



Feedback report on consultation enhancing the remit of the Ombudsman for pension related complaints

Feedback report

Relating to the Government consultation proposing amendments to legislative framework of the Office of Financial Services Ombudsman (the “Ombudsman”) to enhance its remit in dealing with pension related complaints.

1. Background to consultation

- 1.1. The last Government committed to regulating Jersey’s pension market. This commitment was reaffirmed by the new Government, and it forms part of the Ministerial Plan for financial services.
- 1.2. To avoid over-burdening industry and private pension arrangements, it was determined the delivery of pension regulation should be phased with the most immediate consumer harms and potential harms being addressed first. The final stage is to build a comprehensive framework for the regulation of Jersey’s pension market.
- 1.3. Phase 1 of pension regulation was delivered in 2022 and closed a gap which existed in relation to the retail ‘sale’ type of advice given to consumers about their Jersey pension arrangements or pension products.
- 1.4. The consultation and the proposed draft Financial Services Ombudsman (Amendment)(Jersey) Law 202- (“**Draft Amendments**”) included in the consultation address Phase 2 of Pension Regulation.
- 1.5. The aim of Phase 2 is to improve and standardise the duty of care required of all persons responsible for the management and administration of local consumers’ pension arrangements whether those persons are regulated or remunerated. Employer managed occupational pension schemes, including the public employee pension schemes (“**Public Sector Schemes**”), are presently exempted from the scope of the Ombudsman, Phase 2 will close this gap.
- 1.6. The Draft Amendments seek to enhance and create a separate uncapped compensatory regime within the Ombudsman’s framework for pension related complaints, which is aligned to other appropriate jurisdictions’ pension ombudsman’s regimes.
- 1.7. By widening the Ombudsman’s remit in the manner above-described, Phase 2 will give all consumers of Jersey tax approved pension arrangements access to a simple, free, and independent complaints process and provide them with an enforceable compensatory regime for any failings in the delivery of these arrangements.
- 1.8. The consultation sought to test whether industry, market participants and consumers and all relevant stakeholders agreed with Government’s approach and the Draft Amendments proposed.

2. Executive summary of response to consultation

- 1.1. Government received 7 responses to the consultation. It closed on 23 February.

- 1.2. The Ombudsman Board also acknowledged and shared its own comments on the Draft Amendments contained in the consultation. These have been considered and where appropriate additional changes have been made to the Draft Amendments.
- 1.3. Of the 7 responses received 4 were from individuals. Three of these related to the Public Sector Schemes and one related to a private employer's in-house managed occupational scheme ("**Private sector individual response**").
- 1.4. The other 3 responses were from:
 - a. A regulated retail provider who services the Jersey and Guernsey pension market
 - b. The trustees of an employer in-house managed occupational pension scheme
 - c. The management boards of the Public Sector Schemes (the "**Public sector response**").
- 1.5. The feedback to the Legislative Consultation was, in general, very supportive of the enhanced remit of OFSO and the different operational and compensatory approach proposed for dealing with pension-related complaints and the Draft Amendments. It did, however, raise the following issues:
 - a. Retrospective cover

The Draft Amendments in the form attached to the consultation did not restrict retrospective claims being made for those new categories of complaint added to the Ombudsman's remit relating to employer in-house managed occupational pension schemes and the Public Sector Schemes. This was not intended and has been revised in the latest version of the Draft Amendments.
 - b. Funding concerns

A number of respondents raised concern about how the funding of this enhanced remit for the Ombudsman was to be funded by way of the levy or otherwise. The Ombudsman alone has power to determine how its operational costs are to be funded. Funding obligations do not form part of the Draft Amendments accordingly. However, work has been already undertaken in this regard by its office with industry and with the Public Sector Schemes. Furthermore, the Ombudsman will be obliged under its statutory framework to issue a consultation in respect of any changes to its levy consequent on this new remit.

The Ombudsman is mindful, as is Government, that there should be no risk of any cross funding of complaints arising from the Public Sector Schemes by the private sector and work has been done to protect against this risk.
 - c. Clarification of scope

One respondent sought clarification as to how investment business related complaints were to be managed by the Ombudsman going forward with the proposed two separate complaints' regimes for pension-related complaints and financial services business complaints. This has been clarified satisfactorily with the respondent. Another respondent sought clarification as to how the Ombudsman's remit operated in relation to pan Island schemes which are tax approved in both jurisdictions. It is not intended that Guernsey managed schemes will be caught by this new remit, save and except if the complaint is against the Jersey employer as respondent.

d. Operation of compensatory scheme

One respondent correctly raised concern about how the Ombudsman's powers to direct payments to be made into the complainant's pension scheme would work if the complainant had transferred their benefits into a non-Jersey tax approved scheme as this was outside the definition of '*pension scheme*'. This has been addressed in the revised Draft Amendments.

e. Liability for maladministration

One respondent challenged the trustee or scheme manager being liable for the faults of its administrators. This issue has been well-rehearsed and reflects the current regulatory difference between Jersey's regulatory regime and that of the UK and Guernsey where the activity of administration is regulated. In Jersey, trust company business does not include a separate regulated class of activity for administration. It is anticipated this will be addressed in Phase 3 of pension regulation. The Draft Amendments have been amended so that when pension administration is regulated, persons acting in that capacity can be added as respondents to the Ombudsman's regime by Ministerial Order. At that time, it would be appropriate to extend the class of respondents for pension related complaints to include the regulated administrator. Before such time it poses considerable issues.

The respondent also noted, correctly, that for in-house managed occupational pension schemes the employer could end up liable for the default of the scheme manager trustees due to the standard indemnity provisions included in the trust deed. This was understood and intended, and it reflects the commercial decision an employer takes when choosing to self-manage its employee pension arrangements with, typically, its own employees or officers acting as lay trustees.

f. Actual complaints

A number of the individual responses shared actual complaints they had about their pension arrangements. These have been relayed back to relevant parties.

One such response raised a new concern about employers who added their Jersey employees into their UK registered pension scheme and not a Jersey tax approved pension scheme. This creates administrative issues and issues as to the benefits such employees receive under these schemes and how they can be transferred to a Jersey tax approved arrangement. This issue has been explored further with the industry working group, the Ombudsman and Revenue Jersey.

It has been concluded the revised definition of '*pension scheme*' in the Draft Amendments should remain the same and only include Jersey tax approved arrangements. However, this does not prevent an employee of a Jersey employer from bringing a complaint about such a practice to the Ombudsman under the new enhanced remit, nor from the complaint being taken to the UK Pension Ombudsman.

g. Public Sector response

The Public Sector response raised a couple of the same concerns raised by other respondents. More importantly, it raised concerns as to whether the statutory frameworks of the Public Sector Schemes needed to be amended in order that they could comply with the requirements of the Ombudsman's regime and for the

management boards of these schemes to have adequate powers to manage complaints referred to the Ombudsman. Work is being undertaken with the Public Sector Schemes to resolve these issues, but it is not intended this should delay the Draft Amendments being lodged and the enhanced remit of the Ombudsman moving forward of its own right.

3. Conclusions

- 1.1. The feedback shows that the policy objectives for Phase 2 of pension regulation are fully supported. Furthermore, it shows there is evidence that the enhanced remit of the Ombudsman for pension related matters is needed and will benefit consumers.
- 1.2. The technical feedback on the Draft Amendments has been helpful and adopted with further revisions being made to the Draft Amendments. This will ensure the Draft Amendments are fit for purpose, and hopefully iron out any teething issues which might otherwise arise.
- 1.3. It is anticipated that the Draft Amendments will be lodged in the last quarter of 2023 so that the enhanced remit of the Ombudsman will be operative in early 2024. This user experience will help Government and the Regulator formulate how its comprehensive regime for regulation of Jersey's pension market should operate and be designed.