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Jersey Law Commission
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Dear Andrew,

Keeping the Complaints Panel or creating the Ombudsperson?

Thank you for the opportunity to respond to the Jersey Law Commission's report. We have focused our comments on where we think we have something additional to add to the points raised in the report.

Summary

1. We welcome the approach taken by the Law Commission of posing fundamental questions around what the problem that needs to be resolved actually is, and what the desirable features should be of Jersey's independent complaints body.
2. We strongly believe that the ombudsman model is the most effective model to identify systemic issues and help drive improvements in services and complaint handling. The benefit for citizens is therefore not only in resolving disputes, but also in the increased efficiency and effectiveness in public services as a result of 'getting it right first time'.

Background

3. The Ombudsman Association (OA) is the professional association for ombudsman schemes and complaint handling bodies in the UK, Ireland, the British Crown Dependencies, and the British Overseas Territories.
4. The OA's membership criteria¹ are recognised both in the UK and internationally as representing best practice. This is reflected in the UK Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*,² which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'.³
5. The Vision of the OA is that throughout the public and private sectors:
 - It is straightforward and simple for people to complain.
 - People making a complaint are listened to and treated fairly.

¹ www.ombudsmanassociation.org/about-us/join-ombudsman-association

² www.gov.uk/government/publications/new-ombudsman-schemes-guidance

³ www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

- A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
- People have access to an ombudsman in all areas of consumer and public services.
- The learning from a complaint is used to improve services.

Nature and Scale of the Problem

6. In terms of the assessment of the ‘nature and scale of problems in Jersey’s public service’, we note that the original case put forward for the need to establish a Jersey Public Services Ombudsperson (JPSO) came from several different quarters, including via the Jersey Care Inquiry, from the then Comptroller and Auditor General, and of course from the Law Commission. We also note that the transformational goal set out in the law drafting instructions for the JPSO was clear: *‘The overall objective in establishing the JPSO is to drive a higher standard of administration by public services’*.
7. Whilst the OA is not in a position to comment on improvements made in public service complaint handling in Jersey since then, we are not aware of any studies or reports that have concluded that an ombudsman would not provide the same value in Jersey that they do across the different nations and territories of the British Isles, the British Overseas Territories, and across the Commonwealth.

Individual justice or systemic improvement?

8. As the Lady Chief Justice for England and Wales recently set out,⁴ the civil justice system plays three key roles in society: (1) it prevents disputes by guiding behaviour; (2) it resolves disputes without the need to resort to the courts; and (3) in the last resort, the courts determine disputes by adjudication. The same is true of the administrative justice system.
9. Whereas much complaint handling focuses solely on part (2) of that model, an ombudsman aims to deliver both (1) and (2), providing an independent redress model, free at the point of use, that can drive systemic change, tackle injustice, and help organisations to perform more efficiently and effectively.
10. An ombudsman is different to the basic transactional complaint handling which simply picks a ‘winner’ in a dispute. Resolving an individual dispute is of course key to those individuals involved, but the real value in the ombudsman model is their role in feeding back the lessons from their work in order to help secure redress for others in a similar situation, and to improve service delivery and complaints management for the future. For that reason, an ombudsman is often described as being more like a doctor than a police officer, diagnosing what is wrong and making recommendations to improve.
11. As research in Australia has shown,⁵ every dollar spent on complaint handling can reap a ‘return on investment’ of up to 5 dollars, and more so when you consider social return on investment; an ombudsman helps drive increased efficiency and effectiveness in public services as a result of ‘getting it right first time’. And it is in that guise, as an ‘agent of change’, that an ombudsman plays a role in rebuilding trust and confidence in public services.

⁴ [Speech by the Lady Chief Justice: Civil Justice Council’s 12th National Forum - Courts and Tribunals Judiciary](#)

⁵ [ROI of Complaints for Public Organisations \(socap.org.au\)](#)

Professional investigator / volunteers

12. It's worth reiterating that the best practice 'norm' in the British family of nations and territories across both the British Isles and the Commonwealth is the professional ombudsman model. As touched on above, the value in funding a professional ombudsman office, both in terms of cost savings for central government of driving 'right first time' and strengthening democracy through independent accountability, is seen in territories considerably smaller than Jersey, including Gibraltar, Bermuda, and the Falkland Islands.
13. In terms of the potential uniqueness of the British Crown Dependencies, the ombudsman model has, as the report notes, already been adopted in the Isle of Man for complaints about public services (albeit that the Tynwald Commissioner has made clear that their current funding is inadequate). And of course, the ombudsman model already exists and operates effectively in Jersey in relation to complaints about financial services.⁶
14. That model of 'professional investigators' is also the norm in different sectors and in different nations. Where ombudsman schemes do utilise volunteers it is *in addition* to professional full time staff, not instead of.
15. One example is in Indonesia. The Indonesian Ombudsman, a classical public sector ombudsman, utilises volunteers to deal with the issues they face related to having limited resources to service a complex and diverse country, with a population of 279 million, spread across 17,000 islands, with thousands of distinct native ethnic groups, and over 800 different languages.
16. The 'Sahabat Ombudsman' system, or 'Friends of the Ombudsman', they have developed attempts to encourage engaged and active citizens to help provide oversight of public service delivery. Building on a system of public service supervision training and / or internships for 5,000 individuals, participants are then encouraged to form peer groups in their own communities – typically high school students, university students, journalists, and women's community groups - to raise further awareness of the National Ombudsman within the wider community, and often armed with smartphones, to highlight issues with day-to-day services immediately with local authorities.
17. The UK Pensions Ombudsman also have a volunteer network of c.170 pension professionals, working alongside the Pensions Ombudsman's c.160 full-time staff. Those volunteer advisers support vulnerable customers, help people navigate a pension scheme's internal complaints process, and, where possible, help resolve complaints informally before they complete a pension schemes' internal processes.⁷ As well as utilising the experience of those pension professionals, part of the rationale for this approach is that the advisers will take back the best practice knowledge gained from the ombudsman to both share it with their colleagues and to apply it in their daily work.

Public adjudication / investigation in private

18. As noted, a key feature of the ombudsman model is that it is an inquisitorial process, carrying out investigations in private, as opposed to adversarial adjudication in public. In that sense it is quite deliberately an *alternative* to the Courts and so consciously does not replicate the approach taken there.

⁶ [Channel Islands Financial Ombudsman \(ci-fo.org\)](http://ci-fo.org)

⁷ [Jobs and volunteering | The Pensions Ombudsman \(pensions-ombudsman.org.uk\)](http://pensions-ombudsman.org.uk)

19. The value and appeal of that has been well set out in the Law Commission's report and elsewhere, so I will not repeat it in detail here. As quoted in the report, the Tynwald Commissioner notes that cases *"under investigation are not in the public domain and to publish a summary of such ongoing investigations would be both premature and an inappropriate invasion of the confidentiality of both the complainant and the listed authority."*⁸
20. The popularity of ombudsman schemes across different sectors demonstrates that people value the confidential nature of the 'investigation in private' model. Across the British Isles, ombudsman schemes have seen significant increases in casework: 33% for the Scottish Public Services Ombudsman;⁹ 54% for the Communications Ombudsman;¹⁰ and 70% for the UK Financial Ombudsman Service.¹¹
21. As the report highlights, the implication of the Jersey Government's estimation that a JPSO would deal with 'low hundreds of complaints' is that *"there are currently 100-plus islanders who are not using the current Complaints Panel"*. The figures in the UK suggest that could be higher.

Potential changes to the Complaints Panel

22. The States of Jersey Complaints Panel is a 'Complaint Handler Member' of the OA. That criteria is different to that of an 'Ombudsman Member'. The way in which the OA ensures that both Ombudsman Members and Complaint Handler Members comply with best practice is through a programme of re-validation. The Complaints Panel's re-validation had been put on hold on the assumption that it would be replaced by the proposed JPSO.
23. With the pause in taking forward the establishment of the JPSO, and the possibility that the States Assembly may choose to retain the Complaints Panel, the OA has now brought forward the Complaints Panel's re-validation. Alongside the areas identified in the Law Commission's report, and the changes proposed by the Panel itself, that re-validation will identify compliance with the OA's Complaint Handler Member criteria, and the OA's Service Standards Framework,¹² and any areas to improve.

We are happy to provide any further information if that would be helpful.

Yours sincerely



Donal Galligan
Chief Executive

⁸ [Tynwald Commissioner 7th Annual Report \(tynwald.org.im\)](https://www.tynwald.org.im)

⁹ [Public service complaints statistics 2023-24 published | SPSO](#)

¹⁰ [Communications Ombudsman releases updated... | Communications Ombudsman \(commsombudsman.org\)](#)

¹¹ [New data reveals 70% jump in financial complaints – Financial Ombudsman service \(financial-ombudsman.org.uk\)](#)

¹² [OA Service Standard Framework | Ombudsman Association](#)