

Chief Minister



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Dear Rob,

Thank you for your questions, submitted on the 8th of October. Your questions relate to the Public Services Ombudsman (p.31 R.91/2019) and I will answer them below:

1. Why is there no funding available to implement this until 2021?

The policy and legislation development work will run throughout 2020. The Office of the Ombudsman will not, therefore, be established or incur costs until 2021.

2. Why has this work only been agreed now when the States Assembly agreed to appoint a Public Service Ombudsman prior to the election?

The Assembly agreed, in principle, to establish an Ombudsman subject to additional research. That research phase included the Law Commission research report published in October 2018 and the public consultation which explores, with the public and key stakeholders, the issues and options raised by the Law Commission research.

That consultation will close on 11 October. Work has therefore been progressing on developing the proposed form of the Ombudsman since that States' decision.

3. Given the context of the IJCI report and concern over the complaints systems available to members of the public (not to mention redress), why is this not being progressed faster?

As set out below (Q5), the new GoJ complaints policy is in place.

With regard to the Ombudsman, there are some complex issues relating to remit and jurisdiction to make binding decisions that require detailed consideration alongside key

stakeholders. That process takes time, as there are some significant variations in view that need to be understood and responded to.

4. How will an independent Ombudsman service ensure complaints are upheld and Minister's held accountable to deliver on any findings and recommendations?

The Ombudsman consultation, which is due to close on 11 October, explores the issue of whether the Ombudsman's findings and/or recommendations should:

- not be binding (i.e. they can be rejected by the public body and/or the complainant), or
- be binding and enforceable (i.e. the public body must act in accordance with the Ombudsman's decisions regardless of the financial and/or service impact of doing so)
- be binding and enforceable unless challenged by the public body or by the complainant (the public body must act in accordance with the Ombudsman's decisions unless that decision is successfully challenged)

This includes consideration of matters relating to:

1. who would be bound by the decisions of Ombudsman?
 - the public body and the complainant but only in relation to the specific complaint investigated by the JPSO (e.g. the Education Minister must provide a school place at a particular school for the child of the parents who lodged a complaint)
 - the public body and the complainant for all purposes (e.g. the Education Minister must provide a school place at a particular school for all the children of parents who lodged a complaint)
 - the public body and any person it provides the service to (e.g. the Education Minister must provide a school place at a particular school for all the children in the island who wish to go to that school)
2. if the Ombudsman's decision can be challenged?
 - how can they be challenged (for example, appeal to the JPSO, judicial review, appeal to the Royal Court, statement to the Assembly to hold the Minister democratically accountable) and
 - who can challenge the decision (the public authority, the complainant or a third party)

5. When is it intended for the new Government of Jersey internal complaints system to come online and how will this be accessed by members of the public?

The new GoJ complaints policy went live on 30 September. Details are available via [gov.je](https://www.gov.je). People may submit complaints or comments online, in addition to face to face etc. <https://www.gov.je/government/comments/Pages/index.aspx>

6. How will this service drive trust and increase confidence in the work of Government?

- Drive service improvement: The Ombudsman will act as a key driver for customer-centred improvement across the public service system in the long-term. In addition to formal and informal complaints resolution, the JPSO's key functions include:
 - a. oversight of how public bodies design and operate internal complaints handling procedures
 - b. enabling lessons to be learned from complaints, achieving systemic improvements
 - c. 'learning champion' role in relation to the administrative justice system.

The JSPO will focus on driving improvement not just awarding compensation - and so provides a unique way to maintain the pressure long term on the Jersey public sector to join-up services.

- Drive trust and confidence: Jersey's existing Complaints Panel arrangements are considered by many stakeholders to be unsatisfactory. This is evidenced by:
 - a. very low level of complaints considered by the Complaints Board on an annual basis. For example, in 2017 there were 18 new complaints and 3 carried forward. This is the most complaints heard. The number of Health complaints in 2017 in England was 22,500. In Jersey accounting for the size of our population that should have been equivalent to 40 but only 2 were received.
 - b. Ministers regularly rejecting the findings and recommendations of the Complaints Board, indicating a lack of confidence in those findings and recommendations. Between 2013 and 2017 of 8 cases upheld by the Complaints Board the Minister or other public body only accepted findings and recommendations in 2 cases.

- c. Complaints Board adhering to processes that fall short of good practice standards, for example; adversarial as opposed to inquisitorial approach, requirement on complainant to make their 'case' in a public hearing, as opposed to the Complaints Board pro-actively investigating the facts of case.
- d. Failure to provide a fit-for-purpose complaints resolution service erodes public trust and confidence in the Government of Jersey. Aggrieved citizens have nowhere to go with their complaints, which is detrimental to their wellbeing, detrimental to GoJ services (as we miss valuable learning opportunities), absorbs resource (as the complaints often 'bounce' around the system for years without finding resolution), and creates the impression of cover-up (GoJ refusing to admit where it has got it wrong).
Ombudsman schemes are widely recognised as important ways through which government is made accountable. The Institute for Government state that *'Accountability is a part of good governance and can increase the trustworthiness and legitimacy of the state in the eyes of the public'. A well-designed, well-run Ombudsman scheme can help move a system from 'a blame game' (in which a culture of blame when things go wrong is perpetuated) to one in which there is genuine lesson learning to improve the quality of public services.*^[1]

7. What are the international best practice standards for transparency, accountability and fair treatment of complainants referred to in the summary business case?

These include the standards produced by:

- Ombudsman Association Criteria for the Recognition of Ombudsman Offices
- International Ombudsman Institute Membership

8. How does this funding link to the proposed actions in 3.7 (P.17 R.91/2019)?

The Ombudsman is one of a number of indicatives which aim to build confidence in government, through increased transparency and an improved system of checks and balances. Other connected initiatives include:

- a review of Jersey's existing tribunal arrangements to ensure it is accessible, efficient and effective
- a new legal framework for public inquiries in Jersey.

^[1] Institute for Government, *Accountability in modern government: Recommendations for Change* (October 2018).

As part of developing these initiatives there will be a process of open engagement with the community to consider what other actions should be taken.

I hope these responses answer your questions.

Yours sincerely

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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Chief Minister

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