

# Jersey Public Services Ombudsman Consultation Feedback Report

## January 2020

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# Section 1: Introduction

## Background to consultation

1. In March 2018, the States Assembly agreed in principle that, subject to the findings of further research, a public services ombudsman should be established to replace the existing Complaints Board (P.32/2018).
2. In October 2018, the Jersey Law Commission published a detailed report setting out proposals and recommendations relating to the design, remit and reach of a proposed Ombudsman.
3. In July 2019 to October 2019, a public consultation was undertaken on matters relating to the proposed functions of a Jersey Public Services Ombudsman (JPSO). That consultation built on many of the Law Commission's key recommendations.
4. This report summarises the feedback received to that consultation. It should be read alongside the consultation document which is attached (Appendix 3.2).

## Respondents

5. The following responses were received to the consultation
  - a. 47 individuals or organisations responded to the consultation online survey
  - b. 22 responded via email or letter (69 written responses in total)<sup>1</sup>
  - c. 28 people attended two public meetings (some of whom may also have submitted written comments or responded via the on-line survey)
  - d. 14 people commented via social media.
6. Respondents included members of the public, academics, public bodies, non-Ministerial bodies, subject matter experts and representatives of Ombudsman schemes operating in the United Kingdom. This has provided for a broad and rich range of responses.
7. Where people answered a question via the on-line survey, it is possible to present the responses to each question as a percentage (%)<sup>2</sup>. It is not possible to do so for those

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<sup>1</sup> Andium Homes, AA, AA, BB, Bailiff of Jersey, Care Commission, Comité des Connétables, Complaints Panel, GB, GM, Greffier of the States, Information Commissioner, Jersey Law Commission, Jersey Police Complaints Authority, Judicial Greffier, Local Government and Social Care Ombudsman, Margaret Doyle, Visiting Research Fellow, University of Essex, Ombudsman Association, Parliamentary and Health Service Ombudsman, Privileges and Procedures Committee, Probation and After Care Service, Public Services Ombudsman for Wales, Scottish Public Services Ombudsman, Viscount.

<sup>2</sup> These % are based on the number of respondents who answered each online survey question. In total 47 respondents submitted answers via the online survey but no one question was answered by all 47 respondents. The numbers of people answering questions varied between 40 people to 3 people (albeit only 3 people

who responded via email or letters, attended public meetings, or commented via social media. This is because, in most cases, those respondents only addressed some of the issues raised in the consultation.

8. Caution should be applied in weighting responses against each other. A single response from an organisation/body may represent the views of a number of people, or it may represent the view of the majority of people in that organisation or body, but not all.
9. The key issues and themes that arose from the consultation are set out in body of the report and are illustrated using a selection of the comments received.<sup>3</sup>

### Summary of feedback

10. Section 2 of the report sets out the feedback received. It broadly follows the format of the consultation document. It also sets out the Legislation Advisory Panel's (LAP's) provisional policy response to that feedback, which will be used to inform the development of a draft law for debate by the States Assembly.
11. The LAP<sup>4</sup> is leading the development of the proposed JPSO on behalf of the Chief Minister. As the draft law is developed and key provisions are explored in more depth with stakeholders, elements of that provisional policy response may be subject to some refinement or change. This is a standard feature of law drafting processes.
12. In summary, the LAP's provisional policy position is that the Government of Jersey (GoJ) should proceed with legislative drafting for the JPSO and the JPSO will;
  - investigate complaints of maladministration and service failure about a public service where there is no other organisation already established to handle that complaint
  - oversee how public bodies handle complaints, supporting them to learn from complaints and deliver service improvements
  - be free to all complainants, including some categories of businesses
  - exclude decision-making relating to legal proceedings, employment and personnel matters, judicial decision making and the conduct of judges, criminal justice and police functions and international affairs. Healthcare complaints will not be included from the outset, but there will be a timeframe for inclusion

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responding is an outlier, for an open-ended question. Most questions were answered by between 30 to 35 people)

<sup>3</sup> The comments included within this report are from letters and emails received and online survey responses. Comments have not been amended unless to correct spelling and punctuation for ease of reading, as auto correct facilities were not available as part of the online survey software.

<sup>4</sup> The Legislation Advisory Panel is appointed to advise the Chief Minister on matters including legislation relating to the courts and court procedures and customary law. It consists of States members drawn from both the executive and non-executive arms of the Assembly.

- have time restrictions on complaints which will be investigated
- ordinarily only investigate where there has been a negative impact on a complainant
- not undertake investigations at the request of the Chief Minister (that does not preclude the Chief Minister from alerting the JPSO to matters of concern.)
- take an inquisitorial rather than adversarial approach but will, in exceptional cases, provide for public and private hearings
- not make binding findings or recommendations
- have various options for remedy, depending on the matters under investigation
- investigate complaints about any entity which receives public money or manages public assets to deliver services to the public, subject to certain exceptions set out in the law
- be enabled to work jointly and share information with other watchdogs and regulators
- be established with a non-executive Board, an Ombudsman who makes decisions about findings and recommendations, and case workers who investigate complaints
- be provided with funding for staff costs, premises, training and outreach, as shown in the Government Plan 2020-2023.

### Next steps

13. It is envisaged that, subject to the Chief Minister's approval, work will now commence on the development of a draft law. The draft law will be subject to a further round of consultation with key stakeholders before it is lodged for debate by the States Assembly.
14. Pending decisions made by the Assembly, it is anticipated that the JPSO will be established in 2021.

## Section 2: Consultation feedback

### 2.1 Background assumptions

15. The consultation focused on matters relating to the design, remit and governance of the JPSO. It did not ask if an ombudsman should be established as the States Assembly has already made an in-principle decision to establish a public services ombudsman subject to further research (P.32/2018).
16. The consultation set out a number of background assumptions about the role and function of the JPSO. These included:
- a. there should be an ombudsman known as the Jersey Public Services Ombudsman<sup>5</sup>
  - b. the JPSO should:
    - be independent of government
    - investigate complaints where those complaints are about a public service and where no other organisation is already established to handle that complaint
    - investigate the facts of the complaint as distinct from requiring the complainant to make their own case
    - take an inquisitorial rather than adversarial approach
    - have a wide remit covering most entities in Jersey which provide public services, including some non-governmental entities.
  - c. the JPSO should be established in accordance with the membership criteria of the Ombudsman Association<sup>6</sup> which include:
    - independence from those whom the Ombudsman has the power to investigate, and
    - ability to demonstrate effectiveness, fairness, openness and transparency and public accountability.
17. Whilst the consultation did not directly ask if the JPSO should be established, some respondents explicitly stated their support. Comments included:

*“Great idea should have already been done” (response from member of the public)*

*“It is clear from my own experience that the States Complaint Panel, although well served by its learned members, lacks both public and ministerial confidence ... I am therefore in support of the proposed Public Services Ombudsman as a way forward to*

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<sup>5</sup> Two submissions stated that the name ‘Ombud’ should be considered, rather than ‘Ombudsman’, as it would provide a gender-neutral alternative and demonstrate the scheme’s commitment to equalities.

<sup>6</sup> The Ombudsman Association is a professional association for ombudsman schemes and complaint handlers (UK, Ireland, British Overseas Territories and Crown Dependencies). Members must meet the Association’s best practice rules and criteria <http://www.ombudsmanassociation.org/>

*improve the public confidence in the ability to complain and get redress.” (response from member of the public)*

*“An independent ombudsman is greatly needed in Jersey to enable islanders to seek redress from providers of public services when something goes wrong.” (response from member of the public)*

*“Let’s hope that a public service ombudsman, will be established, so that issues with departments that don’t enforce the laws which they are responsible can be accessed.” (response from member of the public)*

*“The Commission welcomes proposals to establish the JPSO. The Commission’s experience as a health and social care regulator clearly demonstrates the need for independent investigation of complaints about public services and expert oversight of how public bodies design and operate their complaints policies and procedures.” (response from Care Commission)*

**Note: Independent Jersey Care Inquiry (IJCI) and Comptroller and Auditor General (C&AG)**

The IJCI published their two-year review report in September 2019, reporting on progress since the publication of their initial inquiry report in July 2017. In their two-year report the IJCI set out that the proposals to establish an ombudsman in Jersey should be progressed “without delay”.

The C&AG published a report on Governance in December 2019, which welcomed the in-principle decision of the States Assembly, Law Commission research and consultation. Her view is that “the establishment of a Public Services Ombudsman, with wide powers reflecting modern legislation in other jurisdictions, sends an important message about transparent, accountable services that embrace feedback and a commitment to improve”.

18. Malcolm Ferey, Chief Executive Officer of the Citizens Advice Bureau, noted the benefit of making provision in law for complaints resolution:

*“I would like to make a general comment in that I consider this piece of work to be similar to the Code of Practice for Access to Information, before FoI [Freedom of Information] came into being. The code was well written and fairly robust, but it did not have the force of law. Consequently, it was hardly ever used, and little was known about its existence. I believe that the States Complaints Board is in a similar situation now, this model needs to be put on a professional footing and enshrined in a robust piece of legislation that the public can have confidence in, and access to redress (and justice) can be seen to be done.”*

19. Only 7 of 69 written responses did not favour the establishment of the JPSO. These were from the existing Complaints Panel, the Privileges and Procedures Committee (PPC), the Comité des Connétables and four members of the public.
20. Most of the people who attended the public meetings supported the establishment of an ombudsman, although not all. Those who did not were, in the main, existing or previous members of Complaints Panels. Their concerns echo the Complaints Panel's written response to the consultation.
21. The Complaints Panel:
  - a. rejected the findings of the Jersey Law Commission, and much of the consultation report, including references to the effectiveness of the current Complaints Panel system
  - b. set out that;
    - the Panel *"is more than willing to further augment its practices to make the system work more efficiently, as indeed it has done in recent years"*, and
    - *"it is right that it should be reformed or even replaced"* if it is failing to provide an accessible and transparent method by which complaints by members of the public can be given a proper hearing
  - c. expressed the view that it could be given enhanced powers and that a new Government of Jersey Customer Feedback policy should be given time to bed in before any new entity is set up.
22. The PPC:
  - a. rejected the Jersey Law Commission findings and recommendations and parts of the consultation report. PPC considers the Complaints Panel to be an effective scheme and is supportive of any improvements which can be made to the existing system
  - b. would also wish to see the impact of the Customer Feedback Policy and what effect this has on numbers escalated to the Complaints Panel before an Ombudsman's office is established.
23. The Comité des Connétables' view is that the current system works well, and the Complaints Panel should be given additional resources if it is not currently able to investigate a complaint.
24. Three survey respondents and one response by email were not in favour of the establishment of the JPSO, irrespective of what functions it might have. Comments included:

*"At present most of these functions are fulfilled by the existing Jersey Complaints Panel, therefore looking at the JPSO proposals from this perspective, it is unclear*

*there is case for establishing a new complaints handling body.” (response from member of the public)*

### **Provisional policy response**

The concerns expressed by the Comité des Connétables, PPC and the existing Complaints Panel are acknowledged.

It is nevertheless envisaged that the Government of Jersey (GoJ) should proceed with legislative drafting for the JPSO on the basis that:

- doing so accords with the previous in-principle decision of the States Assembly
- further research has been undertaken (in accordance with P.32/2018) and that research indicates that an ombudsman should be established, including responses to the consultation being heavily weighted in favour of an ombudsman
- the IJCI is clear that an ombudsman should be established.
- The C&AG is clear that an ombudsman should be established

## **2.2 Functions of the JPSO**

### Principal functions

25. The consultation proposed that the principal functions of the JPSO should include:
- a. informal resolution of individual complaints about maladministration and service failure using appropriate dispute resolution techniques, including mediation
  - b. formal resolution of individual complaints, by investigation or adjudication, resulting in recommendations for remedy where appropriate
  - c. oversight of how public bodies design and operate internal complaints handling procedures
  - d. own-initiative investigations with restrictions, for example ‘reasonable suspicion’ ‘systemic maladministration’
  - e. enabling lesson learning from complaints and achieving systemic improvements
  - f. learning champion role in relation to the administrative justice system.
26. Except for the seven responses that do not support the establishment of the JSPO (see Section 2.1 above), other responses were supportive of these proposed functions. Of those that answered the online survey:

<b>% answered question who agreed the proposed function</b>	<b>Proposed function</b>
80%	Informal resolution of individual complaints
78%	Formal resolution of individual complaints



78%	Oversight of how public bodies design and operate complaints handling
63%	Own-initiative investigations
83%	Enabling lesson learning
58%	'Learning champion' role

27. Comments noted that it was important that the JPSO supported services to understand what went wrong:

*"Ability to review lesson learning to monitor if systemic changes have taken place so that systems are changed and improved following incidents where things have gone wrong." (response from member of the public)*

*"I think the "learning champion" role is particularly important, to help public sector bodies embed a culture of putting customers first. This will have more long-term impact than restricting the ombudsman to dispute resolution functions." (response from member of the public)*

28. The Scottish Public Services Ombudsman noted that the power in law to set complaints handling standards for the public sector is very positive but that there are associated resource challenges and demand can outstrip resources. In short, they note that having powers to set model procedures has positive impact on public service delivery, but to realise benefits the powers must be robust and the Ombudsman adequately resourced.
29. Responses from other Ombudsman schemes and the Ombudsman Association supported the range of functions proposed and also noted the importance of an ombudsman having the ability to be proactive as well as reactive.

### **Provisional policy response**

It is envisaged the JPSO will have all the functions set out in the consultation document, however more detailed consideration will be given to the extent to which the JPSO will set/oversee the complaints handling standards for the public service due to the reported resourcing challenges.

30. The consultation asked about the use of public hearings. Public hearings are a feature of the existing Complaints Panel processes, but no comparable public services ombudsmen<sup>7</sup> hold public hearings<sup>8</sup>.
31. Some attendees at the public meetings were in favour of public hearings, noting they provide openness and transparency and “*concentrate the minds*” of senior officials and politicians. Other attendees were of the view that a “*fear factor*” of public meetings contributed to the small number of complaints received by the current Complaints Panel<sup>9</sup>.
32. Survey respondents were noticeably not in favour of public hearings in all circumstances. Of those that responded:
  - a. only 13% were in favour of the JPSO only hearing complaints in public hearings
  - b. 24% said complaints should not be heard in public
  - c. 37% said the complainant should be able to request a hearing and 26% agreed there should only be a public hearing at the complainant’s request.

33. Comments included:

*“Many complaints contain confidential information which the complainant does not want the public to have access. Especially involving medical records.” (response from member of the public)*

*“... Although the Complaints Board process shows how these matters can be dealt with appropriately in public I remain unclear as to why public hearings are necessary and desirable, so my inclination would be not to permit them, perhaps unless both the complainant and the Ombudsman felt that a public hearing would add value.” (response from member of the public)*

*“... we think it unlikely that a public hearing would be in the interest of the complainant, or in the wider public interest. Nonetheless the Commission can see the value of the JPSO having the powers to hold a public hearing occasionally, subject to the complainant’s agreement.” (response from Care Commission)*

*“I think that the JPSO should have the authority to determine whether a public hearing would be appropriate, whether the complainant requests it or not.” (response from Information Commissioner)*

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<sup>7</sup> None of the Ombudsman schemes which sent submissions use public hearings and it was noted as “*common practice internationally that an Ombudsman investigates complaints in private*”. The response Ombudsman Association submission noted that investigations held in private allowed for “*less confrontational, consistent, assessments of the issue*”.

<sup>8</sup> Whilst comparable public services ombudsman do not hear complaints in public, it should be noted the Jersey’s Commissioner for Children and Young people may hold hearings in public,

<sup>9</sup> 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. In 2016 there were 8 new complaints, in 2015 there were 9, in 2014 there were 13.

### Provisional Policy Response

The JPSO will investigate complaints. This will not generally require a hearing, albeit a hearing may be helpful or necessary in some cases. Hearings bring the risk of an 'inequality of arms'. The entity which is the subject of the complaint may have access to resources (financial, knowledge and information) that place the complainant at a disadvantage.

It is envisaged that the law will provide for public and private hearings in exceptional cases and subject certain conditions, but this will not default method for complaints investigation/resolution.

### Fees

34. Survey responses were split on a question as to whether the JPSO should be free. Of those that responded:
- 45% agreed it should be free to residents but that non-residents should pay
  - 39% were against the proposal that non-residents should pay
  - 16% had no preference.

35. Comments were mostly in favour of the JPSO being free to all:

*"I do not think it would be fair for an alleged victim of a contravention of administrative fairness should have to pay to seek redress" (response from Information Commissioner)*

*"Our position is that any person in receipt of a public service should have the same recourse to redress if they suffer an injustice due to maladministration and service failure." (response from Parliamentary and Health Services Ombudsman)*

*"In my view charging for ombudsman services could exacerbate the challenges non-residents may already face in accessing administrative justice." (response from Public Services Ombudsman for Wales)*

*"We note that the Ombudsman Association's Criteria for the Recognition of Ombudsman Offices state that 'Those complaining to the Ombudsman should be entitled to do so free of charge', so charging non-residents may conflict with the stated assumption/aspiration to establish the JPSO 'in such a way as to ensure it meets the membership criteria of the Ombudsman Association'" (response from Care Commission)*

### Provisional Policy Response

It is envisaged that the JPSO should be free to all. The Law should, however, provide a Regulation making power to introduce fees for non-residents at a later date, in the event that the States determined it is necessary to do so.

### Investigation

36. 85% of 39 survey respondents agreed the JPSO should investigate maladministration and service failure. 75% of 40 respondents also agreed the JPSO should actively investigate the facts of a complaint, as opposed to requiring the complainant to evidence the service failing or maladministration.

37. Comments included:

*“Complainants often have few resources compared to public offices. Complainants normally assume that public services are acting in good faith, therefore tend to not have substantial evidence initially. When a failure is due to a public body’s inaction, then how would a complainant have evidence of something which didn’t occur?”*  
(response from member of the public)

*“I think an investigatory element would add value compared to current arrangements”*  
(response from member of the public)

### Provisional Policy Response

It is envisaged that the JPSO will investigate maladministration and service failure.

### Businesses

38. Around two thirds of survey respondents (64%) agreed the JPSO should be able to investigate complaints from some categories of businesses affected by administrative decisions, in addition to complaints from individuals.
39. Of those who submitted comments, some suggested that the JPSO should be able to investigate complaints from all types of business, as opposed to just some types of businesses. Other respondents referenced only small businesses, charities and those who have tendered for work with GoJ.
40. Respondents also noted the need to ensure:
- there was no overlap with other regulators, such as the Channel Islands Financial Ombudsman

- b. there were sufficient resources if large businesses were to be included in the JPSO's remit.

### **Provisional Policy Response**

It is envisaged the JPSO will accept complaints from some categories of businesses, the scope of which will be determined as the law is drafted<sup>1011</sup>.

The law will provide regulation making powers so that the States may, at a later date, include different types of businesses within the JPSO's remit.

### Types of complaints excluded from JPSO

41. The consultation proposed that the following types of complaints should be excluded from the JPSO remit:
- decision-making relating to legal proceedings
  - employment and personnel matters
  - where there is an established route of redress via a tribunal or court
  - judicial decision-making and the conduct of judges
  - criminal justice and police functions
  - international affairs
  - complaints about matters which did not negatively impact the complainant, except for where the JPSO uses its own initiative powers
42. Of the 35 online survey respondents who answered, the majority supported the proposed exclusions:

<b>% in agreement</b>	<b>Proposed function</b>
69%	Decision-making relating to legal proceedings
80%	Employment and personnel matters which could be addressed in proceedings before a tribunal or court
74%	Judicial decision-making and the conduct of judges
69%	Criminal justice and police functions
60%	International affairs
61%	Where there are other statutory bodies with responsibility to provide redress or regulation

<sup>10</sup> It should be noted that the Financial Services Ombudsman allow complaints from microenterprises (<10 staff <€2m turnover), charities, trusts, foundations and other bodies, plus the GoJ complaints policy also responds to complaints and feedback from businesses.

<sup>11</sup> The footnote above was amended on 29/04/2020 to correct small errors in the numbers of staff and currency which define microenterprises.

43. Comments included:

*"I believe the JPSO should be able to hear complainants who have been to another body and are not satisfied their complaints has been dealt with justly or appropriately"  
(response from member of the public)*

*"I would not exclude decision-making related legal proceedings because that description is too broad. If the intention is to exclude matters that are subject to legal proceedings, then this should be clarified. For example, a decision might be made by a public body not to send a complainant information about their legal routes of redress for an unresolved complaint, and this could be interpreted as a decision related to legal proceedings and wrongly excluded when it is a matter that could be investigated as maladministration by the ombud. I also would not exclude matters where other bodies have statutory responsibility to provide redress or regulation. Instead, I would put a duty on the ombud to work collaboratively with such bodies in its investigations and reporting where potentially the complaint falls within the remit of several bodies"  
(response from Margaret Doyle)*

44. Members of the departments of the judiciary, including the Judicial Greffier and Viscount, noted other routes of redress are available and must be considered as exclusions, notably the Judicial Code of Conduct.

45. A submission from Andium Homes noted that government is also considering whether to establish a Social Housing Regulator. Once established, it would provide an alternative route of redress for those with housing related complaints.

#### **Provisional Policy Response**

It is envisaged that decision-making relating to legal proceedings, employment and personnel matters, judicial decision making and the conduct of judges, criminal justice and police functions, international affairs, and where there are other statutory bodies providing redress, will be excluded.

Consideration will be given as to how best to ensure that this excludes decision making but not matters relating to poor customer service.

The JPSO will be established in such a way that if alternative routes of redress are created after the law comes into force any duplications in the scope of each body's remit could be addressed.

## Time limits<sup>12</sup> and internal complaints

46. The consultation proposed that:
- a. JPSO law would set out time limits for when a complaint will be heard (up to 12 months after the complainant could reasonably be expected to be aware that they had a reason to complain, and no more than 5 years after the act to which the complaint relates)
  - b. the JPSO could not investigate a complaint that relates to an act that happened before the JPSO is established (i.e. no retrospective powers of investigation)
  - c. the JPSO may waive the time limit if they determine that there is exceptional reason to do so.
47. 41% of online survey respondents agreed that the JPSO should only investigate complaints that relate to an act that happened after the JPSO has been established, 47% disagreed.
48. 53% of online survey respondents agreed that the JPSO should only investigate a complaint up to 12 months after the complainant could reasonably be expected to be aware that they had a reason to complain and no more than 5 years after the act to which the complaint relates.
49. At a public meeting it was suggested that thought needed to be given as to when the 12 months started due to the risk of a complaint being “*timed out by the department*” (the inference being that poor GoJ complaints processes may eat up the 12-month period).
50. Other comments reflected this view:

*“There needs to be discretion about the time limit. Also requiring complaints to only be investigated once the internal process is fully complete allows some departments to push matters into the long grass and delay investigations often for very long periods.”*  
(response for member of the public)

*“It is our experience that in most cases it is Departments which delay the procedure by extending the internal review process to include external oversight which can take over 3 months to complete.”* (response from Complaints Panel)

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<sup>12</sup> During the consultation period it was reported that there was an error in the online survey affecting Q7. This error was not identified before the consultation was published, but some respondents did reference it in the comments they submitted. As GoJ cannot be sure how compromised the responses are, it has been agreed to disregard all online responses to Q7 during the time there was an error, except where the respondent noted the issue and explicitly set out what their answers were. All responses received after the error was fixed have been included. Written submissions on the subjects covered in Q7 have also been included.

*"Within the existing organisation, when something goes wrong, an individual seeking redress can expect to encounter a long-winded, confusing process. An individual can expect to be worn down through attrition and obfuscation."* (response from member of the public)

51. 47% of online survey respondents agreed that the JSPO should only investigate once the complainant has exhausted the internal complaints process of the entity about which they have a complaint. Exactly the same number of those that responded (47%) disagreed with this requirement.

*"My concern about the requirement to exhaust the internal complaints procedure is that unless there is consistent good practice in internal complaints handling and signposting across all public bodies in jurisdiction, and a limit on the time allowed for internal complaints handling, some complainants will be disadvantaged by the requirement. There should always be the ombud's discretion to accept a complaint that has not been through the internal complaints process. There should also be the ombud's discretion to initiate an investigation into an issue of wider public interest when the ombudsman becomes aware of a pattern of problem of a systemic error."* (response from Margaret Doyle)

*"I would be cautious of restricting the remit of the ombudsman unduly. However, it is essential that the ombudsman should only come into play once all other complaints processes are exhausted, otherwise there will be a tendency for complainants to head to the ombudsman as quickly as possibly which will deter organisations from sorting out their own complaints processes and have serious resource consequences."* (response from member of the public)

52. 82% of survey respondents did not agree the JPSO should only investigate complaints about matters which have had a negative impact on the complainant:

*"Who determines what is a "negative impact"? This could be very subjective. People might want to complain when something has gone badly wrong but they have not actually experienced negative impact."* (response from member of the public)

53. The Ombudsman Association noted if the JPSO was provided own initiative investigatory powers it could use these powers to bypass restrictions placed on it, this could include only investigating complaints where there had been a negative impact on complainants.

#### **Provisional policy response**

It is envisaged

- that there will be time restrictions on the complaints which the JPSO can investigate
- that complainants will be required to have exhausted the internal complaints process of the entity about which they have a complaint before the JPSO will act



- the JPSO will, as a matter of course, only investigate where there has been a negative impact on a complainant, except for where the JPSO uses their own initiative powers to do otherwise or where a representative brings a complaint in the complainant's name.

There will, however, be some discretion to consider matters falling outside these restrictions when the JPSO is using its own initiative powers of investigation.

### Investigations at the request of the Chief Minister

54. The consultation asked if the Chief Minister should have the power to request the JPSO to investigate a failure of a body or office holder to properly discharge their functions, where the Chief Minister has a statutory responsibility to hold those bodies or office holders to account.

55. A majority of those that responded to the online survey agreed (76%) with this provision but those who submitted comments were, on the whole, opposed:

*"The Ombudsman will be tainted if he/she is a tool of the Chief Minister."*  
(response from member of the public)

*"Allowing the Chief Minister to instigate investigations would lead to an atmosphere of politicisation of the process."* (response from member of the public)

*"such a provision could undermine substantive and perceived independence of the ombudsman"* (Public Services Ombudsman for Wales)

56. The Ombudsman Association stated that other ombudsman scheme with similar provisions had been denied membership. Their association criteria set out that *"The Ombudsman alone ... must have the power to decide whether or not a complaint is within the Ombudsman's jurisdiction."*

### **Provisional Policy Response**

To adhere to the membership criteria of the Ombudsman Association it is envisaged that the JPSO will not undertake investigations at the request of the Chief Minister. That does not, however, preclude the Chief Minister, from alerting the JPSO to matters of concern.

## **2.3 Findings, recommendations and remedy**

57. It is proposed the JPSO will investigate a complaint in order to find out the facts of what has happened and what, if anything, went wrong (a *finding*). The JPSO will also

recommend what action should be taken to put right any errors found (a *recommendation*).

58. The consultation asked:
- whether or not the JPSO's findings and/or recommendations should be binding and enforceable, or
  - whether recommendations should be binding and enforceable unless challenged by the public body or by the complainant.
59. The consultation also asked if findings should be binding:
- between the public body and the complainant for all purposes (i.e. every time the service is provided by the public body to the complainant)
  - between the public body and the complainant only, or
  - the public body and any person it provides the service to.
60. The consultation document noted that there are significant implications to binding and enforceable findings and recommendations.
61. The consultation further set out that, if the JPSO's decisions are to be binding, there must be ways in which they can be challenged or rejected by the public service or the complainant. Three new options were suggested (A, C and D), could be in addition to Option B (Judicial review). Judicial review is already available as a way to challenge a decision of a public body under Part 16 of the Royal Court Rules 2004.
- Option A: Appeal to the JPSO
  - Option B: Judicial review of the JPSO decision
  - Option C: Appeal to the Royal Court
  - Option D: Statement to the Assembly

### Findings and recommendations/Routes of appeal

62. Of those that responded to the online survey:
- 59% agreed that findings should be binding between the public body and complainant but only in relation to the specific complaint investigated
  - 14% agreed that findings should be binding between the complainant and the public body for all purposes
  - 28% agreed that findings binding between the public body and any person it provides the service to.
63. 38% of those that responded to the online survey agreed that recommendations should be binding, 10% that they should not be binding and 52% that they should be binding unless challenged or rejected.
64. Issues relating to findings and recommendations were not mentioned in all the letters and emails received. Of those which did address these issues:

- a. 4 respondents were in favour of findings being binding and 2 were against
  - b. 2 respondents were in favour of recommendations being binding and 9 respondents were not in favour of recommendations being binding.
65. The comments received in the surveys and correspondence also reflected these differences of opinion. Some respondents stated that non-elected officials should not be able to make binding decisions on the basis that it is undemocratic to do so and could have very significant, and potentially unworkable, resource implications. Some respondents, in particular those who attended the public meetings, were clear that decisions should be binding.
66. Comments from respondents in favour of binding decisions included<sup>13</sup>

The JPSO should be given ... *“more teeth than the Complaints Panel”*.

*“I would support a binding and enforceable decision that can be appealed by the minister if circumstances dictate, such as setting a precedent that could cause unexpected public redress.” (response from member of the public)*

The Jersey Law Commission remains strongly in favour of findings being binding and enforceable.

*“In our November 2018 report, we concluded after careful analysis that Ombudsman outcomes in Jersey should be binding and if a Minister or other public body fails to follow a recommendation aimed at providing redress for injustice in an individual case, the aggrieved person should be able to go to court to enforce that recommendation ... This remains the kernel of our advice to the Chief Minister.*

67. Comments from respondents not in favour of binding decisions included:

*“How can findings be binding? How can non-elected people dictate to elected members? Ministers and Departments need to take findings reports more seriously and accept that complaints are not a threat but a positive way of improving services.” (response from member of the public)*

*“The ombud's findings that have wider impact (for example, that affect individuals other than the complainant) should be binding on the public body. Otherwise they would only benefit the individual taking the complaint and would do little to improve initial decision-making and best practice. I do not agree that the ombud's recommendations should be binding, however”. (response from member of the public)*

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<sup>13</sup> Whilst a significant number of respondents were in favour some forms of binding decisions, very few of those respondents set out why they thought that, hence the comments set out focus on the views of those who do not support binding decisions.

*“My assumption is that findings will sometimes be quite specific to the circumstances of a specific complaint so making them binding more broadly might not be sensible.”*  
(response from member of the public)

*“Recommendations cannot be binding on ministers without upending the principle of ministerial accountability to the Assembly, as well as ministers' status as corporations sole. Frustrating although it may be (cf Equitable Life in the UK) democratically-elected politicians are where the buck stops in a democracy, not appointed officials.”*  
(response from member of the public)

*“The ombud's powers are those of persuasion and influence and they require the ombud to be seen as credible and authoritative. They are not like the powers of a court or tribunal, and to make them more like those mechanisms would diminish the distinctive contribution that the ombud makes to administrative justice. However, there should be robust mechanisms for following up and monitoring the actions taken by public bodies on the recommendations made by the ombud, and public bodies should be required to explain their reasons for not implementing a recommendation.”*  
(response from Margaret Doyle)

68. Some respondents noted the criteria of the Ombudsman Association, and the inherent assumption that findings and recommendations will be respected:

*“The Ombudsman Association Criteria ...are clear that there should be a reasonable expectation that the Ombudsman's decisions and recommendations will be complied with. The Ombudsman Association....is clear that an Ombudsman's findings of fact, and of maladministration or poor service, should be binding on the organisation complained about. And that, if the organisation complained about is subject to direct/indirect democratic control, an Ombudsman's findings on responsibility and redress should be respected. This best practice approach is clear, tried and tested in practice.”* (response from member of the public)

69. None of the Ombudsman schemes which responded to the consultation have binding recommendations, and none saw this as problematic or leading to less compliance.

*“... my recommendations are not binding. This is in line with the general ombudsman practice, which does not rely on enforcement, but rather on the power of publicity and reputation, as well as the public law duty of a public body not to reject recommendations irrationally.”* (Public Services Ombudsman for Wales)

70. A recent UK judgment supports this position and asserts that although public authorities are not bound to accept findings and recommendations, they cannot act irrationally in rejecting a finding of maladministration and that there must be ‘cogent reasons’ for rejection.<sup>14</sup>

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<sup>14</sup> R (Bradley) v Secretary of State for Work and Pensions [2008]

71. 76% of those that responded to the online survey agreed that, if decisions are binding, there should be a route of appeal to the JPSO in the first instance, 70% agreed that if decisions are binding they should be subject to challenge by Judicial Review, and 62% agreed they should be subject to challenge by Royal Court Appeal.
72. Comments received set out further nuances:
- “There should be an appeals process but with restrictions (e.g. Tribunal judgements can be appealed on a point of law)” (response from member of the public)*
- “It should not be necessary to include a route of appeal in the statutory framework. A modern effective Ombudsman scheme would put in place its own complaints/review system.” (response from member of the public)*
- “I believe findings should be binding but not challengeable. Why should the court be able to substitute its judgement for that of the ombudsman? But recommendations should not be binding and therefore there is no need for them to be challengeable in court.” (response from member of the public)*
- “IF they are binding ~ they are FINAL” (response from member of the public)*
73. 88% of respondents agreed that the Minister should make a statement to the States Assembly in the event that the Minister rejects the JPSO findings or does not accept a recommendation.
74. 85% of respondent agreed that a Connétable should make a statement to their Parish Assembly in the event that the Connétable rejects the JPSO findings or does not accept a recommendation.

### **Provisional Policy Position**

Whilst it is recognised that some consultation respondents were in favour of binding decisions there are nevertheless very legitimate concerns about unelected officials being able to overturn the decisions of a Minister. Therefore, it is envisaged that neither the JPSO's findings nor recommendations will be binding. This is in accordance with ombudsmen schemes in other jurisdictions.

It is envisaged that the law will provide that:

- a Minister, the entity against which the complaint is made, or the complainant may ask the JPSO to review their recommendations or findings in the event they dispute them, and
- a Minister should not reject the JPSO's findings and/or recommendations without having given those decisions proper consideration.

It is also envisaged that, where a Minister rejects a finding or recommendation,

- the JPSO will issue a formal public report, and
- the Minister will make a statement to the Assembly (and, where relevant, the Constable will make a statement to the Parish Assembly)

Reports and statements will be subject to safeguards designed to protect the privacy of the complainant and associated third parties, as distinct from the Minister or entity against which the complaint has been made.

## Remedies

75. The consultation set out that the types of remedy which the JPSO could recommend. These included:

- apologising for the error
- offering a full explanation of what happened and why
- amending or reversing the decision of the Minister and/or public body decision maker
- providing financial compensation

76. 97% of 36 online survey respondents agreed that the JPSO should have the power to recommend apologising for the error, 75% agreed that that JPSO should have the power to recommend compensation and 97% agreed JSPO should be able to give recommendations for improvement.

77. Comments included:

*“Ability to review if recommendations for improvement have been made. Ability to hold Government Departments to account if there are failings by public service officers in implementing recommendations and failings in following good practice guidelines and policies.” (response from member of the public)*

*“Acknowledgement of responsibility; Explanation; Remedial action; Broad powers to provide effective remedies are required, not detailed lists or compensation limits.” (response from member of the public)*

*“The Ombudsman’s Principles describe an appropriate range of remedies as including: an apology, explanation and acknowledgement of responsibility; remedial action, which may include reviewing or changing a decision on the service given; revising published material; revising procedures; training or supervising staff; or any combination of these.” (response from Care Commission)*

78. A number of respondents to the online survey (plus a number of people who attended the public meetings) commented on whether or not the JSPO should be able to recommend that financial compensation is paid to the complainant.

*"I am uncomfortable with the prospect of the JPSO calculating exact figures for financial compensation on relevant cases. However, the threat of financial compensation when a complaint is upheld might encourage the public service to consistently take complaint handling seriously. Perhaps a notional minimal amount proportional to the agreed financial loss might be considered - but the system would have to be transparent and non-contentious." (response from member of the public)*

*"Compensation should not be punitive but limited to making good any financial loss incurred by the complainant and provide recognition for any harm, distress, or consequence arising from an unbalanced judgement on the complainant." (response from member of the public)*

*"Compensation ONLY where there is ACTUAL LOSS suffered." (response from member of the public)*

### **Provisional policy position**

It is envisaged the JPSO will have various options for remedy, depending on the matters under investigation and any findings and recommendations made.

This will include the ability to recommend a payment is made to the complainant subject to certain constraints, such as a cap, as may be found in the Financial Services Ombudsman (Jersey) Law 2014, or a tariff.

Recommendations relating to payments will not be binding, as set out above.

## **2.4 Jurisdiction and design principles**

79. The consultation document asked a number of questions about the types of entity which should fall within the JPSO's remit, or outside the JPSO's remit.
80. The consultation proposed that the JPSO's remit should include:
- a. the Parishes, arm's length bodies, statutory office holders and States-aided independent bodies
  - b. entities that fall under the Human Rights Law, Public Finances Law, Jersey Appointments Commission and Freedom of Information Law should fall within the jurisdiction of the JPSO (unless there are compelling reasons to exclude them)
  - c. entities which receive public money<sup>15</sup>, or manage public assets, to deliver public services (unless there are compelling reasons to exclude them)

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<sup>15</sup> The consultation document included the Bank Deposit Compensation Scheme in the list of entities that would fall within the JPSO remit on the basis that they receive public money. It is noted, however, that the scheme does not receive any public funding.

81. The consultation also set out a number of proposed exclusions including judicial decisions taken by the Bailiff and others; Law Officers and the Law Officers' Department; the Church, except in relation to property maintained via Parish Rates; the Crown; the States Assembly.
82. 94% of 31 online survey respondents agreed that the executive and administrative functions of the Government of Jersey should fall within the jurisdiction of the JPSO.
83. 81% of 31 online survey respondents agreed that the executive and administration functions of the Parishes should also fall within the jurisdiction of the JPSO<sup>16</sup>.
84. 90% of 31 online survey respondents agreed that the entities which fall under the Human Rights Law, Public Finances Law, Jersey Appointments Commission and Freedom of Information Law should fall within the jurisdiction of the JPSO, unless there are compelling reasons to exclude them.
85. 55% of 31 online survey respondents agreed entities which receive public money, or manage public assets, to deliver public services should be included<sup>17</sup>. 10% disagreed, and 35% stated they did not know, or had no preference.
86. Comments included:

*"Any entity receiving any sort of public funds must be within the ombudsman's jurisdiction." (response from member of the public)*

*"All QWANGOs and the likes of JDC, Andium, Ports together with any company that the Government has significant control over should fall within the jurisdiction." (response from member of the public)*

87. There were also a number of comments which reflected the need to better clarify the link between receipt of public money and/or management of public assets and the JPSO's jurisdiction. For example:
  - a. it was noted that a number of housing trusts, in addition to Andium Homes, have been recipients of public land and/or public funding and that, given that the services they provide are to all intents and purposes the same as Andium Homes, they shall all fall under the JPSO remit if the JPSO is to provide equity for all social housing tenants
  - b. one respondent suggested that private sector bodies (such as private schools) which receive public sector grants should only fall into the JPSO remit where there is direct government involvement or influence with the subsequent use of such grants.

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<sup>16</sup> The Comité des Connétables agrees that the maladministration of the parish should be open to investigation but that should be undertaken by an enhanced Complaints Panel, as opposed to a JPSO.

<sup>17</sup> It is known as the 'follow the money' principle



88. There was less clarity in relation to the Church. Whilst 44% of 32 online survey respondents agreed with the statement that the Church should be included in relation to property maintained via Parish Rates (but not for any other purpose), 31% did not agree:

*“Not really sure why the Church would be considered a public service.” (response from member of the public)*

89. Reflecting on the consultation feedback, it is understood that greater clarity is required as to what exactly the Parish rates fund in relation to the Parish Churches, and the extent to which this can be defined as delivery of services to the public.
90. Indeed, a number of respondents submitted comments which touched on the need to more clearly define:
- what is meant by ‘services to the public’, and/or
  - how and why some entities will fall under the JPSO remit for some elements of service provision but not for others.

*“I note the inclusion of the States Greffe “Only where the States Greffe delivers a service to the public”. I am not sure what this would mean in practice. For example, publication of the Order Paper is “a service to the public” but also a core parliamentary proceeding, protected by privilege. Further discussion is necessary to work out which of our services, if any, could come within the ambit of the Ombudsman.” (Greffier of the States)*

91. Similar views were submitted by other non-Ministerial departments, with the Viscount and Judicial Greffier noting, amongst other points, that due to the nature of their responsibilities it is difficult to separate administrative decisions from judicial ones. The Viscount noted:

*“It is hard to think of any activities of the Viscount (except perhaps as an officer of the States Assembly) which does not flow from judicial activity or from the Courts in Jersey. As a consequence, it is difficult, in turn to categorise decisions and actions taken as either “judicial” or “administrative”.*

92. The Chief Probation Officer noted there might be some administrative and procedural functions that could fall under the jurisdiction of the JPSO but *“... a very careful distinction would need to be made in order not to give potential complainants an inaccurate and unhelpful sense of expectation.”*

### **Provisional policy position**

It is envisaged that law will provide for a schedule which will set out which entities will fall within the remit of the JPSO. This will include any entity which receives public money or manages public assets to deliver services to the public except for where it is determined that the entity, or specific functions of that entity, should not be included on that schedule.

The schedule can be amended by secondary legislation.

In developing the law and associated schedule, consideration will be given to the definition of services to the public.

## 2.5 Healthcare providers

93. The consultation document proposed that:
- a. due to the complexities of Jersey's healthcare system, healthcare providers would be excluded from the remit of JPSO in the first instance
  - b. the law would provide regulation-making powers so that healthcare providers could be included in the JPSO's remit at a later date. This would allow the JPSO time to set up and develop its practice before taking on matters relating to healthcare, which can be extremely complex.
94. 75% of 32 online survey respondents agreed that healthcare providers should be included at a later date.
95. When asked if the JPSO should investigate clinical decisions as well as service provision, 44% of 32 online survey respondents agreed, whilst 38% did not agree<sup>18</sup>:
96. Comments included:
- "The JPSO's remit should include health and social care providers as soon as possible. The reasons for not including them from the outset are understood but there should be a clear timetable for their inclusion."* (response from member of the public)
- "From my experience as Health Service Ombudsman for England, any attempt to exclude clinical decisions would be unworkable and lead to serious complainant dissatisfaction."* (response from member of the public)
- "Clinical decisions are complicated and should be dealt with by medical procedures, already in place."* (response from member of the public)
97. At a public meeting the importance of transitional arrangements between the Complaints Panel, which currently has jurisdiction to investigate healthcare complaints, and the JPSO including healthcare was discussed. The Complaints Panel also expressed concern:

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<sup>18</sup> Non-inclusion of clinical decisions is as per the Jersey Law Commission's position.

*“We accept that there needs to be a clear process for complaints about clinical care, but surely matters of administration, particularly in relation to how complaints themselves were handled, should be part of any new system?”*

98. Responses from Ombudsman schemes and the Ombudsman Association, whilst recognising the complexities, were in favour of health care being included and with a specific legislative timetable for doing so. The Northern Ireland Public Services Ombudsman had a similar staged approach to bringing services into its remit.

### **Provisional policy position**

It is envisaged that healthcare will be excluded from the JPSO remit in the first instance. The report and proposition that accompanies the draft legislation will, however, set out a timeframe for inclusion.

Further careful consideration and discussion with key stakeholders and subject matter experts will be needed in relation to clinical decisions and how these may be incorporated.

## **2.6 Other watchdogs and regulators**

99. There are other watchdogs, regulators and grievance resolution bodies already in operation in Jersey<sup>19</sup>. The consultation proposed that the JSPO would interact with these bodies in three different ways:
- a. joint working: JPSO would be provided powers to undertake joint working with other watchdogs. This will include in relation to investigating individual cases or concerns about systemic failings
  - b. oversight of complaints handling policy: JPSO would have oversight of how other watchdogs design and operate their internal complaints handling process
  - c. investigate failure to act in accordance with complaints policy: JPSO would have the power to investigate complaints about how other watchdogs apply their internal complaints processes but would not be able to investigate whether the decision of that watchdog was right.
100. Of the 28 online survey respondents who answered, the following percentage agreed the proposed relationship between the JPSO and other watchdogs and regulators:

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<sup>19</sup> Care Commission, Children's Commissioner, Commissioner for Standards, Comptroller and Auditor General, Jersey Appointment Commission, Jersey Competition and Regulatory Authority, Jersey Financial Services Commission, Jersey Police Complaints Authority, Information Commissioner and Data Protection Authority

<b>% in agreement</b>	<b>Watchdogs and regulators</b>
96%	Care Commission
96%	Children's Commissioner
96%	Commissioner for Standards
89%	Comptroller and Auditor General
93%	Jersey Appointments Commission
82%	Jersey Competition and Regulatory Authority
79%	Jersey Financial Services Commission
79%	Jersey Police Complaints Authority
89%	Information Commissioner/Data Protection Authority

101. Written responses in agreement with proposals were also received from the Care Commission, Police Complaints Authority and Information Commissioner.

### **Provisional policy position**

It is proposed the JPSO will be enabled to work jointly and share information with other watchdogs and regulators. Subject to further consideration, it may also have oversight of complaints handling policies and investigate failure to act in accordance with complaints handling policies.

These arrangements may take of the form of memorandums of understanding rather than legislative provisions.

## **2.7 Structure and governance**

102. In adopting P.32/2018, the States Assembly agreed that, subject to further research, a Public Services Ombudsman should be established but that consideration should be given as to how 'the best elements' of the existing Complaints Board could be retained. For this reason, the consultation report set out two potential options for the structure of the JPSO:

- a. Option 1 – consists of a non-executive Board, an Ombudsman who makes decisions about findings and recommendations, and case workers who investigate complaints. This is the model proposed by the Jersey Law Commission.
- b. Option 2 - expands on elements of the existing Complaints Board arrangements. The Board would make decisions about finding and recommendations and would be supported by case workers who investigate complaints.

103. Of the two proposed structures 58% of 31 online survey respondents were in favour of Option 1 and 29% in favour of Option 2. Comments reflected the challenges associated with Option 2.

*“The ombudsman should be seen to be independent, I think this would be much more difficult with a board of unpaid volunteers.”* (response from member of the public)

*“Option 2 is not an Ombudsman Scheme.”* (response from member of the public)

104. The Scottish Public Services Ombudsman stated that Option 2 is problematic as it conflates executive functions and board governance responsibilities and does not deliver the office of Ombudsman as independent decision-maker.

105. The Ombudsman Association noted that if Option 2 is adopted the JPSO would be excluded from membership of the Association.

106. One respondent in favour of Option 2 commented:

*“I would like to see the non-executive board members being used as a sounding board in the event that the Ombudsman has difficulty in coming to a decision. In other words, lay people with various life experiences are invaluable (as with the existing Complaints Panel).”*<sup>20</sup> (response from member of the public)

#### **Provisional policy position**

It is proposed to establish the JPSO as Option 1.

107. The consultation set out that the proposed number of paid employees included 1 x Ombudsman, 1.5 x case workers and 1 x assistant. 59% of 29 online survey respondents stated they thought this would be too few staff, 28% said they thought it would be the right amount, with 14% stating it was too few staff.

108. Comments included:

*“Depending on volume of workload”* (response from member of the public)

*“Can always be reviewed and increased as/if required.”* (response from member of the public)

*“More money!!”* (Social media response)

109. At a public meeting there was some support for the Complaints Panel on the basis of cost.

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<sup>20</sup> This was reflected in a public meeting, where the importance of the voluntary effort and role of lay members was noted.

**Provisional Policy Response**

The Government Plan, approved by the States Assembly in December 2019, provides for £378,000 for the JPSO in 2021 (£1,176,000 total estimated between 2021-2023). This will provide for staff costs, premises, training and outreach.

## Section 3: Appendices

### 3.1 Survey Results

1. Data Protection statement
2. Functions of the Jersey Public Services Ombudsman

2. Which of the proposed principal functions should the JPSO have? Tick all that apply								
							Response Percent	Response Total
1	Informal resolution of individual complaints about maladministration and service failure using appropriate dispute resolution techniques including mediation			<div></div>			80.00%	32
2	Formal resolution of individual complaints, by investigation or adjudication, resulting in recommendations for remedy where appropriate			<div></div>			77.50%	31
3	Oversight of how public bodies design and operate internal complaints handling procedures			<div></div>			77.50%	31
4	Own-initiative investigations with restrictions, for example 'reasonable suspicion' 'systemic maladministration'			<div></div>			62.50%	25
5	Enabling lesson learning from complaints and achieving systemic improvements			<div></div>			82.50%	33
6	'Learning champion' role in relation to the administrative justice system			<div></div>			57.50%	23
7	Other, please state in comments box			<div></div>			10.00%	4
Analysis	Mean:	15.45	Std. Deviation:	25.65	Satisfaction Rate:	182.92	answered	40
	Variance:	657.89	Std. Error:	4.06				skipped
Comments: (10)								
Ability to review lesson learning to monitor if systemic changes have taken place so that systems are changed and improved following incidents where things have gone wrong.								

## 2. Which of the proposed principal functions should the JPSO have? Tick all that apply

	Response Percent	Response Total
At present most of these functions are fulfilled by the existing Jersey Complaints Panel, therefore looking at the JPSO proposals from this perspective, it is unclear there is case for establishing a new complaints handling body.		
Signposting to more specific entities. Such as the OIC for Data Protection. Allow 'class action'-style complaints when multiple complainants have similar grievances.		
As long as they have the power and the individual departments accept the findings of the Ombudsmen. The board must have power and control to be respected by everyone and not ignored. Otherwise what's the point?		
None of the above. The Financial Services Ombudsman does not work and is very expensive. There should be no move to establish a public bodies ombudsman until this has been addressed. One complaint would be the amount of taxpayers money spent on expensive solutions.		
I think the "learning champion" role is particularly important, to help public sector bodies embed a culture of putting customers first. This will have more long-term impact than restricting the ombudsman to dispute resolution functions.		
They should have the power to make an organisation Investigate something. For instance, a Care home treated myself and my mother very badly. What with delays by other states and social departments and people, the case has now become historic and the Jersey Care Commission will not now investigate it. They also cite lack of resources. And nobody can make them. This is absolutely disgusting.		
Oversight of how public bodies design and operate internal complaints handling procedures - needs confirmation of existence. own-initiative investigation with restrictions, for example 'reasonable suspicious' 'systemic maladministration' • Ombudsman can conduct own investigations, again, not their role, they should be able to pass on data relating to systemic failures within a body to another investigative body. Learning Champion role ... - unsure		
We consider that the JPSO should have all of the above functions.		
The ombud's principal functions should be directed to public-value investigation of systemic issues. Individual complaint handling should be one of the functions but not the primary function. Lessons from public-sector ombuds elsewhere suggest that if the primary function is handling of complaints from individuals, this can result in a focus away from oversight and learning work that has wider impact. There is a risk that only the most persistent or most articulate individuals will take complaints and others will go unheard. It is also unfair to expect individuals to be the 'enforcers' of good administrative practice.		



### 3. Which of the following statements do you most agree with

							Response Percent	Response Total
1	the JPSO should only hear complaints in public hearings			<div><div></div></div>			13.16%	5
2	the JPSO should not hear complaints in public hearings			<div><div></div></div>			23.68%	9
3	the complainant should be able to request a public hearing			<div><div></div></div>			36.84%	14
4	there should only be a public hearing if the complainant requests a public hearing			<div><div></div></div>			26.32%	10
Analysis	Mean:	2.76	Std. Deviation:	0.98	Satisfaction Rate:	58.77	answered	38
	Variance:	0.97	Std. Error:	0.16			skipped	9

Comments: (12)

I think that the JPSO should have the authority to determine whether a public hearing would be appropriate, whether the complainant requests it or not.

Assuming earlier attempts at mediation/mitigation have failed, then the hearing should be in public UNLESS there are specific reasons for privacy.

This should be decided on a case-by-case basis. The wishes of the complainant should be given significant weight. The factors (e.g. privacy vs. public interest) should be explained to complainants for them to decide.

Many complaints contain confidential information of which the complainant does not want the public to have access. Especially involving medical records. When this occurs it can be seen to go against the complainant but it's only done to respect their privacy.

Like the employment law it will be abused if we open it up to public hearings on a whim or for grandstanding.

It is common practice internationally that an Ombudsman investigates complaints in private.




I think all hearings should be public unless there is a sensitivity such as medical/financial/personal details or the case involves a vulnerable person such as a child.

I suspect that most of the Ombudsman's work would consist of informal resolution of complaints and helping public sector bodies manage complaints appropriately and, indeed, avoid complaints in the first place. Formal complaint resolution is likely to be the tip of the iceberg. Although the Complaints Board process shows how these matters can be dealt with appropriately in public I remain unclear as to why public hearings are necessary and desirable so my inclination would be not to

### 3. Which of the following statements do you most agree with

	Response Percent	Response Total
<p>permit them, perhaps unless both the complainant and the Ombudsman felt that a public hearing would add value.</p> <hr/> <p>Guidelines on this for Ombudsmen</p> <hr/> <p>the JPSO should be able to determine if there is a public hearing Whilst it would seem there might be instances when it is in the public interest and therefore appropriate for the JPSO to have the ability to determine whether a complaint is heard and determined through a public hearing, it would also seem appropriate that in some instances, the complainant should be able to remain anonymous.</p> <hr/> <p>From the Commission's perspective, we think it unlikely that a public hearing would be in the interest of the complainant, or in the wider public interest. Nonetheless the Commission can see the value of the JPSO having the powers to hold a public hearing occasionally, subject to the complainant's agreement.</p> <hr/> <p>The ombud should be open to face-to-face engagement with all parties, including complainants, potential complaints and those complained about as well as other interested parties such as civil society groups and advice agencies. This might be through interviews, roundtable meetings, mediation, or otherwise. However, I do not agree that hearings are the appropriate format for such engagement. The ombud process is an iterative, inquisitorial one, not a one-off event like a trial. Its work is in the public domain in the sense that decisions should be made public and public meetings may need to be held where complaints involve issues of wider public interest. In all the work of the ombud, the presumption should be toward openness as much as is feasibly possible.</p>		




### 4. Do you agree that the JPSO should investigate maladministration and service failure?

	Response Percent	Response Total
1 Yes		84.62% 33
2 No		10.26% 4
3 Don't know / I have no preference		5.13% 2
<b>Analysis</b>	Mean: 1.21 Std. Deviation: 0.52 Satisfaction Rate: 10.26	answered 39
	Variance: 0.27 Std. Error: 0.08	skipped 8
Comments: (3)		
There is already a Controller and Auditor General who conducts independent reviews that report on failures in public administration and these are not only on		

#### 4. Do you agree that the JPSO should investigate maladministration and service failure?

	Response Percent	Response Total
<p>financial matters. There might be a place for the JPSO to investigate in conjunction with CAG.</p> <hr/> <p>Absolutely. Not just investigate but have the power to discipline or issue sanctions where appropriate. Could be discovered over time that there is a common factor ie staff member involved rather than an overall dept. Staff have got to appreciate there are consequences for their inactions. Just like they would in the private sector. Not just come out with 'thank you for your complaint we will use this experience to learn lessons and implement changes'. It's a cliché and means nothing to the individual complainant.</p> <hr/> <p>Given that service failure and maladministration is almost a daily occurrence the department would have to be enormous.</p>		

#### 5. Do you agree that the JPSO should actively investigate the facts of a complaint, as opposed to requiring the complainant to evidence the service failing/maladministration?

						Response Percent	Response Total
1	Yes					75.00%	30
2	No					20.00%	8
3	Don't know / I have no preference					5.00%	2
<b>Analysis</b>		Mean:	1.3	Std. Deviation:	0.56	Satisfaction Rate:	15
		Variance:	0.31	Std. Error:	0.09		
							answered
							skipped

Comments: (10)

I believe the JPSO should have the authority to determine whether to require the complainant to provide evidence of the failing or whether to actively investigate the facts of a complaint.

The complainant should be given the option of providing evidence and only be required to if/when the JPSO is unable to find evidence itself.

But I think the complainant should be required to provide good reasons/evidence of the matter (providing they are competent to do so) rather than complaining and then "sitting back" to let matters take their course and others to do all the work. In other words, complainants need to be active rather than passive.

Complainants often have few resources compared to public offices. Complainants normally assume that public services are acting in good faith, therefore tend to not have substantial evidence initially.

**5. Do you agree that the JPSO should actively investigate the facts of a complaint, as opposed to requiring the complainant to evidence the service failing/maladministration?**

	Response Percent	Response Total
<p>When a failure is due to a public body's inaction, then how would a complainant have evidence of something which didn't occur?</p> <hr/> <p>Yes, there are always two sides. Just like the Police do not accept statements off both dudes they investigate to ensure what's been said by both sides is accurate. As I've experienced the dept concerned provided inaccurate facts at the hearing of the SCB but the board had to accept what was submitted. The new regime must have the power to investigate both sides of the complaint to be seen as far and transparent. Not all complainants are innocent and not all depts are either.</p> <hr/> <p>The budget should be tightly managed. If the complainant cannot be bothered to investigate the complaint themselves then why should others.</p> <hr/> <p>I think an investigatory element would add value compared to current arrangements.</p> <hr/> <p>For the avoidance of doubt - no separate investigation</p> <hr/> <p>See further comments under section 6 re: Police investigations and the role of the Jersey Police Complaints Authority (JPCA)</p> <hr/> <p>We note that the Ombudsman Association's Criteria for the Recognition of Ombudsman Offices state that 'Those complaining to the Ombudsman should be entitled to do so free of charge', so charging non-residents may conflict with the stated assumption/aspiration to establish the JPSO 'in such a way as to ensure it meets the membership criteria of the Ombudsman Association'</p>		

**6. Do you agree that the JPSO should be free to residents but that non-residents should pay?**

							Response Percent	Response Total
1	Yes			<div></div>			44.74%	17
2	No			<div></div>			39.47%	15
3	Don't know / I have no preference			<div></div>			15.79%	6
Analysis	Mean:	1.71	Std. Deviation:	0.72	Satisfaction Rate:	35.53	answered	38
	Variance:	0.52	Std. Error:	0.12			skipped	9
Comments: (13)								

**6. Do you agree that the JPSO should be free to residents but that non-residents should pay?**

	Response Percent	Response Total
I do not think it would be fair for an alleged victim of a contravention of administrative fairness should have to pay to seek redress.		
I agree that the JPSO should be free to residents.		
It does not seem fair that non-residents should pay, if they have been a victim of maladministration/service failures in Jersey. Perhaps there should be a small fee for non-residents, but this could be waived if their complaint is upheld (or the fee could be charged to the authority against whom the complaint has been made).		
Free to all		
Public services are only such to local residents. To foreigners, they're equivalent to private corporations. The primary goal being to achieve value for money for tax-payers.		
How do you define 'residents'? Residentially qualified or anyone that happens to hold a Jersey address. Even if it's just for a day!!		
Why discriminate in this way?		
It is an international norm that an Ombudsman scheme is free of charge to use.		
The service should be free to all. What if the complainant has moved from the Island in the interim? If the action happened in Jersey then the complainant should be able to submit a complaint about it, wherever they live.		
It should be free to everyone.		
Free to all.		
It should either be a FREE service to ALL or a Fee Paying Service. If the latter ~ obviously free IF complaint upheld.		
A complainant should ordinarily be a Jersey resident (or acting on behalf of a Jersey resident). However, someone who was previously and has moved away from the Island but is making a complaint within the time limit of making a complaint (i.e. 12 months) should be exempt from payment. There may also be exceptional circumstances (to be determined by the JPSO) where non-residents should not be charged.		
The underlying funding assumption should be that anyone affected by a public body in the ombud's jurisdiction should have access to the ombudsman without charge, whether or not they are a resident.		

Q7 table has been edited manually to include responses only from the date the error was fixed (13) added to responses received during the time there was an error where the respondent noted their answer in the comments, see below (4).

## 7. Do you agree with the following statements? The JPSO should:

	Yes	No	Don't know / I have no preference	Response Total
Only investigate complaints that relate to an act that happened after the date on which the States Assembly adopt the JPSO law	7 (41.18%)	8 (47.05%)	2 (11.76%)	17
Only investigate a complaint up to 12 months after the complainant could reasonably be expected to be aware that they had a reason to complain, and no more than 5 years after the act to which the complaint relates	9 (52.94%)	4 (23.53%)	3 (17.65%)	17
Only investigate a complaint where the complainant has exhausted the internal complaints process of the entity about which they have a complaint	8 (47.05%)	8 (47.05%)	0	17
Only investigate complaints about matters which have had a negative impact on the complainant	3 (17.65%)	14 (82.35%)	0	17
Investigate complaints from some categories of businesses affected by administrative decisions, as well as individuals	11 (64.70%)	3 (17.65%)	1 (5.88%)	17
Consider undertaking special investigations at the request of the Chief Minister	13 (76.47%)	3 (17.65%)	0	17

Comments: (18)

I agree with all of the statements. However, the system only permitted me to answer one of them. When I tried to click on the next statement, my first selection was deselected.

The choice buttons on the questions on this section did not work for me, so I could not select answers

There should be some leniency in the time requirements. For example, if a complainant has complained via an authority's internal complaints procedures, and it has taken an excessive length of time for the authority to investigate / respond, this should be taken into consideration if the complainant tries to bring the matter before the JPSO at a point when it would normally be considered out of time.

(The above set of multiple-choice questions doesn't work properly; it only allows you to choose 'Yes', 'No', and 'Don't know' once each, so you can't answer all the items).

I am unable to tick appropriate boxes - is there an issue with the survey site?  
Here are my responses:  
Statement 1 NO

## 7. Do you agree with the following statements? The JPSO should:




	Yes	No	Don't know / I have no preference	Response Total
Statement 2 NO Statement 3 NO Statement 4 NO Statement 5 YES Statement 6 YES				
<p>This question asks you to tick yes no do not know but it only allows allows you to tick some of the ones you want to tick, a glitch? Or is this on purpose? I do not like consultations that insist I follow what they want me to follow. If you had an ombudsman. place now this would be an example of what I would complain about! Happens all too often with government consultations the public deserves better! So there please amend your stats as follows, No,No, No, No,No and yes.</p>				
<p>There is a problem with the answering mechanism on this question as it only allows to submit one "yes" and one "no". My answers are - no, yes, yes, no, yes, yes. Regarding the first question, I believe they should have the scope to investigate historic complaints but perhaps with a restriction e.g. five years.</p>				
<p>Who determines what is a "negative impact"? This could be very subjective. People might want to complain when something has gone badly wrong but they have not actually experienced negative impact.</p>				
<p>Many of these statements/limits assume simple errors. Must I remind readers of the Jersey Care abuse+neglect scandal+Inquiry?</p>				
<p>Won't allow me to select answers to all categories. Deletes some when answering another!!!</p>				
<p>The Ombudsman will be tainted if he/she is a tool of the Chief Minister.</p>				
<p>I have answered yes to the first three bullet points with the proviso, as set out in the Consultation, that the Ombudsman is given some discretion in these areas</p> <p>In relation to the fourth bullet point, this would be overly and unnecessarily prescriptive.</p> <p>In relation to the fifth bullet point, this risks calling into question the Ombudsman's independence.</p>				
<p>There needs to be discretion about the time limit. Also requiring complaints to only be investigated once the internal process is fully complete allows some departments to push matters into the long grass and delay investigations often for very long periods.</p>				
<p>I would be cautious of restricting the remit of the ombudsman unduly. However, it is essential that the ombudsman should only come into play once all other complaints processes are exhausted, otherwise there will be a tendency for complainants to head to the ombudsman as quickly as possibly which will deter organisations from sorting out their own complaints processes, and have serious resource consequences.</p>				

## 7. Do you agree with the following statements? The JPSO should:

	Yes	No	Don't know / I have no preference	Response Total
<p>I think they should do historic complaints initially. I have no resolution now and have to live with this for the rest of my life as I have had no explanation of apology. My mother died but she could have lived another 10 years and I would have been trapped in that awful Care home with no support as the OACMHT team would not let me move her. I was suicidal. I could not possibly abandon my mother so had to continue in a hellish situation where the staff did not give her basic care, she was left in discomfort and pain and the home were extremely bullying toward me.</p>				
<p>Allowing the Chief Minister to instigate investigations would lead to an atmosphere of politicisation of the process. If individuals are so aggevied at an alleged administartive failing etc they should take responsibility themselves to submit a complaint.</p>				
<p>All complaints dealt with, no filter. Minister has own team.</p>				
<p>Statement 1 No comments.</p>				
<p>Statement 2 The JPSO will need to have discretion to depart from these requirements exceptionally and with good reasons.</p>				
<p>Statement 3 The JPSO will need to have discretion to depart from these requirements exceptionally and with good reasons.</p>				
<p>Statement 4 'Negative impact' is very subjective and hard to define. This could unnecessarily add difficulty to the ability of the JPSO to act.</p>				
<p>Statement 5 The Chief Minister may make the request but the JPSO must have the discretion to decide whether to act. The Ombudsman Association Criteria make it very clear that 'The Ombudsman alone ... must have the power to decide whether or not a complaint is within the Ombudsman's jurisdiction'.</p>				
<p>My concern about the requirement to exhaust the internal complaints procedure is that unless there is consistent good practice in internal complaints handling and signposting across all public bodies in jurisdiction, and a limit on the time allowed for internal complaints handling, some complainants will be disadvantaged by the requirement. There should always be the ombud's discretion to accept a complaint that has not been through the internal complaints process. There should also be the ombud's discretion to initiate an investigation into an issue of wider public interest when the ombudsman becomes aware of a pattern of problem of a systemic error.</p>				



**8. Do you agree that the JPSO should be able to investigate complaints from some categories of businesses affected by administrative decisions, as well as individuals?**

						Response Percent	Response Total
1	Yes					64.10%	25
2	No					12.82%	5
3	Don't know / I have no preference					23.08%	9
<b>Analysis</b>	Mean:	1.59	Std. Deviation:	0.84	Satisfaction Rate:	29.49	answered 39
	Variance:	0.7	Std. Error:	0.13			skipped 8

Comments: (4)

How do you define a business? A family-run affair, a one-man trade, who could be put out of business by a bad situation, or a big company with it's own extensive resources? Where do you draw the line between "individual" and "business"?

In order to say YES then this must be clarified.

Duplicate question

This question is already included in 7 above

All complaints, unfiltered.





**9. If you do agree that the JPSO should be able to investigate complaints from some categories of business, do you have any comments on the categories of business which should be included?**

		Response Percent	Response Total
1	Open-Ended Question	100.00%	15
<p>All businesses</p> <hr/> <p>I think this should be left to the discretion of the JPSO.</p> <hr/> <p>If businesses may submit a complaint then there should be no restrictions on which ones</p> <hr/> <p>Businesses who have been given tenders by Gov of Jersey to complete work Businesses who have tendered for work and have concerns about the process</p> <hr/> <p>Small businesses</p>			

**9. If you do agree that the JPSO should be able to investigate complaints from some categories of business, do you have any comments on the categories of business which should be included?**

	Response Percent	Response Total
<p>See previous question. Large corporations should be excluded, the Ombudsman could end up with one enormous complaint taking up all his resources to the detriment of others.</p> <hr/> <p>No</p> <hr/> <p>No</p> <hr/> <p>No - why discriminate.</p> <hr/> <p>No. Presumably there will be a need to avoid overlap, eg with the Financial Services Ombudsman.</p> <hr/> <p>It should not be 'some' businesses. It should be one rule for all.</p> <hr/> <p>It depends on the size of the JPSO team and their expertise</p> <hr/> <p>Yes</p> <hr/> <p>All</p> <hr/> <p>I would include small businesses and charities in that category.</p>		
	answered	15
	skipped	32

**10. Which of the following should be outside of the remit of the JPSO (i.e. the JPSO will not investigate) Tick all that apply.**

			Response Percent	Response Total
1	Decision-making relating to legal proceedings		68.57%	24
2	Employment and personnel matters which could be addressed in proceedings before a tribunal or court		80.00%	28
3	Judicial decision-making and the conduct of judges		74.29%	26
4	Criminal justice and police functions		68.57%	24

**10. Which of the following should be outside of the remit of the JPSO (i.e. the JPSO will not investigate) Tick all that apply.**

							Response Percent	Response Total
5	International affairs			<div></div>			60.00%	21
6	Where there are other statutory bodies with responsibility to provide redress or regulation			<div></div>			62.86%	22
7	Other, please state in comments box			<div></div>			5.71%	2
Analysis	Mean:	14.43	Std. Deviation:	22.8	Satisfaction Rate:	170.48	answered	35
	Variance:	519.98	Std. Error:	3.85			skipped	12

Comments: (6)

I believe the JPSO should be able to hear complainants who have been to another body and are not satisfied their complaints has been dealt with justly or appropriately

What about where officers within a Department have not followed policies or interpreted policies arbitrarily? What recourse is there for complainants if SEB won't take action?




I have paused over "decision-making relating to legal proceedings" and "criminal justice and police functions" as I am unclear on how complaints relating to those matters would be dealt with if excluded from the Ombudsman's remit, although that principally reflects ignorance on my part.

2nd point, Employment and personnel matters, delete 'which could be addressed in proceedings before a tribunal or court.  
Criminal just and police functions - governed by courts - Police Complaints Authority - Honorary Police?  
International Affairs - unclear?

As a statutory body whose functions are determined by law, the JPCA has a supervisory and oversight function of investigations into complaints against the States of Jersey Police. The current Police Complaints law and the draft proposals for a new replacement law do not provide for any financial redress should a complaint be substantiated. The proposal to allow the JPSO to recommend non-punitive, limited financial compensation is supported.

I would not exclude decision-making related legal proceedings because that description is too broad. If the intention is to exclude matters that are subject to legal proceedings, then this should be clarified. For example, a decision might be made by a public body not to send a complainant information about their legal routes of redress for an unresolved complaint, and this could be interpreted as a decision related to legal proceedings and wrongly excluded when it is a matter that could be investigated as maladministration by the ombud. I also would not exclude matters where other bodies have statutory responsibility to provide redress or regulation. Instead, I would put a duty on the ombud to work collaboratively with such bodies in its investigations and reporting where potentially the complaint falls within the remit of several bodies.




### 3. Findings, recommendations and remedy

11. Which of the following statements do you agree with? Findings should be binding between:									
						Response Percent	Response Total		
1	The public body and the complainant, but only in relation to the specific complaint investigated by the JPSO					58.62%	17		
2	The public body and the complainant for all purposes					13.79%	4		
3	The public body and any person it provides the service to					27.59%	8		
<b>Analysis</b>		Mean:	1.69	Std. Deviation:	0.88	Satisfaction Rate:	34.48	answered	29
		Variance:	0.77	Std. Error:	0.16			skipped	18
Comments: (9)									
<p>If the finding requires a change in general practice, the JPSO should be able to recommend that change.</p> <hr/> <p>Decisions should set a standard that applies to all in the same circumstances</p> <hr/> <p>So long as this doesn't have negative impact on other service users. I'm thinking, here, of bureaucracy resulting from mindlessly following procedures while ignoring policy or principle.</p> <p>However, such service users so affected could file their own complaint.</p> <hr/> <p>None of the above.</p> <p>Please see comments below.</p> <hr/> <p>How can findings be binding? How can non elected people dictate to elected members? Ministers and Departments need to take findings reports more seriously and accept that complaints are not a threat but a positive way of improving services. Also the responses from Ministers should not be written by the officers who were involved in the complaint itself.</p> <hr/> <p>My assumption is that findings will sometimes be quite specific to the circumstances of a specific complaint so making them binding more broadly might not be sensible.</p> <hr/> <p>I am not in favour of binding findings</p>									

**11. Which of the following statements do you agree with? Findings should be binding between:**

	Response Percent	Response Total
None of the above		
<p>The ombud's findings that have wider impact (for example, that affect individuals other than the complainant) should be binding on the public body. Otherwise they would only benefit the individual taking the complaint and would do little to improve initial decision-making and best practice. I do not agree that the ombud's recommendations should be binding, however.</p>		

**12. Which of the following statements do you agree with?**

			Response Percent	Response Total
1	Recommendations should be binding		37.93%	11
2	Recommendations should not be binding		10.34%	3
3	Recommendations should be binding unless rejected or challenged		51.72%	15
<b>Analysis</b>			answered	29
	Mean: 2.14 Std. Deviation: 0.94 Satisfaction Rate: 56.9		skipped	18
	Variance: 0.88 Std. Error: 0.17			

Comments: (10)

There should be the opportunity for a challenge and re-hearing on appeal

There should be an appeals process but with restrictions (e.g. Tribunal judgements can be appealed on a point of law)

Only in relation to the specific complaint, as in Q11.

There should be some kind of appeals process, instead of recommendations being draconian.




None of the above.

The Ombudsman Association Criteria for Recognition of Ombudsman Offices are clear that there should be a reasonable expectation that the Ombudsman's decisions and recommendations will be complied with. The Ombudsman Association's Strategic Position Statement is clear that an Ombudsman's findings of fact, and of maladministration or poor service, should be binding on the organisation complained about. And that, if the organisation complained about is subject to direct/indirect democratic control, an Ombudsman's findings on responsibility and redress should be respected.

## 12. Which of the following statements do you agree with?

	Response Percent	Response Total
This best practice approach is clear, tried and tested in practice.		
see above		
Recommendations cannot be binding on ministers without upending the principle of ministerial accountability to the Assembly, as well as ministers' status as corporations sole. Frustrating although it may be (cf Equitable Life in the UK) democratically-elected politicians are where the buck stops in a democracy, not appointed officials.		
IF not binding ~ this is a massive waste of Tax Payers money.		
None of the above		
The ombud's powers are those of persuasion and influence and they require the ombud to be seen as credible and authoritative. They are not like the powers of a court or tribunal, and to make them more like those mechanisms would diminish the distinctive contribution that the ombud makes to administrative justice. However, there should be robust mechanisms for following up and monitoring the actions taken by public bodies on the recommendations made by the ombud, and public bodies should be required to explain their reasons for not implementing a recommendation.		

## 13. Do you agree that there should be a route of appeal to the JPSO in the first instance?

			Response Percent	Response Total
1	Yes		76.47%	26
2	No		17.65%	6
3	Don't know / I have no preference		5.88%	2
<b>Analysis</b>		Mean: 1.29 Std. Deviation: 0.57 Satisfaction Rate: 14.71	answered	34
		Variance: 0.33 Std. Error: 0.1	skipped	13

Comments: (7)

Could be used in a similar way the Tribunal is used for final decisions on appeals

So long as there is the possibility of counter-appeal, and the desired outcome is not compromised by mere technicalities.

**13. Do you agree that there should be a route of appeal to the JPSO in the first instance?**

	Response Percent	Response Total
<p>It should not be necessary to include a route of appeal in the statutory framework. A modern effective Ombudsman scheme would put in place its own complaints/review system.</p> <hr/> <p>No appeal against JPSO findings; recommendations are non-binding.</p> <hr/> <p>Public bodies should be given the opportunity to address complaints etc before JPSO becomes involved. In my experience this is beneficial to all parties as it allows a potentially quicker resolution of any concerns, allows the public body to exercise its duties properly and can re-inforce the credibility of any such body</p> <hr/> <p>I assume you mean should every department have a similar "complaints handling procedure"</p> <hr/> <p>I don't agree that there should be a route of appeal but there should be a mechanism for the ombud to review decisions that are questioned by one or both parties. In many public-sector ombuds this review mechanism provides an opportunity to address errors or oversights in ombuds' decisions. Ultimately, parties should have the option to seek permission for judicial review of an ombud decision, and research has shown that judicial review can be of value to the parties and to the wider administration (e.g. Kirkham 2019; Bondy, Platt and Sunkin 2015).</p>		




**14. Do you agree that if JPSO decisions are binding they should be subject to challenge via:**



	Yes	No	Don't know / I have no preference	Response Total
Judicial review	70.0% (21)	10.0% (3)	20.0% (6)	30
Royal Court appeal	61.5% (16)	15.4% (4)	23.1% (6)	26
			answered	31
			skipped	16
Comments: (7)				
<p>They should only be able to be appealed by the complainant - not the public body.</p> <hr/> <p>At no cost.</p>				

**14. Do you agree that if JPSO decisions are binding they should be subject to challenge via:**

	Yes	No	Don't know / I have no preference	Response Total
<p>It is unclear what is meant here by 'decisions'.</p> <p>All public service Ombudsmen should, in any event, be subject to judicial review.</p> <hr/> <p>I believe findings should be binding but not challengeable. Why should the court be able to substitute its judgement for that of the ombudsman? But recommendations should not be binding and therefore there is no need for them to be challengeable in court.</p> <hr/> <p>IF they are binding ~ they are FINAL</p> <hr/> <p>It is unclear as to what might constitute a decision i.e. findings of fact and/or determinations of maladministration and/or recommendations for remedy? Judicial review will be available to complainants and public bodies. Therefore there is not a need for this to be included in the JPSO legislation.</p> <hr/> <p>I do not agree that the ombud's decisions should be binding. I do agree that the ombud's decisions, whether binding or not, should be subject to judicial review.</p>				

## Matrix Charts




14.1. Judicial review							Response Percent	Response Total
1	Yes						70.0%	21
2	No						10.0%	3
3	Don't know / I have no preference						20.0%	6
<b>Analysis</b>		Mean:	1.5	Std. Deviation:	0.81	Satisfaction Rate:	answered	30
		Variance:	0.65	Std. Error:	0.15			

14.2. Royal Court appeal							Response Percent	Response Total
1	Yes						61.5%	16
2	No						15.4%	4






14.2. Royal Court appeal							Response Percent	Response Total
3	Don't know / I have no preference		<div></div>				23.1%	6
Analysis	Mean:	1.62	Std. Deviation:	0.84	Satisfaction Rate:	30.77	answered	26
	Variance:	0.7	Std. Error:	0.16				

**15. Do you agree that the Minister must make a Statement to the States Assembly, where the Minister disputes the JPSO findings or where the Minister does not accept a recommendation? This would be subject to consideration of how Statements can be made to the Assembly whilst also protecting the privacy and interests of the individual people involved in the complaint.**

						Response Percent	Response Total
1	Yes					87.88%	29
2	No					3.03%	1
3	Don't know / I have no preference					9.09%	3
Analysis	Mean:	1.21	Std. Deviation:	0.59	Satisfaction Rate:	10.61	answered 33
	Variance:	0.35	Std. Error:	0.1			skipped 14

**16. Do you think that a Connétable who disputes the JPSO's findings or recommendations should make a Statement to their Parish Assembly? This would be subject to consideration of how Statements can be made to the Assembly whilst also protecting the privacy and interests of the individual people involved in the complaint.**

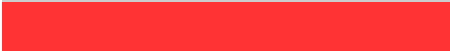



						Response Percent	Response Total
1	Yes					85.29%	29
2	No					5.88%	2
3	Don't know / I have no preference					8.82%	3
Analysis	Mean:	1.24	Std. Deviation:	0.6	Satisfaction Rate:	11.76	answered 34
	Variance:	0.36	Std. Error:	0.1			skipped 13

Comments: (5)

**16. Do you think that a Connétable who disputes the JPSO's findings or recommendations should make a Statement to their Parish Assembly? This would be subject to consideration of how Statements can be made to the Assembly whilst also protecting the privacy and interests of the individual people involved in the complaint.**

	Response Percent	Response Total
<p>However regardless of if they dispute the recommendation or not - they must act upon it (binding)</p> <hr/> <p>But see Q19.</p> <hr/> <p>Public officers must be accountable to the people whom they (ostensibly) serve.</p> <hr/> <p>Best practice would include a dedicated Committee of the States Assembly to undertake such work.</p> <hr/> <p>And those statements should be reported to the States. Whilst recognising the constitutional separation of the States and the Parishes such a move would allow for greater improvements or otherwise in public administration by wider reporting of the issues</p>		

**17. Which of the following remedies should the JPSO have the power to offer? Tick all that apply**

			Response Percent	Response Total
1	Apology		97.22%	35
2	Compensation		75.00%	27
3	Report giving recommendations for improvement		97.22%	35
4	Other, please state in comments box		16.67%	6
<b>Analysis</b>		Mean: 6.06 Std. Deviation: 6.85 Satisfaction Rate: 106.48	answered	36
		Variance: 46.97 Std. Error: 1.14	skipped	11

Comments: (10)

Public Statement Sanction/censure where department or person is negligent or incompetent

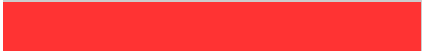

Ability to review if recommendations for improvement have been made.  
Ability to hold Government Departments to account if there are failings by public service officers in implementing recommendations and failings in following good practice guidelines and policies.

**17. Which of the following remedies should the JPSO have the power to offer? Tick all that apply**




	Response Percent	Response Total
<p>I am uncomfortable with the prospect of the JPSO calculating exact figures for financial compensation on relevant cases. However the threat of financial compensation when a complaint is upheld might encourage the public service to consistently take complaint handling seriously. Perhaps a notional minimal amount proportional to the agreed financial loss might be considered - but the system would have to be transparent and non-contentious.</p>		
<p>Unsure about compensation. Details of situations where compensation might be available need to be elucidated.</p>		
<p>Acknowledgement of responsibility Explanation Remedial action</p>		
<p>Broad powers to provide effective remedies are required, not detailed lists or compensation limits.</p>		
<p>Making a company act responsibly when they have not done so.</p>		
<p>Compensation ONLY where there is ACTUAL LOSS suffered.</p>		
<p>Compensation should not be punitive but limited to making good any financial loss incurred by the complainant and provide recognition for any harm, distress, or consequence arising from an unbalanced judgement on the complainant.</p>		
<p>Explanation and Remedial Action Comments: It is recognised that the JPSO would be recommending the public body made an apology and/or paid compensation. Explanation and Remedial Action should also be available. The Ombudsman's Principles describe an appropriate range of remedies as including: an apology, explanation and acknowledgement of responsibility; remedial action, which may include reviewing or changing a decision on the service given; revising published material; revising procedures; training or supervising staff; or any combination of these.</p>		
<p>Other options for remedy should include actions to be taken by the public body for the benefit of the individual complainant and, where appropriate, for the benefit of the wider group of individuals affected. Several existing ombud institutions publish guidance on remedies (eg LGSCO, OIA), and these are helpful to draw upon. I would urge the new JPSO to produce and publish guidance on remedies.</p>		

#### 4. Jurisdiction and design principles




**18. Do you agree that the executive and administrative functions of the Government of Jersey should fall within the jurisdiction of the JPSO?**

						Response Percent	Response Total
1	Yes					93.55%	29
2	No					0.00%	0
3	Don't know / I have no preference					6.45%	2
<b>Analysis</b>	Mean:	1.13	Std. Deviation:	0.49	Satisfaction Rate:	6.45	answered 31
	Variance:	0.24	Std. Error:	0.09			skipped 16
Comments: (1)							
The government exists to serve the people, therefore it is a public service.							

**19. Do you agree that the executive and administration functions of the Parishes should fall within the jurisdiction of the JPSO?**

						Response Percent	Response Total
1	Yes					80.65%	25
2	No					6.45%	2
3	Don't know / I have no preference					12.90%	4
<b>Analysis</b>	Mean:	1.32	Std. Deviation:	0.69	Satisfaction Rate:	16.13	answered 31
	Variance:	0.48	Std. Error:	0.12			skipped 16
Comments: (2)							
There should be enough people within a parish system, from all walks of life and experience and both voluntary and paid, to be able to sort out a complaint without an outside agency becoming involved.							
Parish administration is also a public service.							

**20. Do you agree that the Church should be excluded, except in relation to property maintained via Parish Rates, albeit not for other matters?**



						Response Percent	Response Total
1	Yes					43.75%	14
2	No					31.25%	10
3	Don't know / I have no preference					25.00%	8
<b>Analysis</b>	Mean:	1.81	Std. Deviation:	0.81	Satisfaction Rate:	40.62	answered 32
	Variance:	0.65	Std. Error:	0.14			skipped 15

Comments: (2)

Not really sure why the Church would be considered a public service.

Churches wishing to be exempt should have to meet particular requirements. Such as operating as private entities. Many enjoy the appearance of being public services, and certainly speak as if they are such. Thus accountability must also be applied.




**21. Do you agree with the principle that the entities which fall under the Human Rights Law, Public Finances Law, Jersey Appointments Commission and Freedom of Information Law should fall within the jurisdiction of the JPSO, unless there are compelling reasons to exclude them?**

						Response Percent	Response Total
1	Yes					90.32%	28
2	No					0.00%	0
3	Don't know / I have no preference					9.68%	3
<b>Analysis</b>	Mean:	1.19	Std. Deviation:	0.59	Satisfaction Rate:	9.68	answered 31
	Variance:	0.35	Std. Error:	0.11			skipped 16

Comments: (1)

I think it is important to understand which bodies are caught by this before making a decision - the reach of the Public Finances Law, for example, is very wide. Also, I am unclear on what the compelling reasons for exclusion might be. My inclination would be to start the ombudsman off on government functions and then broaden as necessary over time.

**22. Do you agree with the design principle proposed of 'follow the money' with which to define entities within the jurisdiction of the JPSO?**

						Response Percent	Response Total
1	Yes					54.84%	17
2	No					9.68%	3
3	Don't know / I have no preference					35.48%	11
<b>Analysis</b>	Mean:	1.81	Std. Deviation:	0.93	Satisfaction Rate:	40.32	answered 31
	Variance:	0.87	Std. Error:	0.17			skipped 16

Comments: (4)

All QWANGOs and the likes of JDC, Andium, Ports together with any company that the Government has significant control over should fall within the jurisdiction.

There is a danger of the JPSO's remit becoming so wide-reaching that, either:  
 (a) it has too much work and must be enlarged and become very costly to the tax payer;  
 (b) it begins to investigate matters which are not in the public interest and which could lead to the JPSO becoming a "policeman";  
 (c) litigious people take advantage of a public service to vent their wrath!

Any entity receiving any sort of public funds must be within the ombudsman's jurisdiction.

I am concerned that this could broaden the scope of the Ombudsman very considerably and to a potentially unmanageable extent.

**23. Please give more details if you disagree with the proposed inclusion or exclusion of any particular entity or office holder**




		Response Percent	Response Total
1	Open-Ended Question	100.00%	3
<p>The church as a religious entity should not fall within the remit of the government, unless of course it is breaking a law. If 'church' is included, this should also extend to other religious groups and encompass all religions</p> <hr/> <p>I note the inclusion of the States Greffe "Only where the States Greffe delivers a service to the public". I am not sure what this would mean in practice. For example, publication of the Order Paper is "a service to the public" but also a core parliamentary proceeding, protected by privilege. Further discussion is necessary to work out which of our services, if any, could come within the ambit of the Ombudsman.</p>			

**23. Please give more details if you disagree with the proposed inclusion or exclusion of any particular entity or office holder**

	Response Percent	Response Total
No disagreement		
	answered	3
	skipped	44

**5. Healthcare providers**

**24. Do you agree that healthcare providers should be included in the remit of the JPSO at a later date?**

			Response Percent	Response Total
1	Yes		75.00%	24
2	No		12.50%	4
3	Don't know / I have no preference		12.50%	4
<b>Analysis</b>			answered	32
	Mean: 1.38	Std. Deviation: 0.7	Satisfaction Rate: 18.75	
	Variance: 0.48	Std. Error: 0.12	skipped	15

Comments: (6)

Assuming they receive public money (i.e. not completely private)

Only if they receive funds from States of Jersey

Why 'later date'? What are they to do in the mean time? Sit above everyone else and continue doing their own thing to \*\*\*\* with their users as long as they close ranks and protect their staff. Some of which are continually being named in multiple complaints but protected by their own Senior team! Taking years for complaints to be handled and then not investigated. They are possibly the dept that needs an ombudsmen more than anyone else.

The JPSO's remit should include health and social care providers as soon as possible.

The reasons for not including them from the outset are understood but there should be a clear timetable for their inclusion.

No there should be a provision NOW for administrative matters - clinical care could be later given the complexity.

**24. Do you agree that healthcare providers should be included in the remit of the JPSO at a later date?**

	Response Percent	Response Total
I agree there are complexities related to including healthcare providers in Jersey and that such providers could be included at a later date. In addition, the inclusion of clinical decision-making is not without difficulties. The caseload of the public-sector ombuds in the UK with jurisdiction over health care find that health complaints dominate their caseload, and ombuds may not be best suited to investigating matters of clinical professional judgement (see, e.g., Donaldson 2019). Consideration should be given to excluding matters of clinical decision-making (as opposed to service issues) from the ombud's jurisdiction but to ensure there is a duty to share information and intelligence from complaints with the appropriate health regulatory bodies.		

**25. Do you agree that this should include complaints about clinical decisions as well as matters relating to service provision?**

							Response Percent	Response Total
1	Yes			<div></div>			43.75%	14
2	No			<div></div>			37.50%	12
3	Don't know / I have no preference			<div></div>			18.75%	6
Analysis	Mean:	1.75	Std. Deviation:	0.75	Satisfaction Rate:	37.5	answered	32
	Variance:	0.56	Std. Error:	0.13			skipped	15

Comments: (6)

This would be for the appropriate medical bodies to look after

The JPSO would need independent expert medical opinion to assess clinical decisions and is there not existing an alternative independent route to complain and investigate such ? If not then research on how such matters are dealt with in other jurisdictions is required before making a JPSO responsible.

Perhaps this should continue to be explored through medical negligence claims unless they have the power to award the same level of compensation








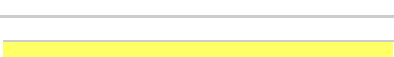

Unsure depending on who is employed by this new team. Are they clinically/medically trained

From my experience as Health Service Ombudsman for England, any attempt to exclude clinical decisions would be unworkable and lead to serious complainant dissatisfaction.

Clinical decisions are complicated and should be dealt with by medical procedures, already in place.



## 6. Other watchdogs and regulators




26. Do you agree with proposals for the relationships between watchdogs and regulators and the JPSO? Tick all that apply							
						Response Percent	Response Total
1	Care Commission					96.43%	27
2	Children's Commissioner					96.43%	27
3	Commissioner for Standards					96.43%	27
4	Comptroller and Auditor General					89.29%	25
5	Jersey Appointments Commission					92.86%	26
6	Jersey Competition and Regulatory Authority					82.14%	23
7	Jersey Financial Services Commission					78.57%	22
8	Jersey Police Complaints Authority					78.57%	22
9	Information Commissioner/Data Protection Authority					89.29%	25
Analysis	Mean:	38.75	Std. Deviation:	96.18	Satisfaction Rate:	384.38	answered
	Variance:	9251.05	Std. Error:	18.18			skipped
Comments: (6)							
<p>It is essential that the Ombudsman maintains independence. It would be highly beneficial for the ombudsman to have an independent website and separate building as with the role of the Children's Commissioner.</p> <hr/> <p>Not sure, worrying, as per Q22.</p> <hr/> <p>Except in cases where the complaint is against such a watchdog or regulator.</p> <hr/> <p>Goodness knows. It doesn't matter the connections people/complainants just want action and someone who cares when it all goes horribly wrong. It's easier enough to talk the talk but we want to see action and resolution including accountability.</p> <hr/> <p>In relation to the Commissioner for Standards, I note that it is suggested that he could pass cases to the Ombudsman. I think the Ombudsman should also be able</p>							

**26. Do you agree with proposals for the relationships between watchdogs and regulators and the JPSO? Tick all that apply**


	Response Percent	Response Total
<p>to pass cases to the Commissioner, where (s)he thinks that one of the Codes of Conduct for members may have been breached.</p> <p>I note the suggestion that the Commissioner and the Ombudsman roles could be merged. This would require legislative change and I would want to understand the rationale further before commenting on the merits of this proposal.</p> <hr/> <p>As currently proposed the new JPSO would only have oversight of how the JPCA designs and operates its internal complaints handling process, and would therefore only investigate failures in how the JPCA applied those procedures. The JPSO would not investigate whether the decision reached by the Police Standards Department (PSD) itself is correct. The JPCA function under the current Police Complaints Law, and also under the new draft law and regulations is supervisory, rather than regulatory, this suggests that the JPSO will have little opportunity to impact on the decision-making process. In effect the JPSO offers an alternative to a complex and costly Judicial Review – however, the JPCA itself could be subject to Judicial Review as is the case now. From a public perception perspective, the role of the police (PSD) investigating complaints against the police, and the JPCA operating in a supervisory/oversight function, remains a fundamental issue, albeit that the JPCA can and do challenge the police throughout their investigation process, resulting in complaints being substantiated and unsubstantiated. The JPCA would expect to work with the JPSO to review and revise its internal process and procedures to ensure that these measures are in line with best practice and are adhered to.</p>		

**7. Structure and governance arrangements**

**27. Which of the two proposed structures best reflects your views on how the JPSO should be established?**

		Response Percent	Response Total
1	Option 1: A non-executive Board which appoints an Ombudsman. The Ombudsman is responsible for investigating complaints and making decisions about findings and recommendations.	 58.06%	18
2	Option 2: A Board of honorary (unpaid) members who make decisions about findings and recommendations based on investigations undertaken by case workers.	 29.03%	9
3	Don't know / I have no preference	 9.68%	3

**27. Which of the two proposed structures best reflects your views on how the JPSO should be established?**

						Response Percent	Response Total
4	Other, please state in comments box					3.23%	1
<b>Analysis</b>	Mean:	1.58	Std. Deviation:	0.79	Satisfaction Rate:	19.35	answered
	Variance:	0.63	Std. Error:	0.14			skipped
							31
							16

Comments: (8)

The ombudsman should be seen to be independent, I think this would be much more difficult with a board of unpaid volunteers.

I selected option 1 for independence, however option 2 would be better if a register of conflicts is considered for each new complaint and board members with conflicts to an involved department are not involved in that complaint.

I would like to see the non-executive board members being used as a sounding board in the event that the Ombudsman has difficulty in coming to a decision. In other words, lay people with various life experiences are invaluable (as with the existing Complaints Panel).

It's the power and authority that needs addressing. Whether it's honorary or paid is irrelevant it's the outcome that matters to the complainant.




Not option 2. They would all be the usual suspects - the [redacted] gin & tonic crowd.

Option 2 is not an Ombudsman Scheme.

maintaining current Complaints Panel but with enhanced powers and support.

Option 2 would have the advantage of expanding and enhancing the role of the current States Complaints Board.

**28. Do you think the proposed number of paid staff, 1 Ombudsman/Principal Case Worker, 1.5 case workers and 1 assistant will be (please tick one):**

			Response Percent	Response Total
1	Too few		58.62%	17
2	The right amount		27.59%	8
3	Too many		13.79%	4
			answered	29

**28. Do you think the proposed number of paid staff, 1 Ombudsman/Principal Case Worker, 1.5 case workers and 1 assistant will be (please tick one):**

						Response Percent	Response Total
<b>Analysis</b>	Mean:	1.55	Std. Deviation:	0.72	Satisfaction Rate:	27.59	skipped
	Variance:	0.52	Std. Error:	0.13			

Comments: (15)

Will need to be properly resourced in order to provide a suitable service.

In an area where it is easy to contact your states members of all catagories is it necessary to create this new role.

There should be the option for more as the number and complexity of cases may require this to prevent backlogging of complaints

This can be reviewed after say a year

Depending on volume of workload

Should be the right amount, providing remit is not too widely extended, as in Q19 and Q22

Staffing should be based on complexity of case so as not to increase waiting times unduly.

Again it will probably be by those brought in from the UK when it should be locals that understand and qualified for the position Never enough staff as you can't possibly know the workload anticipated.

I would like to make a general comment in that I consider this piece of work to be similar to the Code of Practice for Access to Information, before Fol came into being. The code was well written and fairly robust but it did not have the force of law. Consequently, it was hardly ever used and little was known about its existence.

I believe that the States Complaints Board is in a similar situation now, this model needs to be put on a professional footing and enshrined in a robust piece of law that the public can have confidence in, and access to redress (and justice) can be seen to be done.

Malcolm Ferey - CEO  
Citizens Advice Jersey

Impossible to express a view without knowing more about projected caseload volumes and complexity.

It is hard to tell how many staff to provide for, given that the appointment of an ombudsman may lead to an increase in the number of complaints coming forward and there will also be an important new strand of work around lessons learnt and education for departments. However, this estimate seems about right as an opening proposal.

**28. Do you think the proposed number of paid staff, 1 Ombudsman/Principal Case Worker, 1.5 case workers and 1 assistant will be (please tick one):**

	Response Percent	Response Total
Can always be reviewed and increased as/if required.		
Other similar small jurisdictions (smaller populations) have teams similar or greater in number than those proposed above. It is possible that the number of complaints referred to the Jersey Ombudsman would require more staff and a larger budget. However, should option 2 (section 7) be adopted, costs may well be nearer to those suggested.		
No view expressed		
The ombud's primary functions should be to identify and investigate matters of wider public interest and to disseminate learning from complaints. To do so effectively will require a public presence and a communications plan for outreach and publication. There is also the need for the ombud to work with other bodies such as regulators and to publish guidance and training for bodies in jurisdiction. Such tasks may well require additional staff members beyond those identified in the proposal. It is difficult to predict the level of casework and therefore number of caseworkers/investigators. Some ombuds use a pool of freelance investigators (who could be caseworkers in other ombud schemes) as well as permanent staff to deal with surges in complaint numbers and avoid a backlog. This should be considered as a way to build in flexibility.		

## 3.2 Consultation document

# Consultation

## Jersey Public Services Ombudsman

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### SUMMARY

The Chief Minister wishes to seek Islanders' views on a proposed model for a Jersey Public Services Ombudsman (JPSO).

In March 2018, the States Assembly agreed in principle that, subject to the findings of further research, a Public Services Ombudsman should be established (P.32/2018) to replace the existing Complaints Board.

In October 2018, the Jersey Law Commission, having undertaken the further research, published a detailed report setting out proposals and recommendations relating to the design, remit and reach of a proposed JPSO. This consultation report builds on many of the Law Commission's recommendations.

In summary, it is proposed that a Jersey Public Services Ombudsman (JPSO) be established and that the JPSO should:

- be established in law as independent of government
- investigate complaints where those complaints are about a public service, and where there is no other organisation already established to handle that complaint
- actively investigate the facts of the complaint as distinct from requiring the complainant to make their own case
- take an inquisitorial rather than adversarial approach – this means they should investigate the facts as opposed to being a referee between the person who is making the complaint and the person or entity who is the subject of the complaint
- have a wide remit covering most entities in Jersey which provide public services, including some non-governmental entities.

The Law Commission recommend that a new entity should be established with a non-executive board, replacing the existing Complaints Board. A possible alternative could be a hybrid structure that builds on the Complaints Board arrangements but provides an enhanced service with paid case workers who investigate complaints.

## CONSULTATION PROCESS

This consultation report is divided into sections, each looking at a different aspect of the JPSO proposals. At the end of each section, except for Section 1 which provides background information only, there are a number of key questions which you may wish to answer. You can also provide any additional comments that you want or submit any further information.

Public consultation	July to October 2019
Publication of feedback report summarising the responses to consultation	October 2019
Analysis of consultation feedback	October to December 2019

The next steps, post consultation feedback, could vary depending on the feedback received. It may be deemed necessary to return to the States Assembly for an in-principle decision if the proposed JPSO model varies significantly from that proposed in P.32/2018.

## WAYS TO COMMENT OR ASK QUESTIONS

1. You can comment by completing the [online survey](#) or via email or post using the details below.

Email: [JPSO@gov.je](mailto:JPSO@gov.je)  
Post: Strategic Policy, Performance and Population  
Government of Jersey  
19-21 Broad Street  
St Helier  
JE2 3RR

Closing date for comments: 11<sup>th</sup> October 2019

2. You can also attend a public meeting:  
Monday 9<sup>th</sup> September 2019 1pm-2pm; Tuesday 10<sup>th</sup> September 2019 6pm-7pm.  
Both meetings will take place at St Paul's Centre, Dumaresq St, St Helier, JE2 3RL.

## Data Protection

Your personal information will not be shared outside of the team developing policy for a Jersey Public Services Ombudsman (JPSO) or published online as part of the consultation, but we may use it to notify you of progress and/or further consultations relating to development of the JPSO. Under Jersey's Data Protection Law you have the right to ask us not to contact you again (withdraw your consent to the further processing of your information). This will, however, mean that we will be unable to keep you informed throughout the various stages of the project. Should you wish to exercise this right please contact us on tel. 01534 441234 or email [JPSO@gov.je](mailto:JPSO@gov.je).

We may quote or publish responses to this consultation including information being sent to the Scrutiny Office, quoted in a published report, reported in the media, published on [www.gov.je](http://www.gov.je), listed on a consultation summary, but will not publish the names and contact details of individuals without consent. Confidential responses will still be included in any summary of statistical information received and views expressed. Under the Freedom of Information (Jersey) Law 2011, information submitted to this consultation may be released if a Freedom of Information request requires it but no personal data may be released.

For further information on how we handle personal data please visit [gov.je/howweuseyourinfo](http://gov.je/howweuseyourinfo).

The privacy notice can be found at the end of this document.

Q1. Do you give permission for your comments to be quoted?

- ☐ Yes, anonymously
- ☐ Yes, attributed

If yes, name to attribute comments to:

Email address:

Organisation to attribute comments to, where applicable:



# Consultation

## Jersey Public Services Ombudsman

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### Content

This consultation document includes the following sections:

Section 1: Background to proposals

Section 2: Functions of JPSO

Section 3: Findings, recommendations and remedy

Section 4: Jurisdiction and design principles

Section 5: Healthcare providers

Section 6: Other watchdogs and regulators

Section 7: Structure and governance

At the end of all sections, except for Section 1, there are key questions which you can answer if you wish. You may also provide any additional comments that you want to make or submit any further information.

## SECTION 1: BACKGROUND TO PROPOSALS

### What is an Ombudsman?

There are many different types of Ombudsmen working within different sectors, for example: health sector, financial services, local government, property, pensions, removal industry etc.

What all Ombudsman services have in common is that they offer independent complaints resolution as an accessible alternative to the courts or other quasi-judicial processes, such as tribunals.

Ombudsmen are usually free to the complainant, legal representation is not required and the approach is inquisitorial rather than adversarial. This means that the Ombudsman will actively investigate the facts of a particular complaint (i.e. what went wrong or what happened) as opposed to being a referee between the person who is making the complaint, and the person and entity who is the subject of the complaint.

#### Note: Definition

The OED definition of an ombudsman is *an official appointed to investigate individuals' complaints against a company or organization, especially a public authority*.

## Background

The question of whether Jersey should have a Public Services Ombudsman has been a matter of consideration for some time:

- In 2000, the Machinery of Government Review Panel (the *Clothier Review*)<sup>21</sup> stated that the Complaints Panel arrangements in place at that point in time were unsatisfactory and that an independent Ombudsman should be established.
- In 2017, the Jersey Law Commission Report on *Improving Administrative Redress in Jersey*, recommended changes to internal Government of Jersey (GoJ) complaints handling processes, modernisation of the Tribunals system, ending the role of the Complaints Panel and setting up a Public Services Ombudsman<sup>22</sup>.

<sup>21</sup> <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20ClothierReport%20100331%20CC.pdf>

<sup>22</sup> [https://jerseylawcommission.files.wordpress.com/2016/04/jsylawcom\\_topicreport\\_adminredress\\_final.pdf](https://jerseylawcommission.files.wordpress.com/2016/04/jsylawcom_topicreport_adminredress_final.pdf)

- In July 2017, the Independent Jersey Care Inquiry<sup>23</sup> noted a lack of trust and confidence in government. The Inquiry stated that the recommendations of the Clothier Review should be given further consideration and that more should be done to improve openness and transparency in government.
- In March 2018, the States Assembly considered proposition P.32/2018 *Public Services Ombudsman: Establishment of Office*<sup>24</sup> and agreed in principle that, subject to the findings of further research, a Public Services Ombudsman should be established.
- The Jersey Law Commission undertook that further research and, in October 2018, published *Designing a Public Services Ombudsman for Jersey*<sup>25</sup>, a detailed report which considered many of the issues raised in P.32/2018 and set out proposals and recommendations relating to the design, remit and reach of a proposed Jersey Public Services Ombudsman (JPSO).

This consultation paper, which builds on many of the recommendations of the 2018 Law Commission report, sets out proposals for the remit of a JPSO.

## Establishment of the Ombudsman

There are a diverse range of views about the effectiveness of the current Complaints Board system. These include:

- perceived lack of independence (administration and access is via the States Greffe)
- delays in dealing with complaints
- overly formalised system for minor complaints
- low volume of complaints referred to the Board (both formal and informal)
- overly burdensome process for the complainant to navigate

Furthermore the Law Commission, based on discussion with stakeholders, noted a ‘worrying’ pattern in relationships with Ministers, with many findings and recommendations rejected and an atmosphere of mutual distrust.

Other stakeholders are clear about the strengths of the existing Complaints Board arrangements including:

- there is limited cost to the taxpayer, Board members give their time free of charge
- Board members are independent members of the community with relevant experience
- the Board provides an independent means of making the administration of government more efficient

<sup>23</sup><https://statesassembly.gov.je/assemblyreports/2017/r.59-2017%20independent%20jersey%20care%20inquiry%20report%20%20-complete-.pdf>

<sup>24</sup> <https://statesassembly.gov.je/assemblypropositions/2018/p.32-2018.pdf>

<sup>25</sup> [https://jerseylawcommission.files.wordpress.com/2018/11/jsylawcom\\_designingombudsman\\_final.pdf](https://jerseylawcommission.files.wordpress.com/2018/11/jsylawcom_designingombudsman_final.pdf)

In adopting P.32/2018, the States Assembly agreed in principle that, subject to further research, a Public Services Ombudsman should be established to replace the existing Complaints Board. The proposition also suggested that consideration should be given as to how 'the best elements' of the Complaint Board could be retained. For this reason, Section 7 of this report sets out two potential options for the structure of the JPSO.

Option 1 – consists of a non-executive Board, an Ombudsman who makes decisions about findings and recommendations, and case workers who investigate complaints. This is the model proposed by the Jersey Law Commission.

Option 2 - expands on elements of the existing Complaints Board arrangements. The Board would make decisions about finding and recommendations, and would be supported by case workers who investigate complaints.

Whichever option is adopted, it is proposed that the JPSO will deliver improvements on current Complaints Board arrangements, including;

Independence	<p>The JPSO should be independent of government and will be established as a body corporate in law.</p> <p>People should have direct access to the JPSO. Unlike the current Complaints Board access will not be via the States Greffe which is not universally perceived as independent.</p>
Investigating on behalf of the complainant	<p>The JPSO should actively investigate the facts of a complaint as distinct from requiring the complainant to present their own case. The complainant, like all other public services customers, should be at the heart of what public services do.</p> <p>Under the current Complaints Board system the complainant must present details of their complaint to the Board. This places a potentially unfair burden on the complainant.</p>
Capacity to investigate	<p>There should be active promotion of the new JPSO service to support public awareness, and there must be sufficient capacity to actively investigate the facts of a particular complaint (i.e. what went wrong or what happened).</p> <p>The numbers of complaints received and responded to by the current Complaints Board, whether formally or informally, is low in comparison to other Ombudsman services. Furthermore, it does not reflect what is understood about the numbers of unresolved public service complaints.</p>
What can be investigated? The decision or the way the decision was made	<p>The Complaints Board is currently only supposed to consider whether the matter that gave rise to the complaint was dealt with in accordance with the policies of the public service concerned, i.e. it scrutinises the way in which a decision was reached, as distinct from scrutinising the decision.</p>

	The JPSO should have the power to consider both the decision and the way in which the decision was reached.
Learning champion	The JPSO should have oversight of how public services design and operate internal complaints handling procedures. They should support lesson learning from complaints, in order to support systemic improvements.
Own investigations	The JPSO should have powers to undertake own-initiative investigations where there are concerns about systemic failings. Under the present system, the Complaints Board can only investigate complaints received.

## Assumptions underpinning proposals

These proposals are predicated on a number of assumptions:

### 1. Name of the Ombudsman

The name **Jersey Public Services Ombudsman** will be used because it describes the function of the office and meets the criteria of the Ombudsman Association (see below). The new name will reflect the new enhanced service.

### 2. Membership of professional associations

The JPSO will be established in such a way as to ensure it meets the membership criteria of the Ombudsman Association<sup>26</sup>.

The Ombudsman Association is a professional association for ombudsman schemes and complaint handlers (UK, Ireland, British Overseas Territories and Crown Dependencies). Members must meet the Association's best practice rules and criteria which include, the Ombudsman must:

- be independent from those whom the Ombudsman has the power to investigate, and
- demonstrate effectiveness, fairness, openness and transparency and public accountability.

### 3. Pan-island office

The JPSO will be established, in law, in such a way that it could be extended to operate in both Jersey and Guernsey at the point at which Guernsey is ready to progress with the establishment of an Ombudsman. A pan-island Ombudsman could:

<sup>26</sup> <http://www.ombudsmanassociation.org/>

- reduce overhead costs as these could be shared
- help drive service improvement as both islands could learn from each other

In the event the JPSO is extended to Guernsey, it can be renamed the Channel Islands Public Services Ombudsman, or similar.

Pan-island working has the potential to help drive improvements in public services and reduce costs to taxpayers.

Note: Precedents for pan-Island working:

- Channel Islands Competition and Regulatory Authorities (CICRA) has operated in Guernsey and Jersey since December 2010 and has a remit and Board which covers both. CICRA has offices in both islands and Board meetings also take place in both.
- Channel Islands Financial Ombudsman (CIFO) has operated in Guernsey and Jersey since it was established in November 2015 and has a remit and Board which covers both. The office is based in Jersey, Board meetings and an Annual General Meeting take place in both islands.

## SECTION 2: FUNCTIONS OF THE JPSO

### Overview of functions

The Ombudsman Association describes the functions of Ombudsman as follows:  
*Ombudsmen are independent, impartial and provide a free service. They investigate complaints that haven't been solved by the organisation complained against.*  
*Ombudsmen investigate complaints when something has been handled badly or unfairly, making someone suffer as a result.*

It is proposed that the principal functions of the JPSO will be:

1. **informal resolution** of individual complaints about maladministration and service failure using appropriate dispute resolution techniques, including mediation
2. **formal resolution** of individual complaints, by investigation or adjudication, resulting in recommendations for remedy where appropriate
3. **oversight** of how public bodies design and operate internal complaints handling procedures
4. **own-initiative investigations** with restrictions, for example 'reasonable suspicion' 'systemic maladministration'
5. **enabling lesson learning** from complaints and achieving systemic improvements
6. **'learning champion'** role in relation to the administrative justice system.

It is further proposed that the Chief Minister should have the power to request the JPSO to investigate a failure of a body or office holder to properly discharge their functions. This would be in relation to matters where the Chief Minister has a statutory responsibility for holding entities and office holders to account. The JPSO would not be required to investigate where it did not consider that there were sufficient grounds to do so.

## What is meant by maladministration and service failure?

The term 'maladministration and service failure' includes a range of different types of fault or failings that, in general, could result in public service performance that is below that which it would be appropriate for a citizen to expect to receive, for example:

- a public service not doing what it said it would do
- failure to take action or delay
- failure to follow procedures or the law, faulty procedures, or poor record keeping
- offering misleading advice or giving out misleading information, refusal to answer questions, poor communication
- refusal to inform complainants of their right to appeal, failure to investigate
- bias, unfair treatment, rudeness

The UK Parliamentary and Health Service Ombudsman takes the approach of describing what good administration for public services looks like<sup>27</sup>, rather than describing maladministration which can be difficult to define. Good includes:

- getting it right
  - acting in accordance with the law and with regard for the rights of those concerned
  - acting in accordance with the public service body's policy and guidance (published or internal)
  - taking proper account of established good practice
  - providing effective public services, using appropriately trained and competent staff
  - taking reasonable decisions, based on all relevant considerations.
- being customer focused
  - ensuring people can access public services easily
  - informing customers what they can expect and what the public service body expects of them
  - keeping to its commitments, including any published service standards
  - dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
  - responding to customers' needs flexibly, including, where appropriate, coordinating a response with other service providers.
- being open and accountable
  - being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete
  - stating its criteria for decision making and giving reasons for decisions

<sup>27</sup> <https://www.ombudsman.org.uk/about-us/our-principles/principles-good-administration/summary>



- handling information properly and appropriately
- keeping proper and appropriate records
- taking responsibility for its actions.
- acting fairly and proportionately
  - treating people impartially, with respect and courtesy
  - treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests
  - dealing with people and issues objectively and consistently
  - ensuring that decisions and actions are proportionate, appropriate and fair.
- putting things right
  - reviewing policies and procedures regularly to ensure they are effective
  - asking for feedback and using it to improve public services and performance
  - ensuring that the public service body learns lessons from complaints and uses these to improve services and performance.

## Consideration of complaints

Maladministration and service failings can have a significantly greater impact in the public service sector. There is often only one government provider of any particular service, and citizens cannot choose to spend their money elsewhere. It can feel inherently unfair if the service is poor but the citizen is required to use that service because it is based on a legal requirement (for example, completion of a taxes form, long queues at the immigration service desk).

In investigating complaints, the JPSO will need to consider what the public service provider must do – legality and compliance – and also whether the public service provider has been fair.

The International Ombudsman Institute sets out:

*Ombudsman offices typically consider complaints from users of services who believe they have suffered an injustice as a consequence of an error by service providers. In determining such complaints, the Ombudsman needs to be able to examine the decision from the perspectives of legality and compliance. In short, was the decision legal and did the body follow its own policies and procedures.*

*However, the role of an Ombudsman goes beyond legality and compliance. The Ombudsman is a promoter of human rights and good administration. In considering complaints the Ombudsman needs to be able to ask, was the outcome fair and was the outcome just? Often, the Ombudsman will look to ensure that decision makers used any discretion available to them appropriately.<sup>28</sup>*

<sup>28</sup> International Ombudsman Institute, *Developing and Reforming Ombudsman Institutions* (2017)

The JPSO will also need to consider whether the complaint should be addressed via **informal or formal resolution**. Informal resolution could include the JPSO working collaboratively with the public service and the complainant to try and achieve a mutually acceptable outcome.

Formal resolution could include the complaints being considered in a public hearing. Public hearings provide for full transparency and openness, however, they also present a number of risks, as they do not protect the privacy of the complainant or any associated third parties.

Public hearings are a feature of the existing Complaints Board processes, albeit with a discretion to hear complaints in private. Other comparable public services ombudsmen do not hold public hearings.

It is understood, however, that some people may actively want a public hearing, whilst others may be deterred from using the JPSO if they believe that their privacy may be encroached on.

Consideration is therefore being given to whether or not the complainant should be able to choose to have their complaint considered in public. If public hearings were a feature of the JPSO, they would be subject to some restrictions in order to help protect privacy.

## Making a complaint

The JPSO will actively investigate the facts of a complaint; it will not place an unfair unburden on the complainant by requiring them to evidence the service failing/maladministration. But JPSO investigations will be fair and impartial, it will not take sides.

It is proposed that the JPSO services will be free to Jersey residents. The JPSO will be provided powers to charge non-residents, except for where there is a compelling reason to exempt them from the charge (for example, there is significant public interest in investigating the complaint).

The following may make a complaint to the JPSO:

- individual members of the public or, for example, married couples or groups of people subject to the same decisions
- some categories of businesses which have been affected by a decision
- children and young people, in which case the JPSO may consult with the Children's Commissioner in order to determine who is best placed to investigate the complaint
- representatives including family members, elected officials or others will be able to make a complaint on behalf of another person, providing there is evidence of their consent

Complaints will be accepted in any format, written, verbal or electronic.

The JPSO will only investigate a complaint if the complainant has exhausted the internal complaints process of the public service body they are complaining about (i.e. the complainant must give the public service body an opportunity to put things right in the first instance). The JPSO may, however, decide to investigate before internal procedures have been exhausted, where the JPSO determines that the circumstances warrant it.

## Complaints falling outside the JPSO remit

Based on Jersey Law Commission findings, it is proposed that the following types of complaints should be excluded from the JPSO remit:

- decision-making relating to legal proceedings
- employment and personnel matters
- where there is an established route of redress via a tribunal or court (established routes of redress do not include the Planning Committee or a Planning appeal where the decision rests with members of the States Assembly or the Minister)
- judicial decision-making and the conduct of judges
- criminal justice and police functions<sup>29</sup>
- international affairs
- complaints about matters which did not negatively impact the complainant, except for where the JPSO uses its own initiative powers

The JPSO will only investigate a complaint where:

- a. There has been a negative impact on an individual. They must have been personally affected by the matter and it must have caused them an injustice, as opposed to the person feeling aggrieved about a 'wrong' that does not affect them, and/or
- b. The matter does not affect most people living in Jersey.

For example, the JPSO:

- 1) Would investigate a complaint received from a member of the public in relation to the allocation of social housing if they were directly affected by a decision taken.
- 2) Would not investigate a complaint received from a member of the public who wanted to express an adverse opinion on the policies of a social housing provider which falls under the JPSO remit, but who was not affected by their decisions or actions. The exception would be where, for example, the JPSO believed there may be systemic failings so chose to investigate using its own-initiative powers.

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<sup>29</sup> This includes the States of Jersey Police and the Police Authority. It does not include the Police Complaints Authority. See Section 6.

Note: Comparison with other jurisdictions

For illustrative purposes, the UK's Local Government and Social Care Ombudsman website sets out that it **will not** usually look at a complaint if:

- you have left it more than 12 months since knowing about the problem
- the matter has not affected you personally or caused you an injustice
- the issue affects most people in the council's area
- you have, or had, a right to appeal or take legal action and we think it is reasonable for you to have done so. This might be to a tribunal or the courts
- it is about personnel matters (such as your employment or disciplinary issues)

## Time limit on complaints

The JPSO law will set out time limits for when a complaint will be heard. It is proposed that the JPSO:

- will not investigate complaints that relate to an act that happened before the date on which the States Assembly adopt the JPSO law (i.e. no retrospective powers of investigation)
- will usually only investigate a complaint up to 12 months after the complainant could reasonably be expected to be aware that they had a reason to complain, and that should be no more than 5 years after the act to which the complaint relates

In both cases the JPSO may waive the time limit if they determine that there is some exceptional reason to do so. This could include:

- deciding not to investigate complaints that fall with the time limit if it is clear that it is not possible to do so (for example, there is no evidence of what went wrong)
- deciding to investigate complaints that fall outside the time limit if the JPSO determine it is in the public interest to do so

## Section 2 Questions: Functions of the JPSO

Q2. Which of the proposed principal functions should the JPSO have? Tick all that apply.

- ☐ **informal resolution** of individual complaints about maladministration and service failure using appropriate dispute resolution techniques, including mediation
- ☐ **formal resolution** of individual complaints, by investigation or adjudication, resulting in recommendations for remedy where appropriate
- ☐ **oversight** of how public bodies design and operate internal complaints handling procedures
- ☐ **own-initiative investigations** with restrictions, for example 'reasonable suspicion' 'systemic maladministration'
- ☐ **enabling lesson learning** from complaints and achieving systemic improvements
- ☐ **'learning champion'** role in relation to the administrative justice system
- ☐ **other** please state in comments box.

Comments.....  
.....  
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Q3. Which of the following statements do you most agree with?

- ☐ the JPSO should only hear complaints in public hearings
- ☐ the JPSO should not hear complaints in public hearings
- ☐ the JPSO should be able to determine if there is a public hearing
- ☐ there should only be a public hearing if the complainant requests a public hearing

Comments.....  
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Q4. Do you agree that the JPSO should investigate maladministration and service failure?

- ☐ Yes
- ☐ No
- ☐ Don't know / I have no preference

Comments.....  
.....  
.....

Q5. Do you agree that the JPSO should actively investigate the facts of a complaint, as opposed to requiring the complainant to evidence the service failing/maladministration?

- ☐ Yes
- ☐ No
- ☐ Don't know / I have no preference

Comments.....  
.....  
.....

Q6. Do you agree that the JPSO should be free to residents but that non-residents should pay?

- ☐ Yes
- ☐ No
- ☐ Don't know / I have no preference

Comments.....  
.....  
.....

Q7. Do you agree with the following statements? The JPSO should:

	Yes	No	Don't know / I have no preference
only investigate complaints that relate to an act that happened after the date on which the States Assembly adopt the JPSO law			
only investigate a complaint up to 12 months after the complainant could reasonably be expected to be aware that they had a reason to complain, and no more than 5 years after the act to which the complaint relates			
only investigate a complaint where the complainant has exhausted the internal complaints process of the entity about which they have a complaint			
only investigate complaints about matters which have had a negative impact on the complainant			
consider undertaking special investigations at the request of the Chief Minister			

Comments.....

.....

.....

Q8. Do you agree that the JPSO should be able to investigate complaints from some categories of businesses affected by administrative decisions, as well as individuals?

- ☐ Yes  
☐ No  
☐ Don't know / I have no preference

Comments.....

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.....

Q9. If you do agree that the JPSO should be able to investigate complaints from some categories of business, do you have any comments on the categories of business which should be included?

Comments.....  
.....  
.....

Q10. Which of the following should be outside of the remit of the JPSO (i.e. the JPSO will not investigate). Tick all that apply.

- ☐ decision-making relating to legal proceedings
- ☐ employment and personnel matters which could be addressed in proceedings before a tribunal or court
- ☐ judicial decision-making and the conduct of judges
- ☐ criminal justice and police functions
- ☐ international affairs
- ☐ where there are other statutory bodies with responsibility to provide redress or regulation
- ☐ other, please state in comments box.

Comments.....  
.....  
.....



## SECTION 3: FINDINGS, RECOMMENDATIONS AND REMEDY

### Background

The JPSO will investigate a complaint in order to find out the facts of what has happened and what, if anything, went wrong, a **finding**.

The JPSO will also recommend what action should be taken to put right any errors found, a **recommendation**. Examples of recommendations could include the JPSO telling the public body:

- what it needs to do to put right what went wrong (i.e. to make a different decision or take a different action) to improve, or to stop the same error happening again (i.e. seek to achieve systemic improvement), or
- that it must provide a remedy, for example an apology or a payment to compensate for loss<sup>30</sup>

The Ombudsman Association set out that:

*When an ombudsman investigates a complaint he or she can either uphold it (find it in the favour of the person who has complained) or not uphold it (find that the organisation complained about has not behaved wrongly). The ombudsman can usually recommend redress: a sort of compensation for what has gone wrong.*<sup>31</sup>

### Binding or non-binding decisions

Consideration needs to be given as to whether the JPSO's findings and/or recommendations are:

- not binding, or
- binding and enforceable, or
- binding and enforceable unless challenged by the public body or by the complainant.

The Jersey Law Commission sets out a number of options and recommendations but initial consultation with key stakeholders highlight a number of further nuances, which are set out below.

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<sup>30</sup> The JPSO will not have the power to recommend disciplinary action against staff but the JPSO may find that staff made errors.

<sup>31</sup> <http://www.ombudsmanassociation.org/young-people/all-about-omb.htm>

Option 1	JPSO's findings and recommendations are not binding.  This means they can be rejected by the public body and/or the complainant.							
Option 2	JPSO's findings are binding, but recommendations are not binding.  Findings could be binding between: <table><tr><td>Option 2A</td><td>the public body and the complainant, but only in relation to the specific complaint investigated by the JPSO</td></tr><tr><td>Option 2B</td><td>the public body and the complainant for all purposes (for example, the ongoing service arrangements between them)</td></tr><tr><td>Option 2C</td><td>the public body and any person it provides the service to</td></tr></table>		Option 2A	the public body and the complainant, but only in relation to the specific complaint investigated by the JPSO	Option 2B	the public body and the complainant for all purposes (for example, the ongoing service arrangements between them)	Option 2C	the public body and any person it provides the service to
Option 2A	the public body and the complainant, but only in relation to the specific complaint investigated by the JPSO							
Option 2B	the public body and the complainant for all purposes (for example, the ongoing service arrangements between them)							
Option 2C	the public body and any person it provides the service to							
Option 3	JPSO's findings and recommendations are binding and enforceable.  The means that the finding have to be accepted by the public body and complainant and that the public body must act on the recommendations.  Findings and recommendations could be binding between: <table><tr><td>Option 3A</td><td>the public body and the complainant but only in relation to the specific complaint investigated by the JPSO</td></tr><tr><td>Option 3B</td><td>the public body and the complainant for all purposes (for example, the ongoing service arrangements between them)</td></tr><tr><td>Option 3C</td><td>the public body and any person it provides the service to</td></tr></table>		Option 3A	the public body and the complainant but only in relation to the specific complaint investigated by the JPSO	Option 3B	the public body and the complainant for all purposes (for example, the ongoing service arrangements between them)	Option 3C	the public body and any person it provides the service to
Option 3A	the public body and the complainant but only in relation to the specific complaint investigated by the JPSO							
Option 3B	the public body and the complainant for all purposes (for example, the ongoing service arrangements between them)							
Option 3C	the public body and any person it provides the service to							
Option 4	JPSO's findings and recommendations are binding and enforceable unless rejected/successfully challenged by the public body or the complainant.  If findings and recommendations can be challenged, consideration needs to be given as to how they are challenged.							

## Effect of binding decisions

Binding findings and/or recommendations can have very significant implications, as illustrated in the scenario below.

<u>Scenario</u>	
<p>A parent asks that their child (Child X) is allocated a place at School A, which is a secondary school outside of their catchment area but which they believe best meets their child's needs. Their request is declined and the child is offered a place at School B. The parent complains to the JPSO.</p> <p>The JPSO:</p> <ul style="list-style-type: none"> <li>• finds that School B does not meet Child X's needs</li> <li>• recommends Child X should be provided a place at School A and no other child with the same needs should be at School B.</li> </ul>	
Options	Potential outcome
<p>Option 1</p> <p>Findings and recommendations are not binding</p>	<p>The Minister does not need to accept the finding and can maintain the position that Child X will only be offered a place at School B.</p>
<p>Option 2</p> <p>Findings are binding but recommendations are not binding</p>	<p>The Minister must accept that School B:</p> <ul style="list-style-type: none"> <li>• does not meet Child X's needs (Option 2A)</li> <li>• does not meet Child X or Child X's siblings' needs (Option 2B)</li> <li>• does not meet the needs of any children in School B with comparable needs to Child X (Option 2C)</li> </ul> <p>Despite accepting the findings, the Minister does not offer a place/s at School A because there is no capacity in School A. Doing so would:</p> <ul style="list-style-type: none"> <li>• lead to overcrowding in the class</li> <li>• displace other children who lives in the catchment area for School A</li> <li>• be unmanageable due to resource constraints</li> </ul>
<p>Option 3</p> <p>Findings and recommendations are binding and enforceable</p>	<p>The Minister must offer a place/s at School A to:</p> <ul style="list-style-type: none"> <li>• Child X (Option 3A), or</li> <li>• Child X and all Child X's siblings (Option 3B)</li> <li>• all children in School B with comparable needs to Child X (Option 3C)</li> </ul> <p>The Minister must do so even if it will significantly disadvantage other children, including:</p> <ul style="list-style-type: none"> <li>• leading to overcrowding across school classes</li> <li>• displacing other children</li> </ul>

	<ul style="list-style-type: none"> <li>require resources to be diverted from other schools to School A</li> </ul>
<p>Option 4</p> <p>Findings and recommendations are binding and enforceable unless successfully challenged by the public body or complainant</p>	<p>The Minister must act in accordance with JPSO recommendations unless:</p> <ul style="list-style-type: none"> <li>the Minister rejects the recommendations, or</li> <li>the Minister successfully challenges the recommendations</li> </ul>

Preliminary conversations with stakeholders have highlighted a number of concerns about the JPSO making binding decisions (both in relation to findings and/or recommendations) which cannot be rejected or challenged:

- As illustrated above, there are significant implications to binding recommendations; implications which would be further magnified at the point at which the JPSO investigates complaints related to healthcare providers (see Section 5). If the JPSO found that a patient was waiting too long for treatment, and recommended that the Minister take urgent action to provide treatment, would the Minister have to prioritise that patient over others? Or pay for that patient to access private treatment, or pay for all patients to access private treatment?
- If the JPSO's decisions were factually incorrect or otherwise flawed, there could be serious service delivery or resource implications. Also, given that decisions may not be in favour of the complainant, members of the public could be treated unfairly or disadvantaged.

Furthermore, if the JPSO's decisions are binding, with no ability to reject or challenge, the JPSO would be overturning the decisions of a democratically elected Minister; a Minister who should be held to account by the electorate and the States Assembly rather than an Ombudsman.

In a democratic system it is the role of the parliament, i.e. the States Assembly, to have oversight of government, to promote transparency and accountability and hold elected leaders to account<sup>32</sup>.

A Minister may want to reject a finding or recommendation because:

- they think the decision is wrong (for example, they may not accept that a grant should be given), or
- they think the decision is right but there are factors which prevent them acting (for example, they do not have the money to give a grant without taking money away from a different service)

<sup>32</sup> [http://ec.europa.eu/governance/docs/doc3\\_en.pdf](http://ec.europa.eu/governance/docs/doc3_en.pdf)

## Challenging or rejecting decisions

If JPSO decisions are binding, there must be ways in which they can be challenged or rejected by the public service or the complainant. This could include:

- Option A: Appeal to the JPSO

In the first instance, the public body or the complainant must be able to appeal to the JPSO. This would include setting out why they believe the JPSO decision is wrong and asking for it to be reviewed.

- Option B: Judicial review of the JPSO decision

The public body or the complainant could ask the court to consider if the JPSO's decision had been made correctly.

- Option C: Appeal to the Royal Court

The public body and the complainant could be provided the right to seek a Royal Court appeal of the decision of the JPSO. The appeal would look at whether the JPSO's decision was correct or incorrect (as opposed to whether the decision making process was correct or incorrect).

### **Advantages and disadvantages of court appeal/review**

Royal Court appeals and judicial reviews are expensive. Complainants may not be able to afford them and, in many cases, it would be questionable as to whether public money should be used to support a public body to challenge a JPSO decision in court.

They do, however, provide opportunities for evidence to be reconsidered and they arrive at a conclusive position.

- Option D: Statement to the Assembly

The Minister may make a Statement to the States Assembly, where the Minister:

- a. rejects the JPSO findings, and/or
- b. will not act on a recommendation either because they believe it is wrong or because other factors prevent them from doing so.

Any member of the Assembly may then ask a question about this Statement, thus allowing the Assembly to hold that Minister to account. This may include a member who is representing the complainant.

Statements to the Assembly would require changes to Standing Orders and/or be provided for in law. Consideration would also need to be given as to how Statements could be made whilst also protecting the privacy and interests of individual people involved in the complaint.

## Remedy

The Ombudsman Association set out that:

*When an ombudsman investigates a complaint he or she can either uphold it (find in favour of the person who has complained) or not uphold it (find that the organisation complained about has not behaved wrongly). The ombudsman can usually recommend redress: a sort of compensation for what has gone wrong.<sup>33</sup>*

The JPSO's recommendations could include that the public body must try to remedy (put right) what went wrong. Remedy is also referred to as redress.

Recommendations for remedies can include:

- apologising for the error
- offering a full explanation of what happened and why
- amending or reversing the decision of the Minister and/or public body decision maker
- providing financial compensation

Financial compensation is not intended to be punitive (i.e. it is not intended to punish the public service body for making an error). It is intended to:

- make good any quantifiable financial loss incurred by the complainant, and
- provide recognition for the distress, harm or unfair impact on the complainant

In the UK recommendations for financial recompense are often in the £50–£150 range; it is rare for a recommendation of more than £1,000. However, this does not preclude larger higher amounts being recommended in some cases, for example, the UK's Parliamentary and Health Service Ombudsman has 6 levels of award, with level 6 being £10,000 or more.

It is envisaged that the JPSO law will provide powers to set compensation limits.

Note: Local Government and Social Care Ombudsman Guidance on good practice:  
Remedies

*Sometimes we will recommend a financial payment to the person who brought their complaint to us. This might be to reimburse a person who has suffered a quantifiable financial loss, or it might be more of a symbolic payment which serves as an acknowledgement of the distress or difficulties they have been put through. But our remedies are not intended to be punitive and we do not award compensation in the way that a court might. Nor do we calculate a financial remedy based on what the cost of the service would have been to the provider.*

<sup>33</sup> <http://www.ombudsmanassociation.org/young-people/all-about-omb.htm>

Note: International Ombudsman Institute Best Practice Guide

*The Ombudsman should be able to make recommendations to remedy injustice and to set out changes required to improve services. The principle to be observed in determining the remedy is to attempt to put the individual back in the position they would have been in had the injustice not occurred.*

*This should include financial redress in respect of any loss. In some instances, this can be easy to establish, e.g. where someone has not received a grant or benefit to which they were entitled, or has had to pay too much tax. In other cases it may be necessary to calculate the sum, e.g. where a property has been devalued as a consequence of an incorrect planning decision.*

*The ability to recommend financial redress where it is not possible to put the person back in the position they would otherwise have been in is also helpful. Examples of when this might be appropriate include where someone should have received municipal housing but did not do so because of maladministration, or where someone was unable to pursue a course of study because a grant was incorrectly withheld.*

## **Complaints that do not relate to a Minister**

Where the complaint relates to a non-governmental entity that falls under the JPSO remit (See Section 4), it is proposed that JPSO will have the power to recommend what action/s the entity should take and what action/s the Minister should take to require the entity to act in accordance with their recommendation. This may require the Minister to use their powers as a shareholder, funder or grant maker.

Where the complaint relates to the Parish, the JPSO will publish its findings and make recommendations to the Connétable. Consideration will need to be given, in consultation with the Comité des Connétables, as to how the Parish Assembly may then give consideration to the Connétable's response to the JPSO recommendation.

Note: Parish Assembly

Alongside the States Assembly there are twelve autonomous Parish Assemblies, whose members are rate payers and those on the electoral register.

The role of the Parish Assembly only extends to matters specifically relating to the administration of the Parish. The States Assembly does not have authority over the Parish Assemblies, except where the Chair of Comité des Connétables answers questions in the States Assembly under Standing Order no. 9.

### Section 3 Questions: Findings, Recommendations and Remedy

Q11. Which of the following statements do you agree with?

Findings should be binding between:

- ☐ the public body and the complainant, but only in relation to the specific complaint investigated by the JPSO
- ☐ the public body and the complainant for all purposes
- ☐ the public body and any person it provides the service to

Comments.....

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Q12. Which of the following statements do you agree with?

- ☐ recommendations should be binding
- ☐ recommendations should not be binding
- ☐ recommendations should be binding unless rejected or challenged

Comments.....

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Q13. Do you agree that there should be a route of appeal to the JPSO in the first instance?

- ☐ Yes
- ☐ No
- ☐ Don't know / I have no preference

Comments.....

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Q14. Do you agree that if JPSO decisions are binding they should be subject to challenge via:

	Yes	No	Don't know / I have no preference
Judicial review			
Royal Court appeal			

Comments.....

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Q15. Do you agree that the Minister must make a Statement to the States Assembly, where the Minister disputes the JPSO findings or where the Minister does not accept a recommendation? This would be subject to consideration of how Statements can be made to the Assembly whilst also protecting the privacy and interests of the individual people involved in the complaint.

- ☐ Yes
- ☐ No
- ☐ Don't know / I have no preference

Comments.....

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Q16. Do you think that a Connétable who disputes the JPSO's findings or recommendations should make a statement to their Parish Assembly? This would be subject to consideration of how Statements can be made to the Assembly whilst also protecting the privacy and interests of the individual people involved in the complaint.

- ☐ Yes
- ☐ No
- ☐ Don't know / I have no preference

Comments.....

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Q17. Which of the following remedies should the JPSO have the power to offer? Tick all that apply

- ☐ Apology
- ☐ Compensation
- ☐ Report giving recommendations for improvement
- ☐ Other, please state in comments

Comments.....

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## SECTION 4: JURISDICTION AND DESIGN PRINCIPLES

### Overview

The Law Commission proposes a number of ‘design principles’ which should be applied to help determine which entities and officeholders should fall within the jurisdiction of the JPSO.

These include:

1. Are all or some of the officeholder’s or entity’s activities covered by the Human Rights (Jersey) Law 2000?
2. Are the officeholder’s or entity’s finances regulated by the Public Finances (Jersey) Law 2005? Or, are they arm’s length entities/States aided independent bodies’ within the meaning of that law
3. Are the officeholder’s or entity’s appointments overseen by the Jersey Appointments Commission? Or are they ‘independent bodies’ for the purposes of the Jersey Appointments Commission
4. Is the officeholder or entity a ‘scheduled public authority’ under the Freedom of Information (Jersey) Law 2011?
5. Are there clear public policy advantages in having the officeholder or entity within the Ombudsman’s jurisdiction?
6. Are there any compelling reasons for excluding the officeholder or entity from the Ombudsman’s remit?

A further design principle can be also applied; put simply it is called ‘follow the money’. Entities which receive public money to deliver public services should fall within the JPSO remit unless there are compelling reasons to exclude them, for example those entities/services set out below.

It is proposed that the JPSO Law will include:

- a list of entities to that fall under the JPSO’s remit, which can be amended by Regulation, and
- definitions of the types of entity which will fall under the JPSO’s remit.

### Entities falling outside the JPSO remit

The following will fall outside the JPSO’s remit:

The Courts and Judiciary, this includes judicial decisions taken by the Bailiff and others	Decisions of the Courts are appealable to superior courts
Law Officers and Law Officers' Department	The independence of the Law Officers is provided for in law
The Church except in relation to property maintained via Parish Rates	The Church is not a public body
The Crown	The Crown is a sovereign authority
The States Assembly	Assembly decisions benefit from parliamentary privilege

#### Healthcare providers (See Section 5)

Healthcare providers will fall outside the JPSO in first instance due to the complexities associated with public funding arrangements and with determining complaints about clinical decision making. There will be Regulation making powers in law, allowing the States Assembly to extend the JPSO remit to healthcare providers at a later date.

### **Entities falling within the JPSO remit**

The following will fall within the JPSO's remit:

#### Public bodies

	Note
<u>Government of Jersey</u>  This includes any Minister and any person acting on behalf of a Minister or the Government of Jersey	Health Minister will be excluded until the point at which healthcare providers are brought in by a decision of the States Assembly (See Section 5 below)
Officers on whom duties and powers are conferred by law, for example: Medical Officer for Health, Official Analyst	
The Parishes	The Parishes will fall under the jurisdiction of the JPSO, as the public directly pay money to the Parish under the Rates (Jersey) Law 2005.  This would include: <ul style="list-style-type: none"> <li>• Connétable</li> <li>• Parish registrars</li> <li>• Parish officers</li> </ul> This would not include: <ul style="list-style-type: none"> <li>• Honorary Police who fall under the authority of the Attorney General</li> </ul>

	<ul style="list-style-type: none"> <li>Church wardens and Church matters, except in relation to property where it is funded via parish rates</li> </ul> <p>Consideration needs to be given as to whether this does include Parish Hall Enquiries</p>
Bailiff's Chambers	Administrative and procedural functions only, for example: Liquor licensing and Public Entertainment licensing. Judicial decisions fall outside the remit of the JPSO
Judicial Greffe, including the Tribunal Service	Administrative and procedural functions only. Judicial decisions fall outside the remit of the JPSO.
States Greffe	Only where the States Greffe delivers a service to the public
Probation Department and After-Care Service	Administrative and procedural functions only. Judicial decisions fall outside the remit of the JPSO.
Viscount's Department	Administrative and procedural functions only. Judicial decisions fall outside the remit of the JPSO.

### Education bodies

Entity	Public funding	Service delivered by GoJ employees or those who fall with jurisdiction of Jersey Appointments Commission
Head teachers exercising functions under Education (Jersey) Law 1999	Yes	Yes
Governing bodies of schools exercising functions under Education (Jersey) Law 1999	Yes	
'Provided schools' (listed in Schedule 1 to the Education (Jersey) Law 1999)	Yes	
Jersey Curriculum Council	Yes	
Religious Education Advisory Council	Yes	

### Trading and arm's length entities<sup>34</sup>

Entity	Public funding	Service delivered by GoJ employees or those who fall with jurisdiction of Jersey Appointments Commission
Andium Homes	Wholly owned	Appointment Commission
Ports of Jersey	Wholly owned	Appointments Commission
Jersey Post Ltd	Wholly owned	Appointments Commission
JT Group Ltd (Jersey Telecom)	Wholly owned	Appointments Commission
States of Jersey Development Company	Wholly owned	Appointments Commission
Jersey Car Parking	Wholly owned	Civil servants / manual workers
Jersey Fleet Management	Wholly owned	Civil servants / manual workers
Jersey Electricity Company	Not wholly owned	Not Appointments Commission
Jersey Water	Not wholly owned	Not Appointments Commission

### Financial services bodies<sup>35</sup>

Entity	Public funding
Depositor's Compensation Scheme	Yes
Jersey Bank Depositors Compensation Board	Yes

<sup>34</sup> The following are also arm's length bodies but it is proposed that they are excluded from the remit of the JPSO because they do not meet with the design principles

Entity	Public funding	Exclusion
Digital Jersey	Yes	No service to the public delivered
Early Years Childcare Partnership	Yes	No service to the public delivered
Family Nursing and Home Care	Yes	Service to public but proposed that healthcare providers are excluded in phase one
Jersey Business Ltd	Yes	No service to the public delivered
Jersey Innovation Fund	Yes	No service to the public delivered
Visit Jersey	Yes	No service to the public delivered

<sup>35</sup> The list of financial services organisations from the Jersey Law Commission report, also includes Jersey Finance Ltd which is it proposed is excluded from the remit of the JPSO because no services to the public are delivered.

## Other entities

<b>Entity</b>	<b>Public funding</b>	<b>Service delivered by GoJ employees or those who fall with jurisdiction of Jersey Appointments Commission</b>
Association of Jersey Charities	Yes	
Bosdet Foundation	Yes	
Brussels, London and Caen Offices of the States of Jersey	Yes	Yes
Citizen's Advice Jersey	Yes	
Jersey Advisory and Conciliation Service	Yes	
Jersey Arts Centre	Yes	
Jersey Arts Trust	Yes	
Jersey Community Relations Trust	Yes	
Jersey Employment Trust	Yes	
Jersey Childcare Trust	Yes	
Jersey Consumer Council	Yes	
Jersey Gambling Commission	Yes	
Jersey Health and Safety Council	Yes	
Jersey Heritage Trust	Yes	
Jersey Opera House	Yes	
Jersey Law Commission	Yes	
Jersey Overseas Aid Commission	Yes	
Jersey Safeguarding Partnership Board	Yes	
Public Employees Contributory Retirement Scheme/Jersey Teachers Superannuation Fund	Yes	
Public Lotteries Board	Yes	
Records Advisory Board	Yes	
Royal Jersey Agricultural and Horticultural Society	Yes	
Skills Jersey	Yes	
Sport Jersey	Yes	
Tourism Development Fund	Yes	
Westaway Donations Council		Managed by a panel appointed by Health Department

Some trading/arm's length entities deliver both commercial and public services. For example, Ports of Jersey, which has 'public service obligations' meaning it deliver services which are government functions and which a commercial organisation would not normally do. Ports of Jersey provide search and rescue, aids to navigation, maintenance of harbours, and enforcement of shipping legislation, port control functions and management of the Channel Islands Control Area.

Under the proposed design principles the obligations of any trading or arm's length entity which can be defined as services delivered to the public would be subject to the jurisdiction of JPSO whereas any commercial activities and decisions would not be.

#### Case study: Ports of Jersey

A boat owner is unhappy with the maintenance of the crane at Bouley Bay. As Ports of Jersey are custodian of Jersey harbours they call the office to complain. They are unhappy with the response received after completing the Ports complaints process.

They approach the Jersey Competition Regulatory Authority as the regulator for Ports, and are advised that as maintenance of outlying harbours is a public service obligation under the Air and Sea Ports (Incorporation) (Jersey) Law 2015 rather than competition law, the proper authority to hear their complaint is the Public Services Ombudsman.

The complainant then approaches the Public Services Ombudsman who investigates whether there has been maladministration and / or service failure in relation to the maintenance issue and also whether the Ports complaints process has been followed in relation to the original complaint.

#### Case Study: Education

A parent is unhappy with the school place allocated to their child. They ask for the decision to be reconsidered. This is unsuccessful and they appeal using the Children, Young People, Education and Skills appeals process. Their appeal is rejected.

The parents believe the process used to make the original decision and the appeal decision was flawed. They complain to the JPSO who investigates. The JPSO cannot overturn the decision of the Minister in relation to the appeal but can recommend that the Minister reviews their appeal decision.

#### Good practice benchmarks

The International Ombudsman Institute (IOI) sets out:

*....Ombudsman institutions to (should) provide full coverage of all public services, whether delivered by the State, by municipalities or State bodies, on behalf of the State or by independent bodies or companies. Service users should be able to seek independent redress regardless of how services are provided. ... Whichever mechanism is used, it is important that access to an Ombudsman should be available to all users of public services including those provided by devolved levels of Government.*

and

*Similarly, in cases where public services which are currently in the jurisdiction of an existing Ombudsman are being privatised, the IOI strongly recommends that access to redress*



*should remain unchanged...Ultimately, all public services, however they are provided, should fall within the jurisdiction of a public services Ombudsman.*<sup>36</sup>

#### Case Study: Court Service

A member of the public is unhappy with the service provided by the Judicial Greffe believing they were given incorrect information about a Court procedure which led to them missing a deadline. They complain using the Jersey Court Service process. They are not happy with the interaction and follow up with an email. They receive a response from another senior member of staff.

The member of the public believes the response received does not provide them with redress, both due to the initial procedural advice given being incorrect and as the response received was from a colleague in the same department. They complain to the JPSO, who investigates.

#### Case Study: Parishes

A rate payer in Parish X is unhappy about road maintenance in their Parish. They would like to complain in person at the Parish Hall but cannot visit during opening hours as they are at work.

They telephone the Parish secretary to complain about the roads and about the opening hours at the Parish Hall. They are not satisfied with the response received. The complainant writes to the Connétable who replies. The complainant is still not satisfied and complains to the Public Services Ombudsman about the failure to maintain the road. The JPSO investigates.

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<sup>36</sup> International Ombudsman Institute, *Developing and Reforming Ombudsman Institutions* (2017) page 3.

#### Section 4 Questions: Jurisdiction and Design Principles

Q18. Do you agree that the executive and administrative functions of the Government of Jersey should fall within the jurisdiction of the JPSO?

- ☐ Yes
- ☐ No
- ☐ Don't know / I have no preference

Comments.....  
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Q19. Do you agree that the executive and administration functions of the Parishes should fall within the jurisdiction of the JPSO?

- ☐ Yes
- ☐ No
- ☐ Don't know / I have no preference

Comments.....  
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Q20. Do you agree that the Church should be included in relation to property maintained via Parish Rates, albeit not for other matters?

- ☐ Yes
- ☐ No
- ☐ Don't know / I have no preference

Comments.....  
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Q21. Do you agree with the principle that the entities which fall under the Human Rights Law, Public Finances Law, Jersey Appointments Commission and Freedom of Information Law should fall within the jurisdiction of the JPSO, unless there are compelling reasons to exclude them?

- ☐ Yes
- ☐ No
- ☐ Don't know/ I have no preference

Comments.....  
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Q22. Do you agree with the design principle proposed of 'follow the money' with which to define entities within the jurisdiction of the JPSO?

- ☐ Yes
- ☐ No
- ☐ Don't know / I have no preference

Comments.....  
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Q23. Please give more details if you disagree with the proposed inclusion or exclusion of any particular entity or office holder

Comments.....  
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## SECTION 5: HEALTHCARE PROVIDERS

### Overview

#### Jersey's healthcare system

Jersey has a complex healthcare system. Some services, including most hospital services, are publicly funded and are provided free to most residents, other services such as community dentists are provided on a wholly private basis. Some primary care services combine a public subsidy with a patient co-payment such as General Practitioners (GPs), and community pharmacy.

For the first six months of residence people living in Jersey pay the full cost of visiting a GP and prescription medicines. After six months residence, if a person has paid any social security contributions due, they become eligible to receive support for some primary care costs with funding from the Health Insurance Fund while still making a co-payment for some services.

Most hospital services are publicly funded by the Government of Jersey through Health and Community Services. The Emergency Department is free to all and most other treatments and services are free to most Jersey residents, subject to a residency condition.

It is proposed that healthcare providers are excluded from the remit of JPSO when it is first set up. There will, however, be regulation-making powers in the law so that it can be included at a later date. This would give the JPSO time to set up and develop its practice before taking on matters relating to healthcare which, due to clinical decision aspect of the work, can be extremely complex and time consuming.

It was initially proposed that clinical decisions should be excluded from the JPSO remit, but that healthcare service failings should be included. Conversations with stakeholders suggest that it may be difficult to separate out clinical decisions from other kinds of healthcare administration and service failures.

It is also difficult to separate GPs, dentists and pharmacists from other healthcare providers. Although they are funded differently and run as businesses they are very much part of overall healthcare provided to Jersey residents by the Government of Jersey and do receive public money.

Entity	Recipients of public monies	Service delivered by GoJ employees or those who fall with jurisdiction of Jersey Appointments Commission
Heath Minister and any person acting on behalf of a Minister	Yes	Yes
General Practitioners and other primary health providers	Yes	No
Jersey Dental Scheme of Management	Yes	No
Pharmaceutical Benefit Advisory Committee	Yes	No
Registered care providers	Yes	No
The Hospital and other secondary health providers	Yes	Yes
Family Nursing and Home Care	Yes	No

### Section 5 Questions: Healthcare providers

Q24. Do you agree that healthcare providers should be included in the remit of the JPSO at a later date?

- ☐ Yes  
☐ No  
☐ Don't know / I have no preference

Comments.....

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Q25. Do you agree that this should include complaints about clinical decisions as well as matters relating to service provision

- ☐ Yes  
☐ No  
☐ Don't know/ I have no preference

Comments.....

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## SECTION 6: OTHER WATCHDOGS AND REGULATORS

There are a number of other watchdogs, regulators and grievance resolution bodies already established in Jersey (the term watchdog is applied to all these bodies for the purposes of simplicity).

The table below, which takes account of the Jersey Law Commission's recommendation and preliminary feedback from key stakeholders, sets out the proposed interaction between the JPSO and these watchdogs. This interaction falls into three categories:

1. Joint working: JPSO will be provided powers in law to undertake joint working with other watchdogs where those other watchdogs agree to joint working. This will include in relation to individual cases or areas where there are concerns about systemic failings
2. Oversight of complaints handling policy: JPSO will have oversight of how the watchdog designs and operates its internal complaints handling process
3. Investigate failure to act in accordance with complaints policy: JPSO will have the power to investigate complaints<sup>37</sup> about how the watchdog applied its internal complaints processes but will not be able to investigate whether the decision of that watchdog was right

### Case study

A care home resident is unhappy with the standard of care provided. They complain to the care home but are unhappy with the result. They take their complaint to the Care Commission which investigates using its own complaints process.

The resident is not satisfied with the Care Commission's findings and does not believe it investigated properly. They approach the JPSO. The JPSO investigates whether the Care Commission applied its internal complaints investigation process but will not consider whether the Care Commission's findings were correct or incorrect.

In other words, JPSO:

- will investigate when a person says "I don't think they investigated my complaint properly"
- will not investigate when a person says "I don't like their finding about my complaint"

<sup>37</sup> The UK's Parliamentary and Health Service Ombudsman remit also covers numerous commissions and commissioners, for example the Care Quality Commission, Care Commission, Competitions and Market Authority, Health and Safety Executive, Information Commissioner, Pensions Regulator

Watchdog	Joint working	Oversight of complaints policy	Investigate failure to act in accordance with complaints policy
Care Commission		Yes	Yes
Children's Commissioner	<p>JPSO will investigate maladministration and service failure complaints.</p> <p>Children's Commissioner will investigate children's rights complaints.</p> <p>Can undertake joint investigations<sup>38</sup>.</p>	Yes	Yes
Commissioner for Standards	The Commissioner for Standards may refer cases to, and share information with, the JPSO <sup>39</sup> .	Yes	Yes
Comptroller and Auditor General (C&AG)	C&AG may refer cases to, and share information with the JPSO.		
Jersey Appointments Commission		Yes	Yes
Jersey Competition and Regulatory Authority		Yes	Yes
Jersey Financial Services Commission		Yes	Yes
Jersey Police Complaints Authority		Yes	Yes
Information Commissioner/ Data Protection Authority		Yes	Yes

## Section 6 Questions: Other Watchdogs and Regulators

<sup>38</sup> A Memorandum of Understanding will be developed setting out the procedures and requirements for joint investigations.

<sup>39</sup> Consideration will also be given as to whether the JPSO could incorporate the role of the Commissioner for Standards or whether there should be a single access point for both as there may be some areas of significant cross over in their roles.

Q26. Do you agree with proposals for the relationships between watchdogs and regulators and the JPSO? Tick all that apply

- ☐ Care Commission
- ☐ Children's Commissioner
- ☐ Commissioner for Standards
- ☐ Comptroller and Auditor General
- ☐ Jersey Appointments Commission
- ☐ Jersey Competition and Regulatory Authority
- ☐ Jersey Financial Services Commission
- ☐ Jersey Police Complaints Authority
- ☐ Information Commissioner / Data Protection Authority

Comments.....

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## SECTION 7: STRUCTURE AND GOVERNANCE ARRANGEMENTS

### Body corporate

It is a key principle of ombudsman schemes that they are independent of the entities about which they consider complaints. This is a key criterion of the Ombudsman Association<sup>40</sup>, and essential to ensuring public trust and confidence in their services.

It is therefore proposed that the JPSO should be established as a body corporate in law. It will be independent of government. It will provide a report to the States Assembly on an annual basis.

A body corporate with a non-executive Board, as set out in Option 1, mirrors the arrangements for the Jersey Care Commission, the Channel Islands Financial Ombudsman, the Channel Islands Competition and Regulatory Authorities and Data Protection Authority.

Two potential structures are proposed:

- Option 1 – which is recommended by the Jersey Law Commission
- Option 2 - a hybrid structure which builds on the current Complaints Board arrangements but provides an enhanced service through the deployment of appropriate qualified staff.

### Option 1

A non-executive Board who:

- will safeguard the JPSO's independence
- will appoint the Ombudsman
- will provide internal control, advice, guidance and challenge to the Ombudsman
- will not be involved in decision making about the Ombudsman's findings and recommendations.

An Ombudsman who:

- makes decisions about findings and recommendations
- determines when and if the JPSO should use its own initiative investigation powers
- will be executive officer for the JPSO office, including oversight of the efficiency and effectiveness of case work officers
- will lead on embedding learning in public services entities to support service improvement.

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<sup>40</sup> <https://www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf>

1.5 case work officers<sup>41</sup> who:

- will investigate complaints
- will set out for the Ombudsman the findings of their investigation and proposed recommendations for action/remedy.

An assistant who will provide administrative support to the Ombudsman and case work officers

The Ombudsman, case workers and administration assistant will be paid officers.

## Option 2

Board members who:

- will not investigate complaints but will make decisions about findings and recommendations in response to investigations undertaken by case work officers
- will determine when and if the JPSO should use its own initiative investigation powers
- will determine if a complaint should be informally resolved
- will have oversight of the efficiency and effectiveness of case work officers

A principal case worker and 1.5 case work officers<sup>42</sup> who:

- investigate complaints on behalf of the Board who will make decisions about findings and recommendations
- manage the office of the JPSO
- recommend to the Board where a complaint should be informally resolved, and then lead on informal resolution as instructed
- will lead on embedding learning in public services entities to support service improvement
- undertake own-initiative reviews as instructed.

An assistant who will provide administrative support to the case work officers

Board membership will be an honorary (unpaid) role as per current Complaints Board. Case workers and administration assistant will be paid officers.

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<sup>41</sup> The number of staff is based on Law Commission recommendations which were based on an analysis of the volume of complaints received by similar schemes in other small jurisdictions, and on comparable offices in Jersey.

<sup>42</sup> The number of staff is based on Law Commission recommendations which were based on an analysis of the volume of complaints received by similar schemes in other small jurisdictions, and on comparable offices in Jersey.

Note: Ombudsman Association's independent criteria

Option 2 will not meet the Ombudsman Association's Criteria for the Recognition of Ombudsman Offices. This sets out that, for the purposes of ensuring independence:

*The Ombudsman alone (or someone acting on his or her authority) must have the power to decide whether or not a complaint is within the Ombudsman's jurisdiction. If it is, the Ombudsman (or someone acting on his or her authority) must have the power to determine it.*

## Costs

It is estimated that the JPSO could cost:

- Option 1 - approximately £381,000 per year.
- Option 2 – approximately £303,000 per year.

Costs will go up or down, depending on the total number of case work staff and economies of scale that could be delivered by sharing office space with other similar entities.

Note: Current costs

The current Complaints Board arrangements are sometimes presented as being at virtually no cost to the tax payer. This is not correct. Whilst the members of the Board give their time free of cost:

- the States Greffe incurs administrative and overhead costs
- the complainant bears a cost - they must use their time to present their own case to the Board, as opposed to the investigation process being undertaken for them
- the GoJ bears a cost in responding to the complaint
- the GoJ bears ongoing costs due to the numbers of unresolved complaints that are not addressed by the Complaints Board, or are addressed by the Board's recommendations and then rejected.

The current arrangements have significant hidden costs. Most importantly, they place an unfair cost burden on the complainant.

## Section 7 Questions: Structure and Governance Arrangements

Q27. Which of the two proposed structures best reflects your views on how the JPSO should be established?

- ☐ Option 1:  
A non-executive Board which appoints an Ombudsman. The Ombudsman is responsible for investigating complaints and making decisions about findings and recommendations.
- ☐ Option 2:  
A Board of honorary (unpaid) members who make decisions about findings and recommendations based on investigations undertaken by case workers.
- ☐ Don't know / I have no preference
- ☐ Other

Comments.....

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Q28. Do you think the proposed number of paid staff, 1 Ombudsman/Principal Case Worker, 1.5 case workers and 1 assistant will be (please tick one):

- ☐ Too few
- ☐ The right amount
- ☐ Too many

Comments.....

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## Strategic Policy, Performance and Population Department

### Public Services Ombudsman consultation

#### Privacy Notice (Fair Processing Notice)

The Council of Ministers is registered as a 'Controller' under the Data Protection (Jersey) Law 2018 as we collect and process personal information about you. Our registration number is 16051. We process and hold your information in order to provide public services and meet our statutory obligations. This notice explains how we use and share your information. Information may be collected on a paper or online form, by telephone, email, or by a member of our staff, or in some cases, by another government department.

We will continually review and update this privacy notice to reflect changes in our services and feedback from service users, as well as to comply with changes in the law.

<b>WHAT</b>	<b>WHY</b>
<p><b>What information do we collect about you?</b></p> <p>We may collect the following types of information about you:</p> <ul style="list-style-type: none"> <li>• Name</li> <li>• Email address</li> <li>• Postal address</li> <li>• Organisation you represent</li> </ul> <p>We will not hold or process the names and contact details of persons other than the person making contact (or persons authorised). Should we receive this information, it will be securely and confidentially deleted and/or disposed of.</p>	<p><b>Why do we collect information about you?</b></p> <p>We need to collect and hold information about you, in order to:</p> <ul style="list-style-type: none"> <li>• seek views of islanders and other stakeholders on the development and design of a public services ombudsman</li> <li>• provide policy advice to Ministers</li> <li>• register your interest in this subject area, in order that we can respond after the consultation closes</li> <li>• respond to Freedom of Information Requests</li> </ul>

### **HOW**

#### **How will we use the information about you and who will we share your data with.**

Protecting your privacy and looking after your personal information is important to us. We work hard to make sure that we have the right policies, training and processes in place to protect our manual and electronic information systems from loss, corruption or misuse. Where necessary we use encryption, particularly if we are transferring information out of the department. Encryption means the information is made unreadable until it reaches its destination.

We will use the information you provide in a manner that conforms to the Data Protection (Jersey) Law 2018.

We may not be able to provide you with a service unless we have enough information or your permission to use that information.

We will endeavour to keep your information accurate and up to date and not keep it for longer than is necessary. In some instances the law sets the length of time information has to be kept. Please ask to see our retention schedules for more detail about how long we retain your information.

Where necessary, we may disclose your information to other Government of Jersey departments or organisations, either to fulfil your request for a service to comply with a legal obligation, or where permitted under other legislation. Examples of this include, but are not limited to: where the disclosure is necessary for the purposes of the prevention and/or detection of crime; for the purposes of meeting statutory obligations; or to prevent risk of harm to an individual, etc. These departments and organisations are obliged to keep your details securely, and only use your information for the purposes of processing your service request. We will only do this, where possible, after we have ensured that sufficient steps have been taken by the recipient to protect your

personal data and where necessary we will ensure that the recipient has signed a Data Sharing Agreement. A Data Sharing Agreement sets out the purpose of the sharing and the rules that must be followed when processing your data.

We may need to pass your information to other departments or organisations outside the Government of Jersey who either process information on our behalf, or because of a legal requirement. We will only do so, where possible, after we have ensured that sufficient steps have been taken by the recipient to protect your personal data.

We will not disclose any information that you provide 'in confidence', to anyone else without your permission, except in the few situations where disclosure is required by law, or where we have good reason to believe that failing to share the information would put someone else at risk. You will be told about this unless there are exceptional reasons not to do so.

We do not share or process your information overseas. We do not use web services that are hosted outside the European Economic Area.

At no time will your information be passed to organisations for marketing or sales purposes or for any commercial use without your prior express consent.

Publication of your information	E-Mails	Telephone Calls
<p>We may need to publish your information on our website and/or in the Jersey Gazette for the following reasons:</p> <ul style="list-style-type: none"> <li>Where we are required by law to publicise certain information, for example the name of persons to appear at an examination in public, associated with a review of the Island Plan</li> <li>Where we are required to provide statistical information about a group of people; although your data will be anonymised to protect your identity.</li> <li>Where you have responded to a public consultation, although your comments will be anonymised to protect your identity.</li> </ul>	<p>If you email us we may keep a record of your email address and a copy of the email for record keeping purposes.</p> <p>For security reasons we will not include any confidential information about you in any email we send to you. We would also suggest that you keep the amount of confidential information you send to us via email to a minimum or use our secure online services where possible or correspond with us by post.</p> <p>We will not share your email address or your email contents unless it is necessary for us to do so; either to fulfil your request for a service; to comply with a legal obligation, or where permitted under other legislation.</p>	<p>We do not record or monitor any telephone calls you make to us using recording equipment, although if you leave a message on our voicemail systems your message will be kept until we are able to return your call or make a note of your message. File notes of when and why you called may be taken for record keeping purposes. We will not pass on the content of your telephone calls, unless it is necessary for us to do so; either to fulfil your request for a service; to comply with a legal obligation, or where permitted under other legislation.</p>

## Your rights

<p><b>You can ask us to stop processing your information</b></p> <p>You have the right to request that the Strategic Policy, Performance and Population Department (on behalf of the Council of Ministers) stop processing your personal data in relation to any of our services. However, this may cause delays or prevent us delivering a service to you. Where possible we will seek to comply with your request but we may</p>	<p><b>You request that the processing of your personal data is restricted</b></p> <p>You have the right to request that we restrict the processing of your personal information. You can exercise this right in instances where you believe the information being processed is inaccurate, out of date, or there are no legitimate grounds for the processing. We will always seek to comply with your request but we may be</p>
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<p>be required to hold or process information to comply with a legal requirement.</p> <p><b>You can withdraw your consent to the processing of your information</b> In the few instances when you have given your consent to process your information, you have the right to withdraw your consent to the further processing of your personal data. However, this may cause delays or prevent us delivering a service to you. We will always seek to comply with your request but we may be required to hold or process your information in order to comply with a legal requirement.</p> <p><b>You can ask us to correct or amend your information</b> You have the right to challenge the accuracy of the information we hold about you and request that it is corrected where necessary. We will seek to ensure that corrections are made not only to the data that we hold but also any data held by other organisations/parties that process data on our behalf.</p>	<p>required to continue to process your information in order to comply with a legal requirement.</p> <p><b>You can ask us for a copy of the information we hold about you</b> You are legally entitled to request a list of, or a copy of any information that we hold about you.</p> <p>You can <u>submit a subject access request (SAR) using our online form</u>.</p> <p>However where our records are not held in a way that easily identifies you, for example a land registry, we may not be able to provide you with a copy of your information, although we will do everything we can to comply with your request.</p>
<b>Complaints</b>	
<p><b>You can complain to us about the way your information is being used</b></p> <p>If you have an enquiry or concern regarding how the Strategic Policy, Performance and Population Department processes your personal data you can:</p> <p>Telephone: +44 (0)1534 445443</p> <p>Email: <a href="mailto:oneSPPPP@gov.je">oneSPPPP@gov.je</a></p> <p>Strategic Policy, Performance and Population Department 19 – 21 Broad Street St Helier Jersey JE2 3RR</p> <p><b>Or you can also complain to the Central Data Protection Unit about the way your information is being used</b></p> <p>Telephone: +44 (0)1534 440514</p> <p>Email: <a href="mailto:DataProtection2018@gov.je">DataProtection2018@gov.je</a></p> <p>Central Data Protection Unit 3<sup>rd</sup> Floor 28-30 The Parade St Helier Jersey JE2 3QQ</p>	<p><b>You can also complain to the Information Commissioner about the way your information is being used</b></p> <p>The Office of the Information Commissioner can be contacted in the following ways:</p> <p>Telephone: +44 (0)1534 716530</p> <p>Email: <a href="mailto:enquiries@oicjersey.org">enquiries@oicjersey.org</a></p> <p>Office of the Information Commissioner 2<sup>nd</sup> Floor 5 Castle Street St Helier Jersey JE2 3BT</p>