may be redacted to protect identities or other private information, thereby bolstering compliance with Article 8 ECHR requirements (right to respect for private life).

## **Article 8 – The right to respect for private life**

Article 8 ECHR (the right to respect for home and private life) is engaged by powers in Part 5 which enable the Ombudsman to request information or documents from a party which are considered necessary or useful for the investigation or determination of a complaint (there are also powers for the OFSO to request information from the JFSC relating to providers).

A wide range of information could be caught by Part 5 and it is conceivable that this might stretch to details regarding individuals, particularly names, addresses or other personal data protected under Article 8 ECHR as part of the subject's private life. An interference with this right, which might arise from the disclosure or exchange of such information, must be justified under Article 8(2) ECHR, meaning it must be: (a) in accordance with the law; (b) in pursuit of one of the legitimate aims set out in Article 8(2) ECHR; and (c) necessary in a democratic society.

An interference with the Article 8 ECHR right under Part 5 of the draft Law would be deemed justifiable. The information gathering provisions are clear and the rationale for their application, i.e. to ensure that the Ombudsman is able to investigate complaints fully so as to make a determination, support the purposes of the Ombudsman scheme. Furthermore, that scheme is aimed at ensuring an alternative and accessible means for resolving disputes, which is a legitimate aim. The information gathering powers are 'necessary' for the investigation of complaints, which in turn goes toward the effective operation of the Ombudsman scheme. The Ombudsman can be considered as an important avenue for redress, and resolving financial services disputes contributes to ensuring a healthy finance industry which is itself a pressing social need.

It should also be appreciated that Article 19 includes procedural safeguards which mitigate any interference with the Article 8 ECHR right, thereby ensuring that they remain within the remits of what is necessary to achieve the legitimate aim. For example, information must be demanded by notice in writing, the specified period for producing information must be 'reasonable' and the Ombudsman must consider the information requested to be 'necessary or useful for the investigation or determination of the complaint'. On balance, therefore, the information gathering powers in Part 5 would be compatible with the ECHR on the basis that any interference is likely to be justifiable.

## **Article 1 of the First Protocol of the ECHR ("A1P1") – Right to Property**

A1P1 which guarantees the rights to property is engaged by the power for the Ombudsman to make awards, in money or money's worth (Article 16) and to award costs against a party (Article 17). A1P1 is also relevant to the retrospective application of the draft Law enabled by the timing conditions in Article 11.

### **Awards and costs**

In the context of A1P1, the imposition of a financial awards and costs will amount to a clear 'deprivation of possessions'. A deprivation of property in this manner will be justified under A1P1 where it is in the public interest and subject to conditions laid down by law. Further, only in the most exceptional circumstances will a deprivation be justifiable if compensation is not paid. The measure must also be proportionate to the aim pursued.



The ‘public interest’ engaged by the draft Law is the desire to provide an alternative and effective means for redress. Measures implemented for economic reasons or for the protection of certain groups will serve that public interest. Further, where property rights are concerned, states have a considerable margin of appreciation (i.e. discretion) in determining the existence of a problem of general public concern and in implementing measures designed to meet it. This would suggest that the draft Law, in providing for the establishment of an Ombudsman and bestowing the power to demand financial recompense for those whom court action might be financially or logistically unattainable, would be regarded as addressing an identifiable public interest, and come within the States’ margin of appreciation. The measures implemented by the draft Law would also be considered as being sufficiently precise and foreseeable as to be in ‘accordance with the law’.

The question of proportionality requires a fair balance to be struck between the means employed in furtherance of the general interest identified and the protection of the individual’s fundamental rights. The requisite balance will not be struck if the person concerned has had to bear an ‘individual and excessive burden’. In the financial services sphere, the imposition of an obligation on a provider to pay an award where an individual has suffered financial loss would be proportionate, particularly where the intention is to return those affected individuals to the position they would have been in had the particular act or omission not occurred. The same argument could be made for the imposition of costs where a party has been left out of pocket. It is important to appreciate also that, in all cases, the Ombudsman will impose an award or costs only where it is ‘fair and reasonable’ to do so (see Articles 3(1), 15(1) and 16(1)(a)(ii)). In conclusion here, notwithstanding that the proposal to grant awards and costs would amount to a ‘deprivation’ of possessions, such measures would be justified.

A key feature in justifying the ‘deprivation’ of property is the provision of compensation for the interference, which is required in all but the most exceptional of circumstances. The draft Law seeks to impose a financial award in order to address financial disputes and penalise those with culpability. In this situation, a requirement to also provide for compensation for the imposition of a penalty would manifestly defeat the object of the monetary award, and can be disregarded in this context.

#### Retrospectivity

Article 11 of the draft Law enables the Ombudsman to hear, and penalise if necessary, complaints made about acts that occurred on or after the 1st January 2010, i.e. before the draft Law comes into force. The effect will be the ability for the Ombudsman to retrospectively generate liability for an award, in some cases where no liability existed in the first place and in circumstances where there is no regulation in Jersey.

The imposition of awards, whether retrospectively or otherwise, will engage A1P1 for the reasons explained above. The key assessment for the compatibility of retrospective legislation with the ECHR is whether it strikes a ‘fair balance’ between the demands of the general interest and the protection of fundamental rights. Where legislation is retrospective, that will merely be a factor that is put into the mix when evaluating this “fair balance”. Retrospection does not inhabit its own distinct area of jurisprudence in the context of human rights but rather falls to be evaluated within the confines of proportionality.

As detailed above, the justification for the prospective elements of the draft Law that engage A1P1 centre on the desire to provide alternative and effective redress. As for the retrospective application of the draft Law, a convincing public interest case for

retrospection could be made, particularly where an egregious practice had been pursued by a provider before the dawn of this legislation. That public interest case would be all the stronger in the sphere of unregulated activity where there had been no prior consumer protection.

The draft Law will not immediately impose liability from its inception. Liability to make a financial payment will be judged on whether an unfair and unreasonable practice was pursued, and that will fall to be determined by the Ombudsman. As a public authority bound to act in a manner that is compatible with the ECHR under Article 7 of the Human Rights Law, it will be unlawful for the Ombudsman to impose retrospective liability under the draft Law if to do so would be incompatible with the ECHR, i.e. because it imposes an 'individual and excessive burden'. So, although the draft Law would permit retrospective liability that may not always be the outcome.

It is also important to appreciate that the draft Law applies a carve-out in Articles 10(2)(b) and (3), excluding application of the retrospective element of the draft Law to those to whom a liability was transferred before Part 3 of the draft Law (Referral of Complaints to the OFSO) comes into force. The rationale here is that purely innocent persons (for example, third-party purchasers of a financial services company) should not be burdened with a liability that they could not foresee or protect themselves against. In this respect, the draft Law has taken steps to mitigate against any disproportionate retrospective interference with A1P1 rights, thereby reinforcing its compatibility with the ECHR.

## Explanatory Note

---

This Law establishes an Ombudsman service charged with handling complaints about financial services independently, quickly, informally and fairly, so as to offer an alternative to court proceedings that is more accessible for complainants. That service can be shared with Guernsey or stand alone for Jersey.

*Article 1* is the interpretation provision. “Relevant financial services business” is defined broadly by *Article 9* (see below), and a “financial service provider” is defined as any person carrying on such business.

*Part 2* deals with the establishment and functions of the Office of the Financial Services Ombudsman (“OFSO”).

*Article 2* establishes the OFSO as a body corporate with a board of between 3 and 5 members including a Chairman. *Schedule 1* contains detailed provision on the OFSO’s constitution, while *Schedule 2* deals with its finances. The States may by Regulations amend the number of board members or the constitution, but may not amend the provision on the independence of the OFSO (in *paragraph 11* of *Schedule 1* – see below).

*Article 3* provides that the general functions of the OFSO are to secure resolution of complaints independently, fairly, reasonably, effectively, quickly and with minimum formality. The OFSO should offer an alternative to court proceedings that is more accessible for complainants. Complaints may be determined by an Ombudsman, but should be resolved by the most appropriate means, which may include mediation or referral to another forum (or other methods). The board of the OFSO is charged with protecting the independence of the OFSO, and in particular the independence of the Ombudsmen. The States may by Regulations transfer other functions to the OFSO.

*Article 4* provides for the appointment of the Principal Ombudsman and other staff of the OFSO. The board must appoint an appropriate person as the Principal Ombudsman, on terms that promote his or her independence and for at least 5 years. The OFSO must secure sufficient staff, whether as employees, agents or contractors. Employees cannot be board members and board members cannot be appointed as employees.

*Article 5* requires the board to secure that a sufficient number of the staff are designated as Ombudsmen, after the Principal Ombudsman has approved their qualifications and experience. Their terms of appointment must promote their independence. Under *Article 1*, “Ombudsman” is defined to include the Principal Ombudsman when used elsewhere in the Law.

*Article 6* provides for arrangements with Guernsey and for the adaptation of the scheme to European standards. The Law can operate independently for Jersey alone. But, if Jersey and Guernsey reach (or alter) an agreement on sharing a joint Ombudsman service, the States may by Regulations amend any provisions of the Law that would otherwise be inconsistent with the arrangements. This Article provides flexibility to cover a wide variety of possible arrangements, which could include merging the islands’ schemes into one new scheme or subsuming one island’s scheme into the other, or merely sharing functions, finances, board members, Ombudsmen, other staff, information or other items between separate schemes. The Article

expressly provides that it does not prevent any sharing arrangements that might be devised in such a way as not to require any amendment of the Law (or where there are other means of giving effect to the arrangements). Regulations may also separately be used to amend the Law to give effect to any provisions of relevant European legislation, should the States choose to do so.

*Part 3* deals with the referral of complaints to the OFSO.

*Article 7* provides the conditions for referring a complaint to the OFSO. The complainant must be eligible under *Article 8*. The complaint must relate to an act or omission by a person in the course of carrying on relevant financial services business, as defined in *Article 9*, in or from within Jersey (irrespective of the location of the complainant). That person will be the respondent, but another person may be liable or designated as a respondent under *Article 10*. Also the timing of the referral must satisfy the timing conditions set out in *Article 11*.

*Article 8* determines who is an eligible complainant. The complainant can be in Jersey or anywhere else in the world; must not be a financial service provider; must be an individual not acting in a business capacity (or a microenterprise or certain other bodies – see below); and must have been a client of the relevant provider (or have had another specified relationship with the provider).

As well as individuals and microenterprises, the Minister may by Order (on the OFSO's recommendation, following consultation by OFSO with relevant persons) specify further categories of eligible status for complainants, relating to charities, trusts, foundations or other appropriate bodies. The Minister may also by Order (again on the OFSO's recommendation and after consultation) exclude descriptions of individual or microenterprise. In both cases the main factor is that the OFSO's services should remain primarily available to those whose resources or expertise mean they cannot reasonably be expected to use other means to resolve their complaints. This power can also be used to align the scope of the scheme with Guernsey in this respect if appropriate.

If the complainant was not a client of the financial services provider (and was not attempting to be taken on as a client), then they are only eligible if they had a sufficiently close relationship with the provider, as determined under guidelines to be published by the Principal Ombudsman. The guidelines must refer for instance to the position of family members benefiting from pension schemes, retailers relying on cheque guarantee cards, guarantors of credit, subjects of credit information and others (the Minister may by Order amend the list, after consulting the OFSO and other relevant persons). But in dealing with each of these groups the guidelines may provide that they are or are not to be treated as having a sufficient relationship (or that particular factors must be taken into account for particular groups). In these cases the closeness and nature of the relationship must be such that the provider can reasonably be expected to accept responsibility for the effects of their actions on the complainant.

*Article 9* sets the framework for determining what is relevant financial services business. It does so by casting the net very wide, but then requiring the Minister to narrow the scope by Order, to exempt classes of business where it is not appropriate for the OFSO's services to be available.

So the broad potential scope includes business regulated by the Jersey Financial Services Commission ("JFSC") under its regulatory Laws (listed in *Articles 9(1)(a)* to *(e)*), such as: banking and money service business; business relating to alternative investment funds, collective investment funds, and other investment and fund services;

trust company business; and certain types of insurance business. But it also includes business that is exempt from control by the JFSC under those regulatory Laws, and other business that only needs to be registered with the JFSC for anti-money laundering and anti-terrorist financing purposes. This potential scope also extends to aspects of pensions business and credit business (as defined in *Schedules 3 and 4*), for some of which there is currently no specific regulatory legislation in Jersey. Lastly it extends also to business ancillary to the main classes of business, given that, for example, the Banking Business (Jersey) Law 1991 primarily deals with deposit-taking rather than with the many other aspects of the normal business of banks, such as making loans and administering cheque accounts and ATMs.

This broad scope is therefore to be narrowed appropriately by an exempting Order. The Minister must consult before making the exempting Order, and must take into account whether the customers of particular financial services are likely to have resources, expertise or other characteristics that make it reasonable to expect them to use avenues of complaint other than the OFSO. The Minister must also in particular consider whether to exempt classes of business that are not subject to control by the JFSC under its regulatory Laws, looking at the potential impact on those classes of business if they were to be subjected to the Ombudsman scheme. If there is an arrangement to share any aspect of the scheme with Guernsey, the Minister must also consider using this power to align the scope of this scheme with Guernsey's.

*Article 10* determines who can be a respondent to an Ombudsman complaint. In normal circumstances it will be the financial services provider whose act or omission is the subject of the complaint. That person may or may not still be providing financial services. But sometimes another financial services provider will have assumed some or all of the liabilities of the original provider in relation to the act or omission complained of, and in that case this other provider can be treated as a respondent. There may be other cases, where the third party has not assumed any of the particular liabilities, but is a financial services provider and has taken on some of the business, assets or other liabilities of the original provider, and should still in all the circumstances be treated as answerable for the act or omission complained of. In that case the Ombudsman can designate that third party as a respondent (as well as or instead of the original provider, which might no longer exist), but only after inviting and considering objections from the third party and giving written notice of the resulting decision.

*Article 11* provides the 3 timing conditions for a complaint's eligibility – the act or omission complained of must not pre-date 1st January 2010, the complaint must not be premature and it must not be too late.

The complaint to the OFSO is premature if the respondent has not been given a reasonable opportunity to deal with it first. That opportunity cannot stretch beyond 3 months after the respondent first had sufficient information to start to investigate (in the Ombudsman's opinion), and stops sooner if the respondent refuses to take any further action on the complaint. If a complaint is referred within the 3 month period, it is for the Ombudsman to decide (considering all relevant circumstances, including any material from the JFSC that is relevant to the type of business), whether a reasonable opportunity has elapsed.

The complaint to the OFSO is too late if it comes after the general time-limit of 6 years from the act or omission complained of (or 2 years after the complainant could be expected to become aware of the basis for complaint if later, and in either case discounting any period in which the complainant was under a disability). However,

this time-limit will be abbreviated if the respondent follows an internal complaints procedure (whether imposed by the JFSC or taken up voluntarily) that meets the conditions in *Article 11(7)*. Those conditions are that the procedure requires investigation and an attempt at resolution, and that within 3 months of receiving the complaint the respondent notifies the complainant in writing of the outcome, of the right to go to the OFSO and of the time-limits for doing so. If the conditions are met then the time-limit is reduced to 6 months from the written notification. The OFSO can publish a model complaints procedure for these purposes (but cannot require any financial services provider to adopt it). The Ombudsman can extend the time-limits in exceptional cases. The Minister may by Order amend the time-limits or the conditions.

*Part 4* deals with the handling of complaints by the OFSO.

*Article 12* provides for the initial handling of complaints referred. Staff of the OFSO (who may be case-workers rather than Ombudsmen as such, but not board members – see *Article 14* and *paragraph 8* of *Schedule 1* below) must examine the complaint and reject it if it is not eligible under *Part 3*. The complaint may also be rejected, on initial examination by OFSO staff under the OFSO’s published policy, if there are compelling reasons why it is inappropriate to be dealt with by the OFSO. Those reasons are not limited, but *Article 12(3)* lists possible examples, including where there is no real prospect of success, where the complaint has already been dealt by the OFSO or a court or other scheme or by a fair offer from the respondent, where there is a more appropriate forum available such as a different scheme or a court, or where the complaint is really about employment matters, investment performance, commercial judgment, or discretionary action under a trust. The Minister may by Order, on the OFSO’s recommendation, limit the reasons for rejection, to align them with European standards, with Guernsey’s scheme, or with any other jurisdiction’s scheme or other international standard.

*Article 13* provides for the subsequent handling of a complaint that is not rejected. The Principal Ombudsman must supervise it or secure that it is allocated to another Ombudsman to supervise. It must be investigated (by the Ombudsman or another case-worker, but not a board member), but need not necessarily be determined and can instead be resolved by mediation, referral or other means. The supervising Ombudsman must handle the complaint as he or she sees fit with a view to the general functions set out in *Article 3*, and particularly to clarify the issues and avoid formality or any need for legal representation. Both the respondent and complainant must assist the Ombudsman in doing so.

Both parties must be able to see and comment on evidence, unless the Ombudsman is satisfied exceptional circumstances mean that information must be withheld from the complainant in order to preserve confidentiality and reach a fair determination. However, court rules on admissibility of evidence do not apply, and the Ombudsman is free to decide whether to have a hearing, whether to consider the complaint in private or public, and whether to give provisional views on issues and a preliminary draft of a determination (subject in all respects to ensuring that the human rights of the parties are not breached by the chosen procedure taken as a whole).

*Article 14* provides that determinations may only be made by an Ombudsman. But other staff (not board members) can perform other functions in relation to handling of complaints, including investigation, mediation and giving provisional views and inviting comment. Ombudsmen and other staff working on a complaint are entitled to do so free of any interference, other than by or at the direction of the supervising Ombudsman.

*Article 15* provides that determinations must be made by reference to what the Ombudsman believes is fair and reasonable in all the circumstances of the case. The Ombudsman must take account of relevant law, relevant material from the JFSC and other bodies, and the Ombudsman's view of relevant good industry practice at the time of the act or omission.

*Article 16* provides the Ombudsman with discretion to make money awards and directions on a determination, to achieve any result appearing fair and reasonable in all the circumstances. A money award can only cover financial loss and material distress or inconvenience, unless the Minister by Order specifies other kinds of compensatable loss, and the Order may cap amounts for non-financial loss. The total money award cannot exceed £150,000 (the Minister may vary that figure by Order), but the Ombudsman can recommend a respondent to pay more. The Ombudsman may also give a direction to the respondent to take steps, other than payment of money, in relation to the complainant. The Ombudsman is not limited, in making money awards or giving directions, to what could be ordered in court proceedings. Breach of directions can lead to an additional money award (but still subject to the maximum in total), and a money award can be enforced by the complainant as a civil debt (the OFSO can assist in recovery, if necessary to maintain respect for determinations in general). Information in a determination can be disclosed and made public (see *Article 21(2)(b)* below), so the Ombudsman must warn the complainant of this and, if requested by the complainant, must provide in the determination for redaction of the complainant's identity from disclosed copies (the Ombudsman can also exceptionally require redaction of other information to preserve privacy).

*Article 17* allows the Ombudsman to award costs, but only where there has been improper or unreasonable conduct or delay that caused additional expense or deployment of resources. A costs award can be made against a respondent in favour of the complainant or of the OFSO. But a costs award can only be made against a complainant in favour of the OFSO, and not in favour of the respondent.

*Article 18* provides that if a complaint is determined the Ombudsman must give both parties a written statement of the determination, with reasons. The statement must also include details of how the complainant can make the determination binding (on both the complainant and the respondent) by accepting it within the time specified in the statement. If the complainant rejects the determination, or fails to accept it in time, then it remains non-binding (but the Ombudsman can allow the complainant to accept late, for compelling reasons and after inviting representations from the respondent). There is no appeal against a binding determination, and no legal proceedings can be taken or continued by either party over the subject of the complaint after a binding determination. The Ombudsman must notify both parties if the determination becomes binding (or when the time passes for it to do so).

*Part 5* deals with information.

*Article 19* enables the Ombudsman to require parties to a complaint to produce documents, or provide information, likely to be useful to the handling of the complaint. A respondent failing to produce a required document, without reasonable excuse, commits an offence for which a court may impose an unlimited fine. If the complainant fails to produce a required document, or either party fails to provide required information, the Ombudsman can rely on that contravention in determining any relevant issue (and can dismiss the complaint).

It is also an offence, carrying imprisonment for up to 2 years or an unlimited fine or both, for a person to provide information to the OFSO if the person knows that it is materially false and intends it to be used in the handling of a complaint. Offences under this Article can only be prosecuted by or with the consent of the Attorney-General.

*Article 20* provides for the JFSC to provide information on financial service providers to the OFSO, for the OFSO to use in calculating and raising levies. The information is limited to what the JFSC already holds through its own functions, and can be supplied in its original format and without separating it from other information with which it is kept.

*Article 21* provides for restricted information and permitted disclosure. Information about a person's business or other affairs, received for purposes of handling complaints or processing case-fees or levies, is restricted information and cannot be disclosed without consent (such disclosure is an offence carrying up to 2 years imprisonment or an unlimited fine or both, and a person can only be prosecuted by or with the consent of the Attorney-General). However the information is not restricted if it has already been made public, or is disclosed in a public hearing of the complaint, or is contained in a determination (subject to any requirement for redaction of the complainant's identity – see *Article 16* above). Nor does the Article apply to information in an anonymised collection. Exceptions are provided for information disclosed to assist the discharge of the functions of the OFSO and other relevant bodies including the JFSC and overseas Ombudsmen (which would also apply to any Guernsey scheme). The States are given power to amend these provisions by Regulations.

*Article 22* clarifies that the OFSO has power to provide non-restricted information for various purposes including education and cooperation with the JFSC.

*Part 6* deals with miscellaneous matters.

*Article 23* requires the OFSO and the JFSC to co-operate, as far as each considers appropriate. The OFSO must publish a memorandum of how the 2 bodies intend to co-operate.

*Article 24* makes the usual provision for criminal liability of directors and similar officers for offences committed by corporations and similar bodies.

*Article 25* contains consequential and related amendments. The States may make Regulations for such purposes. The Article also amends the Data Protection (Jersey) Law 2005 and the JFSC's regulatory Laws to ensure that information can be disclosed to the OFSO by others as well as being disclosed by it.

*Article 26* makes the usual provision for Orders and Regulations.

*Article 27* provides for the citation and commencement of the Law. The administrative provisions of the Law would come into force on being registered by the Royal Court, but the provisions on referral and handling of complaints would only come into force on a day or days appointed by an Act of the States.

*Schedule 1* provides for the constitution of the OFSO, including the appointment (with the involvement of the Appointments Commission and notice to the States) and cessation of office of board members, Chairman and Deputy Chairman, and their remuneration and expenses, for procedure at meetings and for disclosure of interests and criminal charges. Provision is also made for ancillary functions, for the OFSO's



seal and for limitation of liability. *Paragraph 8* provides general powers to delegate functions to committees and staff, where not reserved to an Ombudsman or the Principal Ombudsman. *Paragraph 11* provides for the independence of the OFSO and the Ombudsmen from the Minister and the States. However, *paragraph 12* allows the Minister to give directions and guidance to the OFSO on certain matters (only if the OFSO's independence will not be compromised).

*Schedule 2* provides for the finances of the OFSO. Its annual accounts must be independently audited and then submitted to the Minister for laying before the States with the annual report. It must budget annually to raise enough funds, particularly through case-fees and levies, while maintaining independence from its funders. The States are given broad powers to make Regulations to provide for case-fees to be payable by respondents, and levies to be payable by financial service providers. The Regulations can empower the OFSO to publish its schemes for the case-fees and levies. Levies can be imposed on some classes of financial service provider (particularly those that already have to register with the JFSC), while leaving others to choose whether to opt in to levies or instead pay higher levels of case-fees (or other incentives can be provided).

*Schedule 3* defines "relevant pension business" and *Schedule 4* defines "relevant credit business", to cover areas that are not as such subject to regulation by the JFSC but will be subject to the Ombudsman scheme. Both definitions are for the purpose of determining what is a relevant financial services business under *Article 9* (see above), and they are therefore drawn widely in anticipation of exemptions being provided by the Minister by Order under *Article 9(4)* (as described above).





Jersey

## DRAFT FINANCIAL SERVICES OMBUDSMAN (JERSEY) LAW 201-

### Arrangement

---

#### Article

<b>PART 1</b>		<b>31</b>
<hr/>		
	INTERPRETATION	31
1	Interpretation .....	31
<b>PART 2</b>		<b>32</b>
<hr/>		
	ESTABLISHMENT AND FUNCTIONS OF OFSO	32
2	Establishment of OFSO.....	32
3	General functions of OFSO.....	32
4	Appointment of Principal Ombudsman and other staff of OFSO .....	33
5	Designation of Ombudsmen.....	34
6	Arrangements with Guernsey and adaptation to European standards .....	34
<b>PART 3</b>		<b>36</b>
<hr/>		
	REFERRAL OF COMPLAINTS TO OFSO	36
7	Eligible complaint .....	36
8	Eligible complainant .....	36
9	Relevant financial services business .....	40
10	Respondents .....	41
11	Timing conditions .....	42
<b>PART 4</b>		<b>44</b>
<hr/>		
	HANDLING OF COMPLAINTS BY OFSO	44
12	Initial handling of complaints referred.....	44
13	Complaint to be handled as Ombudsman sees fit.....	46
14	Allocation of functions in relation to handling of complaints.....	47
15	Determination.....	48
16	Awards and directions.....	48
17	Costs.....	50

18	Notification and finality of determinations.....	51
----	--	----

---

**PART 5** **52**


---

**INFORMATION** 52

19	Powers to obtain documents and information.....	52
20	Financial Services Commission to provide information for levy .....	53
21	Restricted information and permitted disclosure .....	54
22	Provision of general information by OFSO .....	55

---

**PART 6** **56**


---

**MISCELLANEOUS AND FINAL** 56

23	Co-operation between OFSO and Commission.....	56
24	Criminal liability of directors and similar officers.....	56
25	Consequential and related amendments.....	56
26	Orders and Regulations.....	58
27	Citation and commencement.....	58

---

**SCHEDULE 1** **60**


---

**CONSTITUTION OF OFSO** 60

1	Appointment of board members .....	60
2	Appointment of Chairman and designation of Deputy Chairman .....	61
3	Remuneration and expenses of board members.....	62
4	Cessation of office as board member .....	62
5	Cessation of office as Chairman .....	63
6	Procedure at meetings .....	64
7	Disclosure of interest and criminal charges .....	64
8	Committees and delegation.....	65
9	Ancillary functions.....	65
10	Seal.....	66
11	Independence from Minister and States.....	66
12	Directions and guidance from Minister .....	66
13	Limitation of liability.....	67

---

**SCHEDULE 2** **68**


---

**FINANCES OF OFSO** 68

1	Accounts, audit and reports.....	68
2	Budget.....	68
3	Case-fees.....	69
4	Levies.....	70
5	Other fees, donations and borrowing .....	71
6	Reserve and investment .....	71
7	Exemption from income tax.....	71

---

**SCHEDULE 3** **72**


---

**RELEVANT PENSION BUSINESS** 72


---

1	Relevant pension business defined.....	72
2	Pension scheme .....	72

#### **SCHEDULE 4** **73**

---

##### RELEVANT CREDIT BUSINESS 73

1	Relevant credit business defined .....	73
2	Credit.....	73
3	Credit agreement .....	73
4	Credit reference agency business .....	73
5	Debt-adjusting .....	74
6	Debt-counselling .....	74
7	Debt-collecting .....	74
8	Debt administration .....	74





Jersey

## DRAFT FINANCIAL SERVICES OMBUDSMAN (JERSEY) LAW 201-

**A LAW** to establish a Financial Services Ombudsman and for related purposes

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### PART 1

#### INTERPRETATION

##### 1 Interpretation

In this Law, unless the context otherwise requires –

“board” means the board of the OFSO, established by Article 2(2);

“Commission” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998<sup>1</sup>;

“committee” means a committee authorized under paragraph 8(1) of Schedule 1;

“complainant” has the meaning given by Article 7;

“financial service provider” means a person carrying on relevant financial services business;

“Minister” means the Minister for Economic Development;

“OSFO” means the Office of the Financial Services Ombudsman established by Article 2;

“Ombudsman” means a person designated as such under Article 5(1)(b), and includes the Principal Ombudsman;

“Principal Ombudsman” means the person appointed as such under Article 4(1);

“publish”, in relation to publication of a matter by the OFSO, means publish the matter in a manner appearing to the OFSO to be likely to bring the matter to the attention of those affected by it;

“relevant financial services business” has the meaning given by Article 9;

“respondent” means a person against whom a complaint may be entertained by virtue of Article 10;

“staff” has the meaning given by Article 4(3).

## **PART 2**

### **ESTABLISHMENT AND FUNCTIONS OF OFSO**

#### **2 Establishment of OFSO**

- (1) There is to be a body corporate to be known as the Office of the Financial Services Ombudsman (“OFSO”).
- (2) The OFSO is to have a board, whose members are the OFSO’s directors, consisting of –
  - (a) a Chairman; and
  - (b) at least 2, and no more than 4, other members.
- (3) Schedule 1 makes further provision in relation to the constitution of the OFSO.
- (4) Schedule 2 makes provision in relation to the finances of the OFSO.
- (5) The States may by Regulations amend –
  - (a) paragraph (2)(b), to alter the minimum or maximum number of members;
  - (b) Schedule 1, other than paragraph 11.

#### **3 General functions of OFSO**

- (1) The primary function of the OFSO is to administer the operation of this Law to secure that complaints about financial services are resolved –
  - (a) independently, and in a fair and reasonable manner;
  - (b) effectively, quickly, with minimum formality, and so as to offer an alternative to court proceedings that is more accessible for complainants; and
  - (c) by the most appropriate means, whether by mediation, referral to another forum, determination by an Ombudsman or in any other manner.



- 
- (2) The OFSO has in addition any other function conferred on or transferred to it under this Law or any other enactment.
  - (3) The States may by Regulations –
    - (a) transfer to the OFSO any function under any other enactment, to the extent that the function relates to complaints about financial services; and
    - (b) amend this Law or any other enactment in order to give effect to any transfer of functions to the OFSO under sub-paragraph (a).
  - (4) The board of the OFSO must, in carrying out its functions, seek to protect the independence of the OFSO, including in particular the independence of the Ombudsmen, from –
    - (a) the States of Jersey, and in particular the Minister (subject to paragraph (5)(b));
    - (b) persons providing funding for the OFSO;
    - (c) financial service providers;
    - (d) persons who use the services of financial service providers;
    - (e) the Commission; and
    - (f) any other influence that might compromise its independence.
  - (5) Paragraph (4) does not require the board to protect the independence of the OFSO from –
    - (a) any corresponding body in Guernsey, if there is an arrangement described in Article 6(1);
    - (b) the Minister, to the extent that the Minister is exercising his or her power under paragraph 12 of Schedule 1 or under any other provision of this Law.

#### **4 Appointment of Principal Ombudsman and other staff of OFSO**

- (1) The board of the OFSO must appoint as the Principal Ombudsman, for a period of at least 5 years, a person appearing to the board to have the appropriate qualifications and experience to perform the functions of the Principal Ombudsman under this Law.
- (2) The appointment of the Principal Ombudsman is to be on such terms (including terms as to the early termination of his or her appointment and as to remuneration) as the board considers –
  - (a) promote the independence of the Principal Ombudsman; and
  - (b) are otherwise appropriate.
- (3) The OFSO –
  - (a) must secure the availability of a sufficient number of other suitable persons (“staff”) to perform its functions from time to time; and
  - (b) may do so in any way it considers appropriate, including without limitation –
    - (i) by appointing employees,

- 
- (ii) by appointing agents, on the terms that it thinks fit as to the remuneration and expenses of those agents,
    - (iii) by establishing panels of self-employed persons who may be contracted on particular occasions, and
    - (iv) by contracting or otherwise arranging with another person to provide staff on any basis.
  - (4) The OFSO may not enter into or offer to enter into a contract of employment with a person who was a board member immediately before that contract is entered into or offered.
  - (5) In respect of its employees the OFSO may, as it thinks fit –
    - (a) determine terms as to remuneration, expenses, pensions and other conditions of service; and
    - (b) establish and maintain schemes, or make any other arrangements, for the payment of pensions and other benefits.

## **5 Designation of Ombudsmen**

- (1) The board of the OFSO must –
  - (a) secure that, among its staff, there is a sufficient number of persons who appear to the Principal Ombudsman to have the appropriate qualifications and experience to perform the functions of an Ombudsman under this Law; and
  - (b) designate those staff members as Ombudsmen for the purpose of this Law.
- (2) The appointment of a person who is designated as an Ombudsman is to be on such terms (including terms as to the duration and termination of his or her designation and as to remuneration) as the board considers –
  - (a) promote the independence of the Ombudsman; and
  - (b) are otherwise appropriate.

## **6 Arrangements with Guernsey and adaptation to European standards**

- (1) Paragraph (2) applies if an arrangement is entered into by the Minister, after consulting the OFSO, with the States of Guernsey for any or all of the following –
  - (a) sharing resources or staff for the purposes of any function under this Law and of any similar function under a corresponding Ombudsman scheme in Guernsey;
  - (b) aligning any aspect of the procedures, policies, eligibility criteria or other elements of the Ombudsman schemes of the jurisdictions;
  - (c) any other form of cooperation between the separate Ombudsman schemes of the jurisdictions; and
  - (d) combining the Ombudsman schemes of the jurisdictions into a single scheme similar to the scheme under this Law.

- 
- (2) The States may by Regulations make such provision as they consider necessary or expedient to give effect to that arrangement, and that provision may, without limitation, include –
- (a) provision for conferring functions on the OFSO in relation to the Guernsey scheme, or for transferring functions of the OFSO to the corresponding body under the Guernsey scheme;
  - (b) provision for uniting the finances of the schemes, or for allocating between the jurisdictions the expenses of the schemes or the powers to raise income for the schemes;
  - (c) provision for transferring, wholly or partly, the employment of any employee of OFSO (including the Principal Ombudsman) to the corresponding body under the Guernsey scheme, or for reducing the hours and pay of such an employee when that employee is to be offered similar work under the Guernsey scheme;
  - (d) provision for sharing of information between the schemes of each jurisdiction; and
  - (e) provision made by amendment of any provision of this Law except this Article and Parts 5 and 6.
- (3) In the case of an arrangement described in paragraph (1)(d), Regulations under paragraph (2) may, without limitation, include –
- (a) provision for merging the OFSO with the corresponding body under the Guernsey scheme;
  - (b) provision for transferring all of the functions of the OFSO to the corresponding body under the Guernsey scheme, and for abolishing the OFSO following the transfer.
- (4) Nothing in paragraph (2) or (3) is to be read as –
- (a) requiring provision to be made by way of Regulations under this Article, if that provision can instead be made –
    - (i) by an arrangement described in paragraph (1) without any enactment,
    - (ii) by Regulations or an Order under any other provision of this Law, or
    - (iii) by any other means;
  - (b) preventing –
    - (i) a board member, an Ombudsman, or any or all of the other staff of the OFSO, from accepting appointment to a corresponding position under the Guernsey scheme, or
    - (ii) a person appointed to any position under the Guernsey scheme from being appointed to a corresponding position under this Law; or
  - (c) limiting the terms on which any appointment of such a person may be made.
- (5) The States may by Regulations make such amendment to this Law as they consider expedient to give effect, in relation to this Law, to any provision of –

- (a) Regulation (EU) No. 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (OJ L 165/1, 18.6.2013)<sup>2</sup>;
  - (b) Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (OJ L 165/63, 18.6.2013)<sup>3</sup>;
  - (c) Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136/3, 24.5.2008)<sup>4</sup>;
  - (d) Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (OJ L 115/31, 17.4.1998)<sup>5</sup>;
  - (e) Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (OJ L 109/56, 19.4.2001)<sup>6</sup>;
  - (f) any other Community instrument, within the meaning of the European Communities (Jersey) Law 1973<sup>7</sup>, appearing to the States to be relevant to the functions of the OFSO.
- (6) This Article is without prejudice to any other power to amend this Law –
- (a) under any other provision of this Law, including Article 12(8); or
  - (b) under Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996<sup>8</sup>.

### **PART 3**

#### **REFERRAL OF COMPLAINTS TO OFSO**

##### **7 Eligible complaint**

A complaint may be referred to the OFSO if –

- (a) the person (“the complainant”) making the complaint, or on whose behalf the complaint is made, is an eligible complainant;
- (b) the complaint relates to an act by another person, being an act that occurred in the course of relevant financial services business carried on, in or from within Jersey, by that other person; and
- (c) the timing conditions, set out in Article 11, are satisfied.

##### **8 Eligible complainant**

(1) In this Article –

“relevant act”, in relation to a complainant, means the act that is the subject of the complainant’s complaint;

“relevant business” means the relevant financial services business in the course of which the relevant act occurred;

“relevant provider” means the person whose act was the relevant act (being the person carrying on the relevant business at the time of that act, whether or not that person is or was a financial services provider at any other time).

- (2) A complainant is eligible if the complainant –
  - (a) was, at the time of the relevant act, a person falling within any of the categories described in paragraph (3);
  - (b) is not, and was not at the time of the relevant act, a financial service provider; and
  - (c) at the time of the relevant act, had the relationship required by paragraph (6) to the relevant provider in respect of the relevant act.
- (3) The categories referred to in paragraph (2)(a) are –
  - (a) an individual who, in relation to the relevant provider and the relevant act, is acting for purposes other than his or her trade, business or profession;
  - (b) a microenterprise, within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124/36, 20.5.2003)<sup>9</sup>, as amended from time to time;
  - (c) any other category that –
    - (i) relates to charities, trusts, foundations or other bodies,
    - (ii) appears to the Minister to be appropriate for this purpose, subject to paragraph (5), and
    - (iii) is specified for this purpose by the Minister by Order on the recommendation of the OFSO.
- (4) The Minister may by Order, on the recommendation of the OFSO, amend paragraph (3)(a) or (b) to exclude any description of individual or microenterprise appearing to the Minister to be likely to have resources, expertise or other characteristics rendering it reasonable to expect that description of individual or microenterprise to use other means than the OFSO to resolve complaints.
- (5) In making an Order under paragraph (3)(c) the Minister must take particular account of –
  - (a) the desirability of ensuring that the services of the OFSO are primarily available to persons appearing to the Minister to be likely to lack resources, expertise or other characteristics that would render it reasonable to expect those persons to use other means than the OFSO to resolve complaints;
  - (b) if there is an arrangement described in Article 6(1), the desirability of aligning the scheme under this Law with the corresponding Guernsey scheme.
- (6) The required relationship for the purpose of paragraph (2)(c) is –
  - (a) as a client of the relevant provider, being a person –
    - (i) with whom the relevant provider transacts or has transacted relevant financial services business, or

- 
- (ii) to whom the relevant provider gives or has given advice about such business;
  - (b) as a person attempting to become a client of the relevant provider; or
  - (c) any other relationship, appearing to the person examining the complaint under Article 12(1)(a) to be sufficiently close to give appropriate standing for the services of the OFSO to be available to the complainant, taking account of the guidelines published under paragraph (14).
- (7) The Principal Ombudsman must determine, and keep under review, guidelines for use under paragraph (6)(c) by persons examining complaints under Article 12(1)(a).
- (8) The guidelines may make provision in respect of any relationship that a complainant might have to the relevant provider in respect of the relevant act, but must include provision in respect of a relationship that a complainant has –
- (a) as a participant, or a person on whose behalf another person is a participant, in a collective investment fund in respect of which the relevant provider carries on the relevant business;
  - (b) as a person to or in respect of whom benefits are to be provided under a pension scheme in respect of which the relevant provider carries on the relevant business;
  - (c) as a person for whose benefit a contract of insurance was taken out or was intended to be taken out, or who has a right to benefit from a claim under a contract of insurance, being a contract in respect of which the relevant provider carries on the relevant business;
  - (d) as a person who relies in the course of business on a cheque guarantee card issued by the relevant provider by way of the relevant business;
  - (e) as the true owner, or person entitled to immediate possession, of a cheque or other instrument to which Article 5 of the Cheques (Jersey) Law 1957<sup>10</sup> applies, or of the funds it represents, collected by way of the relevant business by the relevant provider for the account of another person;
  - (f) as a person who receives a banker's reference given by the relevant provider by way of the relevant business;
  - (g) as a person who gives the relevant provider a guarantee or security in relation to any credit provided by that provider by way of relevant business falling within Article 9(1)(i);
  - (h) as a person in relation to whose financial standing the relevant provider holds information by way of by way of relevant business falling within Article 9(1)(i);
  - (i) as a person who attempts to enter a relationship falling within any of sub-paragraphs (a) to (h);
  - (j) as a person against whom the relevant provider takes, or attempts to take, steps the taking of which constitute relevant business falling within Article 9(1)(i).

- 
- (9) The provision that may be made in the guidelines includes provision that a relationship (whether or not one of the relationships mentioned in paragraph (8)) –
- (a) is generally to be treated as sufficiently close to justify eligibility;
  - (b) is generally to be treated as not being sufficiently close to justify eligibility; or
  - (c) is to be assessed taking into account factors specified in the guidelines.
- (10) The Minister may by Order, after consulting the OFSO and the persons mentioned in paragraph (13)(a) to (d) –
- (a) amend any of paragraphs (8)(a) to (j) or add further sub-paragraphs to paragraph (8);
  - (b) make such provision as is mentioned in paragraph (9) in relation to a relationship mentioned in paragraph (8).
- (11) Before making a recommendation to the Minister under paragraph (3)(c)(iii) or (4) the OFSO must consult –
- (a) such persons as the Minister may specify by notice to the OFSO; and
  - (b) any other person appearing to the OFSO to be appropriate.
- (12) Before determining any new guideline or any substantial amendment to a guideline, the Principal Ombudsman must consult –
- (a) the Minister;
  - (b) such persons as the Minister may specify by notice to the OFSO;
  - (c) any other persons appearing to the Principal Ombudsman to be appropriate.
- (13) The Minister must specify, for the purposes of paragraphs (11)(a) and (12)(b) –
- (a) if there is an arrangement described in Article 6(1), the person appearing to the Minister to be appropriate in relation to the corresponding Guernsey scheme;
  - (b) any body appearing to the Minister to be representative of the interests of all or any of the persons who may be eligible complainants as a result of the proposed Order or guideline;
  - (c) any body appearing to the Minister to be representative of the interests of all or any of any persons who are more likely to be respondents as a result of the proposed Order or guideline; and
  - (d) any other persons appearing to the Minister to be appropriate.
- (14) The OFSO must publish the guidelines, specifying a date after the publication on which any new or amended guideline is to come into effect.
- (15) In carrying out their functions under paragraphs (6)(c) and (7), the person examining a complaint under Article 12(1)(a) and the Principal Ombudsman must take particular account –

- (a) of the principle that the services of the OFSO should be available for complaints where the relationship is sufficiently close, or of such a nature, as to mean –
    - (i) that acts of the relevant provider are likely to have effects on the interests of persons having that relationship to the relevant provider, and
    - (ii) that it is fair and reasonable to expect the relevant provider to accept responsibility for the effect of those acts on those interests; and
  - (b) if there is an arrangement described in Article 6(1), of the desirability of aligning the scheme under this Law with the corresponding Guernsey scheme.
- (16) It is irrelevant for the purposes of this Article whether the complainant has any or no connection with Jersey (other than through the required relationship in respect of the relevant business that was carried on, as required by Article 7(b), in or from within Jersey).

## **9 Relevant financial services business**

- (1) Relevant financial services business is business, other than business exempted under paragraph (4), that is any one or more of the following –
- (a) financial service business within the meaning of the Financial Services (Jersey) Law 1998<sup>11</sup>;
  - (b) the business of an AIF, of an AIFM or of a service provider, as each of those terms is defined by the Alternative Investment Funds (Jersey) Regulations 2012<sup>12</sup>;
  - (c) deposit-taking business within the meaning of the Banking Business (Jersey) Law 1991<sup>13</sup>;
  - (d) the business of a collective investment fund, within the meaning of the Collective Investment Funds (Jersey) Law 1988<sup>14</sup>, or of a functionary within the meaning of that Law;
  - (e) insurance business for the purposes of the Insurance Business (Jersey) Law 1996<sup>15</sup>;
  - (f) business that would fall within any of sub-paragraphs (a) to (e) but for an exemption or exclusion conferred by or under any of the Laws or Regulations mentioned in those sub-paragraphs;
  - (g) business that –
    - (i) falls within paragraph 7 of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999<sup>16</sup>, and
    - (ii) is specified Schedule 2 business, within the meaning of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>17</sup>, in respect of which Article 10 of that Law requires the person carrying on the business to be a registered person within the meaning of that Law;
  - (h) relevant pension business, within the meaning of Schedule 3;
  - (i) relevant credit business, within the meaning of Schedule 4; or
  - (j) relevant ancillary business, within the meaning of paragraph (2).



- 
- (2) Relevant ancillary business is business ancillary to any other business falling within any of paragraphs (1)(a) to (i) (the “main business”), if –
    - (a) the main business is carried on in relation to the complainant by the same person as the ancillary business; or
    - (b) the ancillary business consists of –
      - (i) introducing, directly or by one or more intermediaries, persons who seek services, the provision of which constitutes the main business, to other persons who carry on that business, or
      - (ii) giving advice with a view to making such introductions.
  - (3) Business that may be ancillary for the purpose of paragraph (2) includes, without limitation –
    - (a) current account services;
    - (b) the provision and operation of automated teller machines;
    - (c) financial advice about the main business;
    - (d) designing or establishing financial schemes or arrangements that require the provision of a service by way of the main business.
  - (4) The Minister must by Order exempt classes of business, to the extent that they would otherwise be relevant financial services business, in relation to which the Minister considers that it is not appropriate for the services of the OFSO to be available.
  - (5) In making an Order under paragraph (4) the Minister must take particular account of –
    - (a) the matters described in Article 8(5); and
    - (b) any likely impact on respondents carrying on any class of business that may be carried on without being registered, or holding a permit or certificate, under any of the Laws or Regulations mentioned in paragraphs (1)(a) to (e).
  - (6) Before exercising the power under paragraph (4) the Minister must consult –
    - (a) the OFSO;
    - (b) the Commission;
    - (c) if there is an arrangement described in Article 6(1), the person appearing to the Minister to be responsible for the corresponding scheme in Guernsey;
    - (d) any body that the Minister believes is representative of the interests of all or any of those who would be affected by the proposed Order; and
    - (e) such other persons as appear to the Minister to be appropriate.

## 10 Respondents

- (1) In this Article “relevant provider” and “relevant act” have the meanings given by Article 8(1).

- 
- (2) A complaint may be entertained by the OFSO against any one or more of –
- (a) the relevant provider (irrespective of whether that person is still a financial service provider when the complaint is referred to the OFSO);
  - (b) another person who, when the complaint is referred to the OFSO –
    - (i) has any liability in relation to the relevant act, being a liability that was transferred, after the commencement of this Part, to the person from the relevant provider, and
    - (ii) is carrying on relevant financial services business (whether or not the same business as that to which the complaint relates) in or from within Jersey; and
  - (c) a person, not falling within sub-paragraph (a) or (b), who is designated under paragraph (3).
- (3) An Ombudsman may, by notice in writing given to a person, designate that person (the “successor”) as a respondent in relation to a complaint referred to the OFSO, whether in addition to or in substitution for a person falling within paragraph (2)(a) or (b), if –
- (a) any business, asset or liability (in relation to the relevant act or to any other matter) of the relevant provider was transferred, after the commencement of this Part and before the complaint is referred to the OFSO, to the successor from the relevant provider;
  - (b) the relevant provider no longer exists when the complaint is referred to the OFSO, or in the opinion of the Ombudsman substantial prejudice is likely to be caused to the complainant if the relevant provider is treated as the only respondent;
  - (c) when the complaint is referred to the OFSO, the successor is carrying on relevant financial services business (irrespective of where it is carried on and whether it is the same business as that to which the complaint relates); and
  - (d) in the opinion of the Ombudsman, after inviting and considering objections from the successor, it is fair and reasonable in all the circumstances of the case to treat the successor as answerable for the relevant act in any respect (and whether jointly with any other person or otherwise).
- (4) For the purposes of paragraphs (2)(b)(i) and (3)(a) the transfer –
- (a) may be direct, or through any other person or persons and through any number of transactions; and
  - (b) may be by agreement of the relevant provider (with the successor or any other person), by operation of law, as part of the winding up of the relevant provider, or in any other manner.

## 11 Timing conditions

- (1) The timing conditions are that –
- (a) the act to which the complaint relates occurred on or after 1st January 2010;

- 
- (b) the complaint is not referred to the OFSO before the complainant has, in the opinion of an Ombudsman, given the respondent a reasonable opportunity to deal with it; and
    - (c) the complaint is referred to the OFSO on or before the expiry of the relevant time-limit, as determined under paragraphs (4) to (8).
  - (2) For the purpose of paragraph (1)(b), the Ombudsman must consider all the relevant circumstances (including any relevant direction, code of practice, guidance, or other rule or standard, issued by or on behalf of the Commission), but must not treat a reasonable opportunity as extending beyond –
    - (a) 3 months after the date on which, in the opinion of the Ombudsman, the respondent first had sufficient information to be able to start to investigate the complaint; or
    - (b) if sooner, the date on which the respondent notifies the complainant that the respondent will take no further action on the complaint for any reason.
  - (3) An Ombudsman may treat the timing condition in paragraph (1)(b) as satisfied if, in the opinion of the Ombudsman, there is some exceptional reason justifying the investigation of the complaint by the OFSO without the respondent having a reasonable opportunity to deal with it.
  - (4) For the purpose of paragraph (1)(c) the relevant time-limit is –
    - (a) if the abbreviated time-limit applies, that time-limit;
    - (b) if the abbreviated time-limit does not apply, the general time-limit.
  - (5) The general time-limit is the period ending whichever is the later of –
    - (a) 6 years after the act to which the complaint relates; and
    - (b) 2 years after the complainant could reasonably have been expected to become aware that he or she had a reason to complain in relation to the act complained of.
  - (6) The abbreviated time-limit –
    - (a) is the period ending 6 months after the first day on which all of the internal procedure conditions are met; and
    - (b) applies if –
      - (i) all of the internal procedure conditions are met, and
      - (ii) the general time-limit has not expired when the abbreviated time-limit expires.
  - (7) The internal procedure conditions are –
    - (a) that the respondent has established a procedure for handling complaints in relation to the relevant financial services business to which the complaint relates;
    - (b) that the procedure conforms to a model procedure published by the OFSO, or otherwise requires the respondent to investigate the complaint, to attempt to resolve it and to notify the complainant of the result;

- (c) that the respondent notifies the complainant in writing that the respondent has applied the procedure to the complaint and regards the procedure as exhausted;
  - (d) that that notification is given within 3 months after the date on which, in the opinion of the Ombudsman, the respondent first had sufficient information to be able to start to investigate the complaint; and
  - (e) that the respondent, on notifying the complainant under subparagraph (c), informs or reminds the complainant in writing –
    - (i) of the complainant’s right to refer the complaint to the OFSO, giving details of a means by which the OFSO may be contacted,
    - (ii) of the effect of the abbreviated time-limit, specifying the date on which it expires, and
    - (iii) if the respondent has reason to believe that the general time-limit may expire before the abbreviated time-limit, of the need for the complainant to check the general time-limit.
- (8) An Ombudsman may –
- (a) treat the general or abbreviated time-limit as suspended during any period throughout which, in the opinion of the Ombudsman, the complainant could not reasonably be expected to pursue the complaint for any reason relating –
    - (i) the complainant being a minor,
    - (ii) the complainant’s lack of mental capacity,
    - (iii) some other impediment affecting the complainant and justifying the suspension in all the circumstances;
  - (b) treat the timing condition in paragraph (1)(c) as satisfied if, in the opinion of the Ombudsman, there is some other exceptional reason justifying the investigation of the complaint by the OFSO despite the expiry of the relevant time-limit.
- (9) The Minister may, on the recommendation of the OFSO, by Order –
- (a) amend paragraph (6)(a) to extend or reduce the period of the abbreviated time-limit;
  - (b) amend the internal procedure conditions in paragraph (7).

## **PART 4**

### **HANDLING OF COMPLAINTS BY OFSO**

#### **12 Initial handling of complaints referred**

- (1) When a complaint is referred to the OFSO, the OFSO must –
  - (a) examine whether the complaint is one which may be so referred under Part 3; and
  - (b) if it is not, reject it.

- 
- (2) If the complaint is one that may be referred to the OFSO, the OFSO may –
- (a) examine whether there are compelling reasons why it is inappropriate for the complaint to be dealt with by the OFSO; and
  - (b) if there are, reject it.
- (3) Without prejudice to the generality of paragraph (2)(a), the reasons referred to in that sub-paragraph include (subject to whether the reason is compelling in the particular case) that –
- (a) the complaint has no real prospect of success, such as where –
    - (i) the complaint is frivolous or vexatious,
    - (ii) the complainant has not suffered, and is unlikely to suffer, compensatable loss, within the meaning of Article 16(3), or
    - (iii) the complaint is evidently misconceived even on the complainant's version of the facts;
  - (b) the subject matter of the complaint has already been appropriately dealt with, such as where –
    - (i) the respondent has already made an offer of compensation, or of a goodwill payment, that is still open for acceptance and is fair and reasonable in relation to the circumstances alleged by the complainant,
    - (ii) the subject matter of the complaint has previously been considered or rejected by the OFSO, and the complainant presents no evidence that is likely to affect the outcome and was unavailable to the complainant at the time of the previous consideration or rejection,
    - (iii) the subject matter of the complaint has been the subject of legal proceedings in which a final decision has been made, or
    - (iv) the subject matter of the complaint has been finally dealt with by an independent complaints scheme or dispute-resolution process that is comparable to the OFSO;
  - (c) there is a more appropriate forum available than the OFSO, such as where –
    - (i) the subject matter of the complaint is the subject of current legal proceedings, and those proceedings are not stayed for the purpose of enabling the matter to be referred to the OFSO,
    - (ii) the subject matter of the complaint is being dealt with by an independent complaints scheme or dispute-resolution process that is comparable to the OFSO,
    - (iii) the complaint cannot be determined without deciding on a significant doubtful point of law, and the need for resolution of that point by a court outweighs the benefits of the OFSO procedure, or
    - (iv) it would be more appropriate for the subject matter of the complaint to be dealt with by an arbitration scheme, or

- another complaints scheme or dispute-resolution process, that is comparable to the OFSO and to which the complainant can reasonably be expected to resort;
- (d) the subject matter of the complaint is inappropriate for the OFSO, such as where the complaint is about –
    - (i) employment matters, where the complainant is an employee or former employee of a respondent,
    - (ii) investment performance, as opposed to negligent selection or management of investments,
    - (iii) the legitimate exercise of the respondent’s commercial judgement, or
    - (iv) a decision by the respondent exercising a discretion under a will or trust, including any failure to consult the complainant before exercising such a discretion in a case where there is no legal obligation to consult; or
  - (e) it would be inappropriate to deal with the complaint in the circumstances, such as in the absence of consent from another potential complainant whose interests would be unreasonably prejudiced by proceeding without his or her consent.
- (4) Rejection under paragraph (1)(b) or (2)(b) is to be by notice in writing to the complainant and respondent, setting out the reasons for the rejection and any provision for review.
  - (5) Nothing in this Article prevents an Ombudsman determining a complaint in the respondent’s favour on grounds for which the complaint could have been rejected under this Article.
  - (6) The functions under paragraphs (1) to (4) must be delegated to an Ombudsman, or to another member of the OFSO’s staff, and must not be carried out by the board, a member of the board, a committee or a member of such a committee.
  - (7) The OFSO must publish its policy on –
    - (a) the factors that will be considered in deciding whether to reject complaints under this Article;
    - (b) the delegation of functions under paragraphs (1) to (4); and
    - (c) its arrangements for review of decisions to reject a complaint, if such a decision is delegated to a person other than an Ombudsman.
  - (8) The Minister may by Order, on the recommendation of the OFSO, amend any or all of paragraphs (2)(a) and (3)(a) to (e) to limit the reasons for which a complaint may be rejected, if it appears expedient to do so in order to align those reasons with any equivalent reasons in the law of any other jurisdiction or with any European or international standard relevant to Ombudsman schemes.

### **13 Complaint to be handled as Ombudsman sees fit**

- (1) If a complaint is not rejected under Article 12, the Principal Ombudsman must secure that it is allocated to an Ombudsman to supervise the

investigation of the complaint with a view to mediation, referral, determination or resolution by any other means.

- (2) The Ombudsman to whom the complaint is allocated must –
  - (a) handle the complaint in such manner as he or she considers most appropriate for the clarification of the issues and generally for the just handling of the complaint; and
  - (b) have regard to the primary function of the OFSO under Article 3(1), and in particular, so far as it appears to the Ombudsman appropriate to do so, seek to avoid –
    - (i) formality in handling the complaint, and
    - (ii) any need for legal representation for either party.
- (3) Subject to paragraphs (2) and (5), the Ombudsman may handle the complaint as he or she sees fit.
- (4) Without prejudice to the generality of paragraph (3), the Ombudsman –
  - (a) may make such enquiries of the complainant and respondent and of any other person as he or she considers appropriate;
  - (b) is not bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before courts;
  - (c) may consider all or any part of the complaint in public or in private and with or without a hearing;
  - (d) may at any stage indicate a provisional view on any issue and invite comment from both parties on that view;
  - (e) may invite comment from both parties on a preliminary draft of the determination, or may issue a determination without such a prior invitation, if the Ombudsman is satisfied that it is not necessary in the circumstances.
- (5) The Ombudsman must not take account of evidence in determining a complaint unless –
  - (a) both parties have had an opportunity to see and comment on the evidence; or
  - (b) the evidence has been disclosed to the respondent and not to the complainant, but the Ombudsman is satisfied in the exceptional circumstances of the case –
    - (i) that a fair determination cannot be made without taking account of that evidence, and
    - (ii) that it is necessary not to disclose that evidence to the complainant, in order to preserve the confidentiality of information revealed by that evidence.
- (6) The complainant and the respondent must assist the Ombudsman in the discharge of the Ombudsman's duties under paragraph (2).

#### **14 Allocation of functions in relation to handling of complaints**

- (1) Only an Ombudsman may make a determination of a complaint.

- 
- (2) The Ombudsman to whom the complaint is allocated may authorize any other of the OFSO's staff (not being a board member or committee member), to perform any other function in relation to a complaint, including but not limited to –
    - (a) investigation of the complaint;
    - (b) mediation of the complaint;
    - (c) taking a provisional view of an issue and inviting comment, as described in Article 13(4)(d).
  - (3) A person performing a function described in paragraph (1) or (2) in relation to a complaint is entitled to do so free from any interference from any other person, except the Ombudsman to whom the complaint is allocated or a person (other than a board member or committee member) who acts at the direction of that Ombudsman.

## **15 Determination**

- (1) An Ombudsman, when determining a complaint, must do so by reference to what is, in the opinion of the Ombudsman, fair and reasonable in all the circumstances of the case.
- (2) Without prejudice to the generality of paragraph (1), the Ombudsman, must take into particular account –
  - (a) the relevant law;
  - (b) any relevant direction, code of practice, guidance, or other rule or standard, issued by or on behalf of the Commission;
  - (c) any similar instrument issued by any other body if the Ombudsman considers it relevant to the complaint; and
  - (d) what the Ombudsman considers to have been relevant good industry practice at the time of the act to which the complaint relates.

## **16 Awards and directions**

- (1) If a complaint is determined in favour of the complainant, the determination may include –
  - (a) an award against the respondent of payment, in money or money's worth, of such amount ("a money award") as the Ombudsman considers –
    - (i) to represent compensation for compensatable loss as defined in paragraph (3), and
    - (ii) to be fair and reasonable in all the circumstances of the case;
  - (b) a direction that the respondent take such steps in relation to the complainant as the Ombudsman considers to be fair and reasonable in all the circumstances of the case.
- (2) For the purposes of a money award or a direction under paragraph (1) the Ombudsman –



- 
- (a) may include an amount or step even if a court could not order that amount to be paid or that step to be taken; and
  - (b) may seek –
    - (i) to put the complainant into the position that he, she or it would have been in but for the matter complained of,
    - (ii) to put the complainant into the position that he, she or it would have been in if the respondent had carried on its business fairly and reasonably in relation to the matter complained of, or
    - (iii) to achieve any other result appearing fair and reasonable to the Ombudsman in all the circumstances of the case.
  - (3) Compensatable loss is –
    - (a) financial loss;
    - (b) material distress or material inconvenience; or
    - (c) any other loss or damage of a kind specified by the Minister by Order,suffered by the complainant as a result of the act complained of.
  - (4) The Minister may by Order specify a maximum amount that may be included in a money award in respect of compensatable loss under paragraph (3)(b) or (c).
  - (5) The steps that may be included in a direction under paragraph (1)(b) do not include –
    - (a) the payment of money or money's worth; or
    - (b) any step the effect of which is to give the complainant a benefit that has a monetary value to the complainant that, if it had formed part of a money award, would have resulted in a contravention of paragraph (7).
  - (6) If the Ombudsman is satisfied that a respondent has failed to comply with a direction under paragraph (1)(b), the Ombudsman may add to the determination a money award in respect of that failure.
  - (7) The total money award in respect of a complaint may not exceed the monetary limit, being £150,000 or such other amount as may be specified by the Minister by Order.
  - (8) If the Ombudsman considers that fair compensation requires payment of an amount exceeding the monetary limit, the Ombudsman may recommend that the respondent pay the complainant the balance.
  - (9) A money award –
    - (a) may provide for the amount payable under the award to bear interest at a rate and as from a date specified in the award (but not so as to take the total over the limit in paragraph (7) on or before the time when the determination becomes binding); and
    - (b) is recoverable by the complainant as a debt due from the respondent.

- 
- (10) The OFSO may assist or act on behalf of the complainant in recovering an award under paragraph (9)(b), if –
- (a) the complainant requests the OFSO to do so, or appears unable so to request and unable to enforce the award otherwise; and
  - (b) it appears to an Ombudsman to be necessary to do so in order to maintain respect among potential respondents for determinations under this Law.
- (11) A determination may include provision that any copy of the determination disclosed by any person (and in any manner, including indirectly) to any person other than the complainant or the respondent must be redacted –
- (a) to exclude the identity of the complainant or any information from which that identity can be ascertained; and
  - (b) exceptionally, to exclude any other information that the Ombudsman considers should be private.
- (12) The Ombudsman must –
- (a) before making a determination, inform the complainant of the effect of paragraph (11)(a); and
  - (b) include in the determination a provision under paragraph (11)(a) if the complainant so requests.

## 17 Costs

- (1) An Ombudsman may, on determining a complaint, award costs –
- (a) against the respondent in favour of the complainant;
  - (b) against the respondent in favour of the OFSO;
  - (c) against the complainant in favour of the OFSO.
- (2) Costs must not be awarded unless, in the opinion of the Ombudsman –
- (a) the payer was responsible, through improper or unreasonable conduct or unreasonable delay, for causing additional resources to be deployed, or expenses to be incurred, by the payee in dealing with the complaint; and
  - (b) the costs represent a reasonable contribution to those resources deployed, or expenses incurred.
- (3) For the purpose of paragraph (2) the payer is the person against whom the costs are awarded, and the payee is the person in whose favour they are awarded.
- (4) An Ombudsman making an award of costs may order that the amount payable under the award bears interest at a rate and as from a date specified in the determination.
- (5) An amount due under an award of costs is recoverable as a debt due to the person in whose favour the award was made.

**18 Notification and finality of determinations**

- (1) Within a reasonable time after determining a complaint the Ombudsman must give a written statement of the determination to the respondent and to the complainant.
- (2) The statement must –
  - (a) give the Ombudsman's reasons for the determination;
  - (b) require the complainant to notify the Ombudsman, on or before a date specified in the statement and by a means so specified, if the complainant accepts the determination; and
  - (c) explain the effect of paragraphs (3) to (7).
- (3) If the complainant notifies acceptance in accordance with paragraph (2)(b), the determination binds the respondent and the complainant.
- (4) If paragraph (3) does not apply, the determination is not binding.
- (5) After the date specified under paragraph (2)(b), a determination that is not binding nevertheless becomes binding if –
  - (a) the complainant has not notified the Ombudsman that the complainant rejects the determination;
  - (b) the complainant notifies the Ombudsman that the complainant wishes to accept the determination and gives details of compelling reasons why the complainant could not reasonably have been expected to notify in time; and
  - (c) the Ombudsman, after inviting representations from the respondent, is satisfied that those reasons are compelling and that it would be unjust not to allow the complainant to accept the determination out of time.
- (6) No appeal lies against a binding determination.
- (7) Neither the complainant nor the respondent may institute or continue legal proceedings in respect of a matter which was the subject of the complaint, after a determination of the complaint becomes binding.
- (8) The Ombudsman must notify the respondent and the complainant of each of the following events, as the case may be –
  - (a) when a determination becomes binding under paragraph (3);
  - (b) when a date specified under paragraph (2)(b) passes without the determination becoming binding; and
  - (c) when a determination becomes binding, or remains not binding, following a decision of the Ombudsman under paragraph (5)(c).
- (9) A copy of a determination on which appears a certificate signed by an Ombudsman, stating that the determination has become binding, is evidence that the determination has become binding.
- (10) Such a certificate purporting to be signed by an Ombudsman is to be taken to have been duly signed unless the contrary is shown.

---

## PART 5

### INFORMATION

#### 19 Powers to obtain documents and information

- (1) In this Article –
  - “party” means the complainant or the respondent in a complaint;
  - “document” includes a document within the meaning of the Electronic Communications (Jersey) Law 2000<sup>18</sup> and an electronic record within the meaning of that Law.
- (2) The Ombudsman may, by notice in writing given to a party to a complaint, require that party to produce a document that –
  - (a) is specified in the notice, or is of a description so specified; and
  - (b) appears to the Ombudsman to be likely to be necessary or useful for the investigation or determination of the complaint.
- (3) The party must produce the document before the end of such reasonable period as is specified in the notice.
- (4) A respondent who, without reasonable excuse, contravenes paragraph (3) is guilty of an offence and liable to a fine.
- (5) If a party contravenes paragraph (3), the Ombudsman may require the party to state, to the best of his or her knowledge and belief, where the document is.
- (6) If a document is produced in response to a requirement imposed under paragraph (2), the Ombudsman may –
  - (a) retain the document or take copies or extracts from it; and
  - (b) require the person producing the document to provide an explanation of the document.
- (7) If a person claims a lien on a document, its production under this Article does not affect the lien.
- (8) A person who requires, for the purpose of the person’s business, any document retained under this Article, and who requests that document, must be supplied with a copy as soon as practicable.
- (9) The Ombudsman may, by notice in writing given to a party to a complaint, require that party to provide information that –
  - (a) is specified in the notice, or is of a description so specified; and
  - (b) appears to the Ombudsman to be likely to be necessary or useful for the investigation or determination of the complaint.
- (10) The party must provide the information –
  - (a) before the end of such reasonable period as may be specified in the notice; and
  - (b) in such manner or form, if any, as may be specified in the notice.
- (11) A statement made by a person in response to a requirement under paragraph (6)(b) or a notice under paragraph (9) may not be used by the

prosecution in evidence against the person in any criminal proceedings, except proceedings under paragraph (15).

- (12) The Ombudsman may, relying wholly or partly on an inference drawn from any contravention by a party of any requirement of or under this Article –
  - (a) determine any issue in the complaint to which the information or document sought appears to be relevant; or
  - (b) in the case of a contravention by a complainant, reject the complaint.
- (13) Paragraph (12) applies irrespective of whether a contravention, by a respondent, amounts also to an offence under paragraph (4).
- (14) Nothing in this Article requires the disclosure or production by a person to an Ombudsman of information or documents that the person would in an action in court be entitled to refuse to disclose or produce on the grounds of legal professional privilege.
- (15) A person is guilty of an offence, and liable to imprisonment for a term of 2 years and to a fine, if the person provides information to the OFSO, knowing that it is false in a material particular and intending it to be used by the OFSO for the purpose of any function under Part 4.
- (16) For the purpose of paragraph (15) it is irrelevant whether the information –
  - (a) is contained in a document or not; or
  - (b) is provided under this Article or not.
- (17) No proceedings for an offence under this Article may be instituted except by or with the consent of the Attorney General.

## **20 Financial Services Commission to provide information for levy**

- (1) The OFSO may request the Commission to provide details that –
  - (a) are required by the OFSO to enable it to calculate or raise a levy under paragraph 4 of Schedule 2 in relation to any year;
  - (b) are held by the Commission; and
  - (c) relate to persons who –
    - (i) are registered with the Commission to carry on any relevant financial services business falling within any of subparagraphs (a) to (e) of Article 9(1),
    - (ii) hold (or are otherwise authorized by) a permit from the Commission to carry on any such business, or
    - (iii) are registered persons, within the meaning of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>19</sup>, in relation to whom the Commission is the relevant supervisory body for the purpose of that Law in respect of any relevant financial services business falling within Article 9(1)(g) of this Law.
- (2) The Commission –

- (a) must provide the details requested under paragraph (1) in a timely manner; and
- (b) may provide the details –
  - (i) along with other information, if the resources required to separate the details would unduly prejudice the performance of other functions of the Commission, and
  - (ii) in any format in which the details are held, or in any format requested by the OFSO, at the option of the Commission.

## **21 Restricted information and permitted disclosure**

- (1) A person who receives information (“restricted information”) relating to the business or other affairs of any person –
  - (a) under or for the purposes of Part 4, or for the purpose of calculating or raising a case-fee or levy under paragraph 3 or 4 of Schedule 2; or
  - (b) directly or indirectly from a person who has so received it,is guilty of an offence and liable to imprisonment for a term of 2 years and a fine if he or she discloses the information without the consent of the person to whom it relates and (where sub-paragraph (b) applies) the person from whom it was received.
- (2) This Article does not apply to information that –
  - (a) is disclosed in the course of a public hearing held by an Ombudsman under Article 13;
  - (b) is contained in or derived from a determination, unless the determination includes provision prohibiting the disclosure of that information under Article 16(11);
  - (c) at the time of the disclosure is or has already been made available to the public from other sources; or
  - (d) is disclosed in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (3) This Article does not preclude the disclosure of information –
  - (a) for the purpose of enabling or assisting the OFSO or any person acting on its behalf to discharge any of its functions, other than its functions under Article 22;
  - (b) by the OFSO or any person acting on its behalf –
    - (i) to the Viscount,
    - (ii) to the Comptroller and Auditor General for the purpose of enabling or assisting the carrying out of any of the Comptroller and Auditor General’s functions in relation to the OFSO,
    - (iii) to the Commission, or to any person acting on behalf of or appointed by or at the request of the Commission, for the purpose of enabling or assisting the Commission or that

- person to exercise any function of the Commission or any function for which the person was so appointed, or
- (iv) to any other person for the purpose of enabling or assisting that person to exercise, in Jersey and in relation to financial service providers, any function conferred on that person by or under any enactment;
  - (c) with a view to the investigation of a suspected offence, or with a view to the institution of, or for the purposes of, any criminal proceedings (whether the offence or proceedings are under this Law or otherwise);
  - (d) in connection with any other proceedings arising out of this Law, or with any proceedings conducted by or on behalf of the Commission under any of its functions; or
  - (e) without prejudice to the generality of sub-paragraph (a), by the OFSO to a body appearing to the OFSO to be equivalent to the OFSO in another jurisdiction, if it appears to the OFSO that disclosing the information would enable or assist the OFSO to discharge its functions.
- (4) The States may by Regulations amend paragraphs (2) and (3) by –
- (a) adding further persons or bodies to or by whom disclosure may be made and specifying in each case the purpose for which disclosure of information may be made;
  - (b) amending the circumstances in which disclosure may be made to or by any person or body specified in those paragraphs, including the purposes for which and conditions in which such disclosure may be made.
- (5) No proceedings for an offence under this Article may be instituted except by or with the consent of the Attorney General.

## **22 Provision of general information by OFSO**

- (1) Without prejudice to the generality of the functions of the OFSO under this Law, the OFSO may in particular provide –
- (a) information and guidance about the OFSO and its procedures, intended for actual or potential complainants or respondents or other users of the OFSO;
  - (b) information and guidance about the OFSO's experience of complaints, and what may be learnt from that experience;
  - (c) information about determinations made by Ombudsmen;
  - (d) information to the Commission on general patterns in complaints indicating contraventions of any requirement imposed or enforced by the Commission, or on other issues relevant to the Commission's functions;
  - (e) information to any department of the States responsible for trading standards, or to any other body with similar responsibility, on general patterns in complaints in relation to financial service providers not regulated by the Commission.

- (2) This Article does not permit the disclosure of any information if that disclosure constitutes an offence under Article 21.

## **PART 6**

### **MISCELLANEOUS AND FINAL**

#### **23 Co-operation between OFSO and Commission**

- (1) Without prejudice to Article 20, the OFSO and the Commission must each take such steps as it considers appropriate to co-operate with the other in the exercise of their functions.
- (2) The OFSO and the Commission must prepare and maintain a memorandum describing how they intend to comply with paragraph (1).
- (3) The OFSO must publish the memorandum, as in force from time to time, and ensure that an electronic copy is freely available to the public.

#### **24 Criminal liability of directors and similar officers**

- (1) This Article applies if an offence under this Law, committed by a limited liability partnership, a separate liability partnership or a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of –
- (a) a person who is a director, manager, secretary or other similar officer of the body corporate, or a partner of the partnership; or
- (b) a person purporting to act in any such capacity.
- (2) That person –
- (a) is also guilty of the offence; and
- (b) is liable in the same manner as the body corporate or the partnership to the penalty provided for the offence.
- (3) If the affairs of a body corporate are managed by its members, this Article applies in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

#### **25 Consequential and related amendments**

- (1) The States may, by Regulations, amend any enactment other than this Law for the purpose of making such transitional, consequential incidental, supplementary or savings provisions as they consider necessary or expedient in respect of any provision made by or under this Law.
- (2) After Article 31(5)(a) of the Data Protection (Jersey) Law 2005<sup>20</sup> there is inserted the following sub-paragraph –



- “(aa) any function conferred on the Office of the Financial Services Ombudsman or on an Ombudsman, under the Financial Services Ombudsman (Jersey) Law 201-<sup>21</sup>”;
- (3) At the end of Regulation 37 of the Alternative Investment Funds (Jersey) Regulations 2012<sup>22</sup> there is added the following paragraph –
- “(3) Without prejudice to the generality of paragraph (1)(c), Regulation 35 does not preclude the disclosure of information by the Commission to the Office of the Financial Services Ombudsman or to an Ombudsman, within the meaning of the Financial Services Ombudsman (Jersey) Law 201-<sup>23</sup> –
- (a) to comply with a duty of the Commission under Article 20 of that Law; or
- (b) for the purpose of enabling or assisting that Office or Ombudsman to exercise any function under that Law (including the raising of a levy).”
- (4) At the end of Article 44 of the Banking Business (Jersey) Law 1991<sup>24</sup> there is added the following paragraph –
- “(3) Without prejudice to the generality of paragraph (1)(c), Article 42 does not preclude the disclosure of information by the Commission to the Office of the Financial Services Ombudsman or to an Ombudsman, within the meaning of the Financial Services Ombudsman (Jersey) Law 201-<sup>25</sup> –
- (a) to comply with a duty of the Commission under Article 20 of that Law; or
- (b) for the purpose of enabling or assisting that Office or Ombudsman to exercise any function under that Law (including the raising of a levy).”
- (5) At the end of Article 28 of the Collective Investment Funds (Jersey) Law 1988<sup>26</sup> there is added the following paragraph –
- “(3) Without prejudice to the generality of paragraph (1)(c), Article 26 does not preclude the disclosure of information by the Commission to the Office of the Financial Services Ombudsman or to an Ombudsman, within the meaning of the Financial Services Ombudsman (Jersey) Law 201-<sup>27</sup> –
- (a) to comply with a duty of the Commission under Article 20 of that Law; or
- (b) for the purpose of enabling or assisting that Office or Ombudsman to exercise any function under that Law (including the raising of a levy).”
- (6) In Article 38 of the Financial Services (Jersey) Law 1998<sup>28</sup>, after paragraph (1)(a) there is inserted the following sub-paragraph –
- “(aa) without prejudice to the generality of sub-paragraph (a)(iii), by the Commission to the Office of the Financial Services Ombudsman or to an Ombudsman, within the meaning of the Financial Services Ombudsman (Jersey) Law 201-<sup>29</sup> –

- (i) to comply with a duty of the Commission under Article 20 of that Law, or
  - (ii) for the purpose of enabling or assisting that Office or Ombudsman to exercise any function under that Law (including the raising of a levy);”.
- (7) At the end of Article 31 of the Insurance Business (Jersey) Law 1996<sup>30</sup> there is added the following paragraph –
  - “(3) Without prejudice to the generality of paragraph (1)(c), Article 29 does not preclude the disclosure of information by the Commission to the Office of the Financial Services Ombudsman or to an Ombudsman, within the meaning of the Financial Services Ombudsman (Jersey) Law 201-<sup>31</sup> –
    - (a) to comply with a duty of the Commission under Article 20 of that Law; or
    - (b) for the purpose of enabling or assisting that Office or Ombudsman to exercise any function under that Law (including the raising of a levy).”.
- (8) At the end of Article 36 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>32</sup> there is added the following paragraph –
  - “(3) Without prejudice to the generality of paragraph (1)(a), Article 35 does not preclude the disclosure of information by a supervisory body to the Office of the Financial Services Ombudsman or to an Ombudsman, within the meaning of the Financial Services Ombudsman (Jersey) Law 201-<sup>33</sup> –
    - (a) where the supervisory body is the Commission, to comply with a duty of the Commission under Article 20 of that Law; or
    - (b) for the purpose of enabling or assisting that Office or Ombudsman to exercise any function under that Law (including the raising of a levy).”.

## 26 Orders and Regulations

- (1) An Order or Regulations under this Law may contain such transitional, consequential, incidental, supplementary or savings provisions, other than an amendment of this Law, as appear to the Minister or the States (as the case may be) to be necessary or expedient for the purposes of the Order or Regulations.
- (2) A power under this Law to amend, by Regulations, any provision of this Law includes the power to make such transitional, consequential, incidental or supplementary amendments to any other provision of this Law as appears to the States to be necessary or expedient.

## 27 Citation and commencement

- (1) This Law may be cited as the Financial Services Ombudsman (Jersey) Law 201-.

- (2) Parts 1, 2 and 6 and Schedules 1 and 2 come into force on registration.
- (3) Parts 3 to 5 and Schedules 3 and 4 come into force on such day or days as the States may by Act appoint.

---

**SCHEDULE 1**

(Article 2(3))

**CONSTITUTION OF OFSO****1 Appointment of board members**

- (1) The Minister must, by instrument in writing, appoint 2 board members (subject to the minimum and maximum numbers under Article 2(2)) from among persons nominated by the Chairman.
- (2) The Chairman, before nominating a member, and the Minister, before appointing a member, must seek the views of the Appointments Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>34</sup> on the appointment (without prejudice to the powers of the States or the Appointments Commission under Article 15 of that Law).
- (3) The Minister must, at least 2 weeks before appointing a board member, present to the States a notice of his or her intention to make the appointment.
- (4) The Chairman may nominate a person only if that person –
  - (a) is not a member of the States; and
  - (b) has applied to be appointed or re-appointed as a board member and has complied with sub-paragraph (6) in respect of the application.
- (5) An Ombudsman, and any member of the OFSO's staff, may not hold office as a board member.
- (6) In making nominations and appointments, the Chairman and the Minister must –
  - (a) seek to ensure that persons nominated or appointed are prepared in particular –
    - (i) to maintain the independence of the OFSO as set out in Article 3(4) and paragraph 11 of this Schedule, and
    - (ii) to act in the public interest, rather than as representatives of any particular interest;
  - (b) ensure that the majority of the board members are not financial service providers or persons whose business involves representing financial service providers; and
  - (c) have regard to the desirability of securing that there is such a balance as the Chairman or Minister considers appropriate (subject to clauses (a)(ii) and (b)) between –
    - (i) persons with experience of working as or for financial service providers,

- 
- (ii) persons with experience of using, other than as or for financial service providers, the services of financial service providers,
    - (iii) persons with experience of providing services similar to any of those provided by the OFSO, and
    - (iv) persons with experience of the financial, legal and other aspects of management of bodies similar to the OFSO.
  - (7) A person (the “nominee”) must not be nominated unless he or she has provided –
    - (a) a statement setting out the nominee’s interests, direct or indirect, in any relevant financial services business, or in business carried on outside Jersey that would be relevant financial services business if carried on in Jersey; and
    - (b) an instrument authorizing the provision to the Minister of information as to whether the person has been charged with, or convicted of, an offence –
      - (i) under customary law or under any enactment, or
      - (ii) against any law of a country or territory outside Jersey.
  - (8) The Minister must, in the instrument appointing a board member, specify a period for that appointment of not less than 3 years (subject to paragraph 4) and not more than 5 years.
  - (9) A person appointed as a board member holds and vacates office in accordance with the terms of his or her appointment, subject to this Law.
  - (10) The terms of appointment must be such as to secure the independence of board members in the performance of their functions.
  - (11) The rights and obligations of the OFSO, and the validity of the performance of its functions, are not affected by –
    - (a) a vacancy in the office of Chairman or board member; or
    - (b) a defect in the appointment of a person as Chairman or as a member of the board.

## **2 Appointment of Chairman and designation of Deputy Chairman**

- (1) The Minister must appoint the Chairman of the board –
  - (a) in the case of the first such appointment, and in any other case where there are no board members, from among persons appearing to the Minister to be suitable for the position (subject to paragraph 1(5)); and
  - (b) in any other case, from among board members appearing to the Minister to be so suitable.
- (2) Before appointing a Chairman, the Minister must seek the views of the Appointments Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005 on the appointment (without prejudice to the powers of the States or the Appointments Commission under Article 15 of that Law).

- (3) The Minister must, at least 2 weeks before appointing a Chairman, present to the States a notice of his or her intention to make the appointment.
- (4) When appointing a Chairman the Minister must determine the period of the appointment, expiring before or on the same date as the person's appointment as a board member.
- (5) A person appointed as a Chairman holds and vacates office in accordance with the terms of his or her appointment, subject to this Law.
- (6) The Minister may re-appoint a serving Chairman (and references in this paragraph to appointment include re-appointment).
- (7) The Chairman must designate another board member as Deputy Chairman.
- (8) When –
  - (a) the Chairman is unable to act through incapacity or absence; or
  - (b) there is a vacancy in the office of Chairman,the Deputy Chairman must perform the functions of the Chairman under paragraph 1 and any functions delegated to the Chairman under paragraph 8(3)(a).

### **3 Remuneration and expenses of board members**

- (1) The OFSO must pay to the board members –
  - (a) such remuneration as it may determine, subject to any maximum limit directed by the Minister (who may direct different limits in respect of the Chairman, Deputy Chairman and any other description of board member); and
  - (b) reasonable out of pocket expenses occasioned in the course of carrying out their duties.
- (2) Any maximum remuneration directed by the Minister after the appointment of a board member does not operate to reduce the remuneration previously determined by the OFSO in respect of that board member, but does limit any subsequent increase.

### **4 Cessation of office as board member**

- (1) A person ceases to be a board member if –
  - (a) he or she resigns from office by giving not less than one month's notice in writing to the Minister;
  - (b) the Minister terminates his or her appointment under sub-paragraph (2); or
  - (c) his or her appointment expires under sub-paragraph (4).
- (2) The Minister may terminate the appointment of a board member, other than the Chairman, after –
  - (a) consulting the Chairman, or, if paragraph 2(8) applies –

- 
- (i) the Deputy Chairman in relation to any board member other than the Deputy Chairman, or
    - (ii) such board member or members as the Minister sees fit in relation to the Deputy Chairman; and
  - (b) satisfying himself or herself that the board member –
    - (i) has been absent from meetings of the board for a period longer than 3 consecutive months without the permission of the board,
    - (ii) has become bankrupt,
    - (iii) is incapacitated by physical or mental illness for a significant period, or
    - (iv) is otherwise unable or unfit to discharge the functions of a board member.
  - (3) The Minister must, not more than 2 weeks after terminating the appointment of a board member, report to the States that the Minister has terminated the appointment.
  - (4) A person's appointment as board member expires if –
    - (a) the period for which the person was appointed expires without re-appointment;
    - (b) the person becomes a member of the States;
    - (c) the person becomes an Ombudsman, or any other member of the OFSO's staff;
    - (d) the person's appointment as Chairman is terminated under paragraph 5(2); or
    - (e) the person completes 10 years (whether consecutive or in aggregate) of service as a board member.

## **5 Cessation of office as Chairman**

- (1) A person ceases to be the Chairman if –
  - (a) he or she resigns from office as Chairman by giving not less than 2 months' notice in writing to the Minister;
  - (b) his or her appointment as Chairman is terminated under subparagraph (2); or
  - (c) his or her appointment as Chairman expires under subparagraph (5).
- (2) The Minister may terminate the appointment of the Chairman if the Minister is satisfied that the Chairman –
  - (a) has been absent from meetings of the board for a period longer than 3 consecutive months without the permission of the board;
  - (b) has become bankrupt;
  - (c) is incapacitated by physical or mental illness for a significant period; or

- (d) is otherwise unable or unfit to discharge the functions of the Chairman.
- (3) The Minister must, not more than 2 weeks after terminating the appointment of the Chairman, report to the States that the Minister has terminated the appointment.
- (4) A person's appointment as Chairman expires if –
  - (a) the period for which he or she was appointed expires without re-appointment; or
  - (b) the person ceases to be a board member.

## **6 Procedure at meetings**

- (1) Except as otherwise provided in this Law, the board may determine its own proceedings.
- (2) The quorum for the board is a majority of the board members.
- (3) At a meeting of the board –
  - (a) if the Chairman is present, he or she is to preside;
  - (b) if the Chairman is not present but the Deputy Chairman is present, the Deputy Chairman is to preside;
  - (c) if neither the Chairman nor the Deputy Chairman is present, the board members present must elect one of their number to preside.
- (4) At a meeting of the board –
  - (a) each board member has one vote on each matter for deliberation; and
  - (b) if a vote is tied, it is to be taken to have been lost.
- (5) A resolution is a valid resolution of the board, even though it was not passed at a meeting of the board, if –
  - (a) it is signed or assented to by a majority of board members; and
  - (b) proper notice of the proposed resolution was given to all board members.
- (6) The board must keep proper minutes of its proceedings, including minutes of any business transacted in accordance with sub-paragraph (5).

## **7 Disclosure of interest and criminal charges**

- (1) If a board member has any direct or indirect personal interest in the outcome of the deliberations of the board in relation to any matter –
  - (a) the board member must disclose the nature of the interest at a meeting of the board in person or by means of a written notice brought to the attention of the board;
  - (b) the disclosure must be recorded in the minutes of the board; and
  - (c) the board member must withdraw from any deliberations of the board in relation to that matter and must not vote upon it.



- 
- (2) A board member may disclose the nature of an interest for the purpose of sub-paragraph (1)(a) by giving a general notice that he or she should be regarded as interested in any matter concerning a particular organization, partnership or body corporate, the members or directors of which include –
    - (a) that board member; or
    - (b) a person through whom that board member has an indirect interest.
  - (3) A board member must notify the Minister as soon as practicable after being charged or convicted of an offence –
    - (a) under customary law or under any enactment; or
    - (b) against any law of a country or territory outside Jersey.

## **8 Committees and delegation**

- (1) The board may authorize the transaction of its business by committees, established by the board, that consist of board members alone or together with staff of the OFSO or other persons appearing to the board to be appropriate for the committee.
- (2) The functions of appointing the Principal Ombudsman under Article 4(1) and of designating an Ombudsman under Article 5(1)(b) may be exercised only by the board.
- (3) The OFSO may, subject to Article 14, delegate any of its other functions under this or any other enactment wholly or partly to –
  - (a) the Chairman;
  - (b) one or more board members;
  - (c) a committee authorized under sub-paragraph (1);
  - (d) an Ombudsman; or
  - (e) any other member of the OFSO's staff.
- (4) Nothing in this paragraph –
  - (a) applies to a function reserved by or under this Law to an Ombudsman or to the Principal Ombudsman; or
  - (b) authorizes the OFSO to delegate this power of delegation.
- (5) The delegation of a function under this paragraph –
  - (a) does not prevent the performance of that function by the OFSO itself; and
  - (b) may be amended or revoked by the OFSO.

## **9 Ancillary functions**

- (1) The OFSO may do anything reasonably necessary or expedient for or incidental to any of its functions, so far as is not prohibited by any enactment.
- (2) Without prejudice to the generality of sub-paragraph (1), the OFSO may in its corporate name –

- (a) sue and be sued;
- (b) enter into contracts; and
- (c) acquire, hold and dispose of property.

## **10 Seal**

- (1) As a body corporate, the OFSO may have and use a common seal.
- (2) The application of the seal is to be authenticated by the signature of a person authorized (generally or specifically) by the board for the purpose.
- (3) If a document purports to be duly executed under the seal, that document is to be –
  - (a) received in evidence; and
  - (b) taken to be duly executed, unless the contrary is proved.

## **11 Independence from Minister and States**

- (1) The OFSO and the Ombudsmen are independent of the Minister and of the States.
- (2) Sub-paragraph (1) is without prejudice to –
  - (a) any provision of this Law, including in particular paragraph 12, or of any other enactment; and
  - (b) any obligation to comply with any condition lawfully attached to any funding accepted by the OFSO from the States.
- (3) Sub-paragraph (1) is not to be construed as preventing the OFSO from being an independently audited States body for the purposes of the Public Finances (Jersey) Law 2005<sup>35</sup>.
- (4) Despite sub-paragraphs (2) and (3) –
  - (a) the OFSO is not to be regarded as exercising functions on behalf of the Minister or the States;
  - (b) the Ombudsmen and the OFSO's staff, board members and committee members are not to be regarded as employees of the States; and
  - (c) neither the Minister nor the States are liable for any act, or debt or other obligation, of the OFSO.

## **12 Directions and guidance from Minister**

- (1) The Minister may give specific directions to the OFSO as to –
  - (a) the format and content of its accounts and annual report under paragraph 1 of Schedule 2;
  - (b) the setting of case-fees under paragraph 3 of Schedule 2;
  - (c) any determinations as to a levy under Regulations under paragraph 4 of Schedule 2.
- (2) The Minister may give general directions to the OFSO in respect of its functions under Article 22(1)(a) and (b).

- 
- (3) The Minister may give guidance to the OFSO in respect of any matter on which specific or general directions may be given.
  - (4) Directions and guidance must be given in writing.
  - (5) The OFSO must –
    - (a) act in accordance with any specific directions given under sub-paragraph (1) and any general directions given under sub-paragraph (2); and
    - (b) have regard to any guidance given under sub-paragraph (3).
  - (6) The Minister must not give guidance or general directions unless he or she –
    - (a) has first consulted the OFSO and such other persons as appear appropriate to the Minister; and
    - (b) considers that the giving of that guidance or direction –
      - (i) is necessary in the public interest, and
      - (ii) will not compromise the independence of the OFSO.

### **13 Limitation of liability**

- (1) A protected person is not liable in damages for any act in the exercise or purported exercise of any relevant function.
- (2) Sub-paragraph (1) does not apply –
  - (a) if it is shown that the act was in bad faith; or
  - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>36</sup>.
- (3) In sub-paragraph (1) –
  - (a) a relevant function is a power, duty or other function that may or must be exercised or performed under this Law or under any enactment under this Law; and
  - (b) a protected person is –
    - (i) the OFSO,
    - (ii) the board,
    - (iii) a board member,
    - (iv) a committee member,
    - (v) an Ombudsman,
    - (vi) any other person who exercises the relevant function as a member of the OFSO's staff, or
    - (vii) any other person exercising a relevant function, if any enactment provides that this paragraph is to apply to that person when exercising that function.

---

**SCHEDULE 2**

(Article 2(4))

**FINANCES OF OFSO****1 Accounts, audit and reports**

- (1) The OFSO must –
  - (a) keep proper accounts and proper records in relation to the accounts;
  - (b) prepare accounts in respect of each financial year and a report on its operations during that year; and
  - (c) submit the accounts and report to the Minister not later than 4 months after the end of each financial year.
- (2) The accounts of the OFSO must distinguish clearly between amounts received as case fees, levy and other income.
- (3) The Minister must lay a copy of the accounts and report prepared by the OFSO before the States not later than 2 months after receiving them from the OFSO.
- (4) The OFSO must publish each report.
- (5) The accounts of the OFSO must –
  - (a) be audited by auditors appointed in respect of each financial year by the board and qualified for appointment as auditors of a company by virtue of Article 113 of the Companies (Jersey) Law 1991<sup>37</sup>; and
  - (b) be prepared in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of the OFSO for the period and of the state of the OFSO's affairs at the end of the period.
- (6) This Article is without prejudice to any additional requirements in relation to accounts that are imposed by the Public Finances (Jersey) Law 2005<sup>38</sup> or any other enactment.
- (7) In this paragraph, and in paragraph 2, "financial year" means the period beginning with the day on which this Schedule comes into force and ending with the 31st day of December next following, and each subsequent period of 12 months ending with the 31st day of December.

**2 Budget**

- (1) The OFSO must, before the start of each financial year (or as soon as practicable after that start, in the case of the first such year), adopt an annual budget which has been approved by the Minister.

- 
- (2) The OFSO may, with the approval of the Minister, vary the budget for a financial year at any time after its adoption.
  - (3) The annual budget must include an indication of –
    - (a) the distribution of resources deployed in the operation of the OFSO; and
    - (b) the amounts of income of the OFSO arising or expected to arise from the operation of the OFSO.
  - (4) The board must secure –
    - (a) that the establishment and operation of the OFSO are funded primarily by financial service providers, in a manner that maintains the OFSO's independence from those funding it; and
    - (b) that the service provided by the OFSO is generally free to complainants.
  - (5) Accordingly, the fees under paragraph 3 and the levy under paragraph 4 must be set at such a level as is necessary that, in aggregate and taken with any other resources of the OFSO, they –
    - (a) raise sufficient income to enable the OFSO to carry out its functions under this Law; and
    - (b) provide a reserve of such amount as the OFSO considers necessary for carrying out such functions.
  - (6) Nothing in sub-paragraph (5) is to be read as requiring the OFSO to set any case-fee or levy in any particular financial year, if the board considers that its duty under sub-paragraph (4)(a) can be met without doing so.

### **3 Case-fees**

- (1) The States may by Regulations provide for fees (“case-fees”) to be payable by respondents to the OFSO in respect of complaints against them.
- (2) Without prejudice to the generality of sub-paragraph (1), Regulations under that sub-paragraph may –
  - (a) give the OFSO the power to prescribe a scheme of case-fees, by publishing the scheme or otherwise;
  - (b) allow such a scheme to set different case-fees on any basis, including in respect of different descriptions of financial service provider, such descriptions including in particular descriptions by reference to –
    - (i) whether the provider is registered with or holds a permit or other authorization from the Commission under a Law mentioned in Article 9(1), and
    - (ii) whether the provider has volunteered to be liable for a levy under paragraph 4;
  - (c) allow such a scheme to –

- (i) require payment of case-fees at or in respect of any stage of the handling of a complaint by the OFSO, or a later time when a levy is payable by a respondent, or at any other time, and
- (ii) provide for the OFSO to waive case-fees in circumstances specified in the Regulations or at its discretion;
- (d) require the OFSO, before prescribing or varying such a scheme, to consult on it, and to refer an increase in a fee to the Bailiff to be considered by Jurats if that increase is disputed by a consultee or in other circumstances specified in the Regulations;
- (e) provide for enforcement of payment of case-fees, including powers to demand information required in order to calculate fees.

#### 4 Levies

- (1) The States may by Regulations provide for levies to be payable by financial service providers to the OFSO in respect of the expenses of the OFSO that are not met by case-fees under paragraph 3.
- (2) Without prejudice to the generality of sub-paragraph (1), Regulations under that sub-paragraph may –
  - (a) prescribe descriptions of financial service provider that must pay a levy;
  - (b) prescribe other descriptions of financial service provider that may volunteer to pay a levy, in return for lower case-fees or for other favourable terms in relation to any fees or levies;
  - (c) distinguish in any manner, for the purposes of clauses (a) and (b), between different descriptions of financial service provider, such descriptions including in particular descriptions by reference to whether the provider is registered with or holds a permit or other authorization from the Commission under a Law mentioned in Article 9(1);
  - (d) provide for the manner in which the total amount required by the OFSO in levies is to be determined;
  - (e) give the OFSO the power to demand information from persons who may be liable to pay a levy, being information required in order to calculate the levy;
  - (f) give the Commission the power to demand such information on the OFSO's behalf;
  - (g) specify (or permit the Minister to determine) limits to the amounts that may, in any period, be raised in total by way of levies, or charged to any one financial service provider;
  - (h) give the OFSO the power to prescribe a scheme, by publishing the scheme or otherwise, under which the liability for the levy is to be divided among those liable, the amounts of levy are to be calculated, and the persons liable are to be notified;
  - (i) prescribe the time and manner in which levies must be paid;

- (j) provide for appeals against or reviews of decisions in relation to levies, and for the effects on liability to pay pending determination of the appeal or review;
- (k) provide for enforcement of payment of levies (including enforcement of provision of information required in order to calculate levies), including orders for payments of costs of enforcement by persons connected with the person liable to pay.

## **5 Other fees, donations and borrowing**

- (1) Without prejudice to the other means by which the OFSO may receive funds to enable it to perform its functions, the OFSO may –
  - (a) contract to charge a fee for providing any service, information or other item in pursuance of any of its functions, if it is not obliged to provide that service or item gratuitously to the person with whom it contracts;
  - (b) accept a grant or donation, whether or not subject to conditions, but only if it considers that it can satisfactorily maintain its independence, integrity and reputation; and
  - (c) borrow, subject to sub-paragraph (2).
- (2) The Minister may, after consulting the Minister for Treasury and Resources, prescribe by Order either or both of –
  - (a) a maximum amount up to which the OFSO may borrow; and
  - (b) a requirement for the OFSO to obtain approval before borrowing, in a manner specified and from a person specified in the Order (whether the Minister or any other person).

## **6 Reserve and investment**

The OFSO may, in accordance with any guidelines set by the Minister for Treasury and Resources –

- (a) accumulate a reserve of such amount as it considers necessary; and
- (b) invest that reserve and any other of its funds and resources that are not immediately required for the performance of its functions.

## **7 Exemption from income tax**

The income of the OFSO is not liable to income tax under the Income Tax (Jersey) Law 1961<sup>39</sup>.

---

**SCHEDULE 3**

(Article 9(1)(h))

**RELEVANT PENSION BUSINESS****1 Relevant pension business defined**

Relevant pension business is any business so far as it comprises the choice, establishment or operation of a pension scheme, within the meaning of paragraph 2.

**2 Pension scheme**

- (1) A pension scheme is a fund, scheme or other arrangement, constituted in one or more instruments or agreements, that falls within either or both of sub-paragraphs (2) and (3).
- (2) A fund, scheme or other arrangement falls within this sub-paragraph if it is, or is held out as being or as capable of being –
  - (a) a fund described in Article 131G(1) of the Income Tax (Jersey) Law 1961<sup>40</sup>;
  - (b) a “registered pension scheme” or a “recognised overseas pension scheme”, as each is defined in section 150 of the Finance Act 2004 of the United Kingdom, as amended from time to time; or
  - (c) recognized under legislation of any country or territory other than Jersey and having an effect equivalent to that of the legislation mentioned in clauses (a) and (b).
- (3) A fund, scheme or other arrangement falls within this sub-paragraph if it has, or is held out as having or as being capable of having, effect so as to provide benefits to or in respect of persons –
  - (a) on retirement from an employment or all employment; or
  - (b) in similar circumstances.
- (4) For the purpose of sub-paragraph (3) it is irrelevant whether the fund, scheme or other arrangement –
  - (a) has any effect on any liability to tax;
  - (b) has, or is held out as having or as being capable of having, effect so as to provide benefits to or in respect of other persons or in other circumstances linked to death, age or employment.



---

**SCHEDULE 4**

(Article 9(1)(i))

**RELEVANT CREDIT BUSINESS****1 Relevant credit business defined**

Relevant credit business is any business so far as it comprises –

- (a) provision of credit under credit agreements;
- (b) credit reference agency business;
- (c) debt-adjusting;
- (d) debt-counselling;
- (e) debt-collecting; or
- (f) debt administration,

as those terms are defined by the following paragraphs of this Schedule.

**2 Credit**

Credit includes –

- (a) a cash loan;
- (b) a loan secured against immovable property, whether by hypothecation or by mortgage or in any other manner;
- (c) the financial accommodation provided in the letting of goods (as defined in the Supply of Goods and Services (Jersey) Law 2009<sup>41</sup>) under a hire-purchase agreement (as so defined), or in the selling of goods under a conditional sale agreement (as so defined); and
- (d) any other form of financial accommodation.

**3 Credit agreement**

A credit agreement is an agreement under which credit is provided to a person (“the debtor”), being an agreement between that debtor and the person providing the credit (“the creditor”).

**4 Credit reference agency business**

Credit reference agency business is the furnishing of persons with information relevant to the financial standing of other persons, being information collected for that purpose by the person furnishing the information.

**5 Debt-adjusting**

Debt-adjusting is, in relation to debts due under credit agreements –

- (a) negotiating with the creditor, on behalf of the debtor, terms for the discharge of a debt;
- (b) taking over, in return for payments by the debtor, the debtor's obligation to discharge a debt; or
- (c) any similar activity concerned with the liquidation of a debt.

**6 Debt-counselling**

Debt-counselling is the giving of advice to debtors about the liquidation of debts due under credit agreements.

**7 Debt-collecting**

Debt-collecting is the taking of steps to procure payment of debts due under credit agreements.

**8 Debt administration**

Debt administration is the taking of steps –

- (a) to perform duties under a credit agreement on behalf of the creditor; or
- (b) to exercise or to enforce rights under such an agreement on behalf of the creditor, so far as the taking of such steps is not debt-collecting.

- 
- <sup>1</sup> chapter 13.250
- <sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32013R0524:EN:NOT>
- <sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32013L0011:EN:NOT>
- <sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0052:EN:NOT>
- <sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998H0257:EN:NOT>
- <sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001H0310:EN:NOT>
- <sup>7</sup> chapter 17.210
- <sup>8</sup> chapter 17.245
- <sup>9</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003H0361:EN:NOT>
- <sup>10</sup> chapter 05.050
- <sup>11</sup> chapter 13.225
- <sup>12</sup> R&O.142/2012
- <sup>13</sup> chapter 13.075
- <sup>14</sup> chapter 13.100
- <sup>15</sup> chapter 13.425
- <sup>16</sup> chapter 08.780
- <sup>17</sup> chapter 08.785
- <sup>18</sup> chapter 04.280
- <sup>19</sup> chapter 08.785
- <sup>20</sup> chapter 15.240
- <sup>21</sup> P.9/2014
- <sup>22</sup> R&O.142/2012
- <sup>23</sup> P.9/2014
- <sup>24</sup> chapter 13.075
- <sup>25</sup> P.9/2014
- <sup>26</sup> chapter 13.100
- <sup>27</sup> P.9/2014
- <sup>28</sup> chapter 13.225
- <sup>29</sup> P.9/2014
- <sup>30</sup> chapter 13.425
- <sup>31</sup> P.9/2014
- <sup>32</sup> chapter 08.785
- <sup>33</sup> P.9/2014
- <sup>34</sup> chapter 16.325
- <sup>35</sup> chapter 24.900
- <sup>36</sup> chapter 15.350
- <sup>37</sup> chapter 13.125
- <sup>38</sup> chapter 24.900
- <sup>39</sup> chapter 24.750
- <sup>40</sup> chapter 24.750
- <sup>41</sup> chapter 05.800