

Law Drafting Instructions



JERSEY PUBLIC SERVICES OMBUDSPERSON

Summary

These instructions **request new legislation to establish a Public Services Ombudsperson in Jersey** and replace the Complaints Panel, which is the current route for resolution of complaints about public services in Jersey.

The Law will create a Jersey Public Services Ombudsperson (JPSO) which will resolve complaints about administrative actions, decisions or omissions, or failures to act, which have resulted in injustice or hardship, by specified bodies in Jersey.

While the JPSO's principal function will be the investigation of individual complaints by members of the public, the JPSO will also be able to conduct own-initiative investigations in certain circumstances, whether or not a complaint has been made, and will be able to undertake joint investigations with other bodies where appropriate.

The JPSO will also be able to bring forward model complaints handling procedures for public services and will oversee the application of the model procedures it draws up.

The JPSO will be independent of Government and will have a particular focus on transparency in all its dealings. There will be access to the JPSO across all areas of public services (other than those which the legislation excludes).

The overall objective in establishing the JPSO is to drive a higher standard of administration by public services. While the findings and recommendations of the JPSO will be non-binding, the drafting instructions below set out mechanisms to reinforce compliance and transparency of the public bodies concerned.

Nota bene:

Jersey Public Services Ombudsperson (JPSO): refers to the office of Jersey Public Services Ombudsperson which constitutes a Governance Board of which the Principal Ombudsperson is a member.

The JPSO is the body set up to drive public service improvement in Jersey

Ombudsperson: refers to the Principal Ombudsperson (one person). The purpose of using the term 'Ombudsperson' rather than 'Ombudsman' is to render it gender neutral¹.

The Ombudsperson is solely accountable for investigating complaints. They may delegate this function to case officers. No Board members, except the Principal Ombudsperson, may investigate complaints or instigate own initiative investigations

¹ <https://untermportal.un.org/unterm/Display/record/UNHQ/ombudsman/2E129932E6473E6A85256FD50061E131>

Summary	1
Section 1: Why are we establishing a Public Services Ombudsperson in Jersey?	5
The current situation	5
The need for a Jersey Public Service Ombudsperson	6
The pathway to the creation of a Jersey Public Services Ombudsperson (JPSO)	7
Strategic vision and governing principles	8
The JPSO's place in the landscape of scrutiny of public administration	10
Section 2: What will the JPSO look like?	11
Establishing the JPSO	11
Legal authority and guidance	11
Independence of the JPSO	12
Funding of the JPSO	13
Transparency of the JPSO	14
Civil liability of the JPSO	15
The Principal Ombuds	15
Appointment of the Principal Ombuds	15
Termination of appointment of the Principal Ombuds	17
Functions of the Principal Ombuds	18
Remuneration of the Principal Ombuds	18
The Board	18
Appointment of the Chair of the Board	18
Termination of the appointment of the Chair of the Board	19
Appointment of Board members	19
Termination of the appointment of Board members	20
Functions of the Board	20
Remuneration of the Board	21
The potential to develop a Channel-wide Public Services Ombuds	21
Section 3: What will the JPSO do?	22
Addressing maladministration and service failure	22
Overview of functions	22
Investigative function	23
Opening an investigation	23

Onwards referral of complaints	24
Own-initiative investigations	25
Whistleblowing functions	28
Eligible complainants	29
Making a complaint	30
Time limits and internal complaints	31
How complaints will be investigated	32
Offences	32
Information handling and disclosure	34
Consulting and cooperating with others	35
Overlapping powers of investigation	36
Information sharing and disclosure	37
Resolving maladministration or service failure in other ways	38
Parties' agreement and adjudication	38
Transparency	39
System-wide recommendations	39
Model complaints handling	39
Handling complaints by whistleblowers	41
Findings, recommendations and remedy	42
Compliance	45
Reports	46
Special Reports	46
Thematic Reports	46
Challenge to the JPSO	47
Section 4: Jurisdiction and design principles: inclusions and exclusions of the JPSO's remit	47
Specified bodies	52
Public bodies	52
Education bodies	53
Trading and arm's length entities	53
Financial services bodies	54
Other entities	55
Administration of court	57

Social housing providers	57
Healthcare providers as specified bodies	58
Section 5: Commencement, transitional and other provisions	60

Section 1: Why are we establishing a Public Services Ombudsperson in Jersey?

The current situation

1. The existing final recourse for individuals in Jersey wanting to make a complaint about a public service is the Complaints Panel. The States of Jersey Complaints Panel is an administrative redress body unique to Jersey. It currently operates under the Administrative Decisions (Review) (Jersey) Law 1982². The 1982 Law was amended in significant ways in 1996 and 2006. It currently consists of a Chair, Deputy Chair and other members, all of whom work in a voluntary capacity.
2. The Complaints Panel considers disputes arising from decisions taken by ministers and civil servants in Government of Jersey (“GoJ”) departments. Complainants are required to use any internal complaints systems within a GoJ department before approaching the Complaints Panel. Complaints are received by the office of the States Greffe (part of the States Assembly). There is no charge for using the process.
3. If the complaint falls within the Panel’s jurisdiction, the Chair may attempt to resolve the grievance informally. If this is tried but fails, or is thought not to be appropriate, a hearing, usually in public, is held in front of a “Board” of three members of the Complaints Panel, at which the complainant presents his or her case, followed by a response on behalf of the Minister.
4. The Board prepares a written decision, which is made as a report to the States Assembly by the Privileges and Procedures Committee (PPC). The Committee may uphold the complaint and make recommendations to the Minister for providing a remedy. Any recommendations are not binding on the Minister, who may reject them in whole or in part.
5. The Complaints Panel provides an independent means of making a complaint about a public service. It is recognised as low-cost to the taxpayer (Board members give their time free of charge), and Panel members are independent members of the community with relevant experience.
6. Jersey currently has two schemes which are recognised by the Ombudsman Association (“OA”), a professional association for Ombudsman schemes and complaint handlers in the UK, Ireland, British Overseas Territories and Crown Dependencies. These are:
 - a. the States of Jersey Complaints Panel, as described above, which falls within the OA’s Complaints Handler membership category, as distinct from its Ombudsman members category because it does not deliver the full functions of an Ombudsman; and

² <https://www.jerseylaw.je/laws/revised/PDFs/16.025.pdf>

- b. the Channel Islands Financial Ombudsman, which provides an independent dispute resolution service to settle complaints between customers and financial services providers in Jersey and Guernsey and is established by the Financial Services Ombudsman (Jersey) Law 2014³. The Financial Services Ombudsman is a full member of the Ombudsman Association.

The need for a Jersey Public Service Ombudsperson

7. The Independent Jersey Care Inquiry (IJCI)⁴ found a strong perception of a “Jersey Way” on the island. The term “Jersey Way” has numerous different, and often contradictory connotations, but was used as shorthand by the IJCI to describe a lack of transparency and of fairness in decision-making, a reluctance to challenge the *status quo* and an absence of redress for those who suffered – what were considered to be – injustices. This perception of unfairness was exacerbated for many victims of abuse, as the abusive systems and practices to which they had been subjected appeared to have been tolerated by those in authority. In their follow up review, the Inquiry Panel recommended⁵ that *‘every opportunity should be taken to counter [this] perception by working to demonstrate accountability, transparency and impartiality in all aspects of public services. Decision-making processes should be clear, consistent and demonstrably impartial. Complaints processes should be readily accessible with elements of independent oversight and effective redress, such as would be gained by the appointment of a Public Services Ombudsman’*.
8. Previous reviews had also identified the need for more openness and transparency in government and public services in Jersey, including the 2000 Clothier Review, and in 2017 the Jersey Law Commission had produced a report setting out recommendations for reform of Jersey’s administrative justice system.
9. International best practice on public administration⁶ highlights the importance of citizens having access to an independent channel to make a complaint about a public service should internal routes to resolve a problem prove unsuccessful. Such a channel provides a remedy against an ‘accountability deficit’ for public service maladministration and service failure. An accountability deficit is an absence of, inconsistent and/or ineffective oversight of injustice and/or hardship caused as a result. This concept acknowledges a principle that all public services must be held accountable, above and beyond questions of law, for observing, or not observing, *“norms and rules of behaviour designed to ensure that citizens (and, more generally, users) are properly treated and enjoy their rights fully”*⁷.

³ <https://www.jerseylaw.je/laws/revised/Pages/13.255.aspx>

⁴ <https://statesassembly.gov.je/assemblyreports/2017/r.59-2017%20independent%20jersey%20care%20inquiry%20report%20%20-complete-.pdf>

⁵ <https://statesassembly.gov.je/assemblyreports/2019/r.123-2019.pdf>

⁶ <https://www.oecd.org/gov/the-role-of-ombudsman-institutions-in-open-government.pdf>
<https://www.ombudsman.europa.eu/en/speech/en/49379>

⁷ from a speech given by Professor P Nikiforos Diamandouros, former National Ombudsman of Greece and Ombudsman for the European Union) <https://www.ombudsman.europa.eu/en/speech/en/340>

10. Such an independent channel should:
 - a. resolve complaints of maladministration and service failure effectively and expeditiously, based on what is fair and reasonable in the circumstances, providing redress to the complainant. Maladministration and service failure concerns administrative actions, decisions or omissions, or failures to act which have resulted, or are alleged to have resulted, in injustice or hardship; and
 - b. help drive shared principles of good administration across public services, improving accountability and transparency. The service should be free to the complainant and funded by the government.
11. The establishment of an independent JPSO should take into account that, even if a service has few complaints or otherwise performs well, this does not negate the need for a body which can deal impartially with problems when they arise and raises the standards of services over time.

The pathway to the creation of a Jersey Public Services Ombudsperson (JPSO)

12. The current Complaints Panel (described above) is considered to have limitations as an independent public service complaints body. These include a perceived lack of independence due in part to being associated with the States Greffe, delays in dealing with complaints, an overly formalised system for minor complaints with a burdensome process for the complainant to navigate, and the potential for an adversarial atmosphere when complaints are heard in public. The volume of complaints received by the Panel is very low. Furthermore, the Law Commission⁸ noted a 'worrying' pattern in relationships with ministers, highlighting the rejection of many findings and recommendations and an atmosphere of mutual distrust.
13. In March 2018, the States Assembly considered proposition Public Services Ombudsman: Establishment of Office (P.32/2018)⁹ 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'¹⁰, (the "2018 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 JPSO.
14. Between July 2019 and October 2019, a public consultation was undertaken on the proposed functions of a public services Ombudsperson. The consultation built on many of

⁸ https://jerseylawcommission.files.wordpress.com/2018/11/jsylawcom_designingOmbudsman_final.pdf

⁹ <https://statesassembly.gov.je/assemblypropositions/2018/p.32-2018.pdf>

¹⁰ https://jerseylawcommission.files.wordpress.com/2018/11/jsylawcom_designingOmbudsman_final.pdf

the key recommendations of the Law Commission's 2018 Report. Responses were received at public meetings, in writing and via an online survey. A consultation feedback report was published in February 2020¹¹. These drafting instructions take account of the 2019 consultation feedback and additional feedback received from key stakeholders during the process of developing these instructions.

15. The 2020 Government Plan (P.71/2019)¹² provided monies for the JPSO for the period 2021 – 2023. These were proposed as an efficiency in the Government Plan 2021– 2024 but were reinstated from mid-2022 onwards further to adoption of amendments (P.130/2020 Amd.)¹³

Strategic vision and governing principles

The shape and design of the JPSO, as set out in these drafting instructions, is drawn from a combination of the following:

- The Jersey Law Commission's Report (2018)¹⁴, which set out proposals and recommendations relating to the design, remit and reach of a proposed JPSO. The 2018 report built upon a previous report of the Jersey Law Commission (2017 report), which set out recommendations for the reform of Jersey's administrative justice system
- The Ombudsman Association Criteria for the Recognition of Ombudsman Offices¹⁵
- The Ombudsman Association's best practice guidance¹⁶
- The Venice Principles¹⁷ (principles on the protection and promotion of the Ombudsman Institution) adopted by the European Commission for Democracy through Law and by the General Assembly of the United Nations¹⁸
- The legislative framework for Public Services Ombudsman in other jurisdictions (key examples: Public Services Ombudsman (Wales) Act 2019, Scottish Public Services Ombudsman Act 2002, Public Services Ombudsman Act (Northern Ireland) 2016). The legislative framework of Public Services Ombudsman in other jurisdictions (key examples: Public Services Ombudsman (Wales) Act 2019, Scottish Public Services Ombudsman Act 2002, Public Services Ombudsman Act (Northern Ireland) 2016).

¹¹ <https://www.gov.je/Government/Consultations/Pages/JerseyPublicServicesOmbudsman.aspx>

¹² <https://statesassembly.gov.je/assemblypropositions/2019/p.71-2019.pdf>

¹³ <https://statesassembly.gov.je/AssemblyPropositions/2020/P.130-2020%20Amd%20Amd.pdf>

¹⁴ https://jerseylawcommission.files.wordpress.com/2018/11/jsylawcom_designingombudsman_final.pdf

¹⁵ <https://www.ombudsmanassociation.org/sites/default/files/2021-03/OA%20Terms%20and%20Rules%20-%20July%202019.pdf>

¹⁶ <https://www.ombudsmanassociation.org/sites/default/files/2020-12/BIOAGovernanceGuideOct09.pdf>

¹⁷ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)005-e)

¹⁸ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/373/10/pdf/N2037310.pdf?OpenElement>

16. The overarching objective for the JPSO is to drive higher standards of public administration within its jurisdiction by:
 - a. responding to identified levels of poor service or maladministration, and
 - b. through proactively seeking to drive up standards across public services.

17. Informed by the framework of the Ombudsman Association on the key characteristics for a public services Ombudsman¹⁹, the vision is for a JPSO which:
 - a. has a wide remit, covering all public services delivered in Jersey;
 - b. is straightforward and simple for people making complaints;
 - c. listens to and treats fairly those people making a complaint;
 - d. deals fairly and effectively with a complaint at the earliest stage using suitably trained staff;
 - e. deals with complaints in a timely manner with a clear timeline – it should be clear when the complaint will be resolved;
 - f. uses the learning from complaints to drive improvement in services by feeding back the lessons from its work; and
 - g. increases public confidence in the organisations complained about – through providing members of the public with accessible and effective redress.

18. The following governing principles set out the standards which guide how the JPSO will operate:
 - a. it is independent and seen to be independent of the entities about which it will consider complaints;
 - b. it is an impartial service: the service is fair and effective for all service users, both complainants and the organisation complained about, and it will use its power to initiate its own investigations (see paragraphs 82 to 93, below) as a means to give a voice to those who are not able to complain;
 - c. the JPSO will not confine itself to considering whether the conduct of any agency or individual was lawful. Rather it will consider what was fair and reasonable in the circumstances;

¹⁹ <https://www.ombudsmanassociation.org/sites/default/files/2021-01/Service%20Standards%20Framework.pdf>

- d. it is transparent about how it operates. For example, it must publish information about its activities – through annual casebooks of its decisions, statistics on how cases have been resolved and on the compliance of public bodies with their recommendations, and details of meetings with officials and ministers;
 - e. there is access to the JPSO in all areas of public services (other than those which this legislation excludes); and
 - f. the JPSO will work collaboratively with other bodies such as regulators, commissioners and other complaints services, particularly where the complaint falls within the remit of several bodies.
19. These principles guide how the JPSO will operate and are central to driving higher standards of public administration in Jersey. The legislation may, therefore, benefit from having these principles clearly set out within the draft Law, subject to advice from the Legislative Drafting Office (LDO).

The JPSO's place in the landscape of scrutiny of public administration

20. Ombudsperson have evolved as an alternative form of scrutiny of public administration, alongside the courts, commissions, regulators, inquiries and inquests. All these bodies will address, to varying degrees, poor standards of public administration, but with different powers and modes of resolution. Existing commissions and regulators apply to specific areas of public services, in comparison a public services Ombudsperson normally applies to all areas of public service. Whereas courts determine the legality of the conduct or decisions of public administration, the Ombudsperson is concerned with standards of conduct. For example, even where a public service body has acted entirely lawfully, it may still have fallen below the standards of good administration that the citizens of Jersey can reasonably expect. It should be noted that an individual addressing a complaint to the JPSO is not precluded from seeking recourse through the courts. The JPSO must respect any pending court proceedings and not pronounce itself on any judicial matters.
21. The Ombudsperson will seek to drive a high standard of conduct in public administration beyond simply fulfilling legal obligations. For example:
- a. the fact that a school has acted unlawfully is *ipso facto* maladministration/ service failure; and
 - b. the fact that a school has acted lawfully does not necessarily mean it has not fallen below the standards of good administration.

Section 2: What will the JPSO look like?

Establishing the JPSO

Legal authority and guidance

22. New legislation is requested which will establish a body corporate to be known as the Office of the Jersey Public Services Ombudsperson (JPSO). The JPSO will replace the States of Jersey Complaints Board and the new Law would replace the Administrative Decisions (Review) (Jersey) Law 1982 (the “1982 Law”).
23. The Law will:
 - a. set out the JPSO is to have a Board and will provide for functions of that Board and appointments to that Board; and
 - b. set out that there is Principal Ombudsperson and will provide for the functions of and for the appointment of the Ombudsperson.
24. In doing so the Law will provide the main framework for the ombudsperson scheme and create the ability to bring forward additional provisions by Regulations and/or Orders, including:
 - a. it is envisaged any payments made to a complainant will be subject to certain constraints, such as a cap or tariff, as may be found in the Financial Services Ombudsman (Jersey) Law 2014²⁰, for which the Chief Minister may specify a single maximum amount by Order;
 - b. a power for the States to establish a joint Jersey / Guernsey Public Services Ombudsperson at a later date by Regulations (see Article 6 Financial Services Ombudsman (Jersey) Law 2014) in the event that this is desired; and
 - c. a power for the States to include other areas of public service not already included within the remit of the JPSO by Regulations.
25. The LDO is requested to advise on the most appropriate mechanism for bringing forward additional / future provisions (i.e. the proposals as to which may be introduced by Regulations or Orders, as set out above, may not be correct).
26. The Law also specify that the JPSO must produce guidance:
 - a. on matters relating to how it operates, including:

²⁰ <https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/13.255.aspx>

- the criteria the JPSO will use to decide whether and when to open investigations into complaints, as well as investigations of its own initiative;
 - the standard procedure that will be followed when the JPSO conducts investigations;
 - the circumstances when an alternative form of resolution (“adjudication”) may be used; and
- b. on matters relating to how others must operate when managing complaints, including the minimum standards of complaints handling procedure, which they and others must adopt and comply with, as described in paragraphs 147 to 154.

Independence of the JPSO

27. The Law will state that:

- a. the Board and the Principal Ombudsperson (including staff) must act independently, free from influence from the States of Jersey, Government, public services and others (see Paragraph 2 (1) of the Schedule to the Commissioner for Children and Young People (Jersey) Law 2019);
- b. the States must respect, uphold and defend the independence of the Board and the Principal Ombudsperson (see Paragraph 2(2) of the Schedule to the Commissioner for Children and Young People (Jersey) Law 2019);

The above provisions are aligned with the “Venice Principles”, (Principles on the Protection and Promotion of the Ombudsman Institution), which lists independence as one of the core elements of the Ombudsman Institution.²¹ The Ombudsman Association includes independence in its six principles of good governance, noting the need to ensure and demonstrate the freedom of the office holder from interference in decision-making²².

28. The JPSO may not be directed on how any of their functions are to be carried out (see Article 17 Comptroller and Auditor General (Jersey) Law 2014 and Article 2(2) and Schedule 1 Scottish Public Services Ombudsman Act 2002). The Government of Jersey may only give general directions to the JPSO in respect of any information and guidance it provides so long as they have consulted the JPSO and this direction is necessary in the public interest and will not compromise the independence of the JPSO (see Article 12(2) and (6), Schedule 1 Financial Services Ombudsman (Jersey) Law 2014).

29. The Law should state that the JPSO must produce an annual report on the performance of the functions of the JPSO for each financial year. The report must comply with the

²¹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e).

²² <https://www.ombudsmanassociation.org/best-practice-and-publications/guide-principles-good-governance#the-six-principles>

requirements for the annual reports of entities listed under Schedule 6 to the Public Finances (Jersey) Law 2019 under the Public Finances Manual. See Article 9(2)(b) of the Official Analyst (Jersey) Law 2022 for an example of this provision enacted. The annual report must also contain the Strategic Plan – see paragraph 36, below.

30. As per Article 9(3) to (5) of the Official Analyst (Jersey) Law 2022, the Chair of the Board must present the annual report to the Chief Minister as soon as is practicable after the end of the financial year. The Chief Minister must then present a copy of the report to the States as soon as is practicable. The whole Article which governs the preparation of the annual report should be amendable by Order. In addition, it should be provided that the Chief Minister may make comments on the Annual Report and that any such comments must be published.
31. Operationally, the independence of the JPSO must be communicated clearly to the public in order to increase confidence. Practical means of signifying this independence may be considered, for example adopting contact information, including email addresses, that refers to the 'Jersey Public Services Ombudsperson' rather than the Government of Jersey.

Funding of the JPSO

32. The Law should replicate the effect of Article 7(1) and (2) of the Official Analyst (Jersey) Law 2022. In conjunction with this funding provision, the JPSO should be included under Schedule 6 to the Public Finances (Jersey) Law 2019.

Article 7(1) and (2) of the Official Analyst (Jersey) Law 2019

(1) The Minister must make an annual assessment of the funding required to ensure that the Official Analyst is provided with the financial and administrative resources, and other support, including staff, services, equipment and accommodation, necessary to enable the Official Analyst to discharge the functions of the Official Analyst economically, effectively and efficiently.

(2) Before the Council of Ministers includes a statement in a government plan under Article 10(2) of the 2019 Law that relates to an amount submitted by the office of the Official Analyst, the Minister must consult the Official Analyst.

33. The Law should state that the Principal Ombudsperson, with the support of the Board, will produce a Strategic Plan (as part of an Annual Report – see paragraph 29, above) on an annual basis, outlining the financial requirements for the next financial year, based on the previous year's performance and the expected programme of work in the next year – this may include the financial requirements for the own-initiative investigations as outlined in paragraph 86, above.

34. This Plan must be submitted to the Chief Minister for it to be considered as part of the Government Plan funding cycle, which is presented to the States Assembly for consideration. The Chief Minister may make any comments in response to the Strategic Plan but may not amend it. The original Strategic Plan and the Chief Minister's response should be published to heighten transparency and accountability.
35. Operationally, the Chief Minister and the Treasury and Exchequer should draw up a Memorandum of Understanding to clarify that the Treasury and Exchequer will only approve the financial impact assessment of the Strategic Plan and not challenge the substance and the rationale of the plan.
36. In addition, if an *ad hoc* need arises for more funding to enable a critical own-initiative investigation beyond what has been provided for in the annual funding cycle, the Principal Ombudsperson, again with the support of the Board, may request the funding from the Chief Minister. The Chief Minister must:
 - a. consider all requests received and set out in writing to the JPSO his response to all such requests. A redacted version of the JPSO's request (as per paragraphs 118 to 126), which includes information about the request and the relevant rationale should be published by the JPSO. Similarly, the Chief Minister should publish the responses to the JPSO's request;
 - b. having given consideration to the case for funds, seek to make available to the JPSO such funds as are considered necessary for the proper and effective discharge of the own-initiative investigative function; and
 - c. publish a set of agreed standards jointly with the JPSO, about the management of ad hoc funding requests and timescales.
37. The JPSO must prepare annual accounts, details of which will be contained within its Annual Report, which will be audited (see Paragraph 13 of the Schedule to the Commissioner for Children and Young People (Jersey) Law 2019), except that the Comptroller and Auditor General must approve the external auditor to be appointed, to help accord with recommendation A25 in the report 'Governance – A Think Piece'²³ published in December 2019.

Transparency of the JPSO

38. The Law should ensure that the JPSO will start from a presumption of transparency about the relationship between (1) the Principal Ombudsperson and the Board and (2) the JPSO and the Chief Minister, unless such a disclosure is related to information that an individual would, in action in court, be entitled to refuse to disclose on the grounds of legal professional privilege (see Article 19(14) Financial Services Ombudsman (Jersey) Law

²³ <https://www.jerseyauditoffice.je/wp-content/uploads/2019/12/Report-Governance-A-Thinkpiece-18.12.2019.pdf> p.26

2014). Therefore, what the JPSO will routinely publish includes but is not limited to the following:

- a. Board minutes;
- b. comments made by the Chief Minister on the Annual Report and the Strategic Plan;
- c. the responses of the Chief Minister to requests for *ad hoc* funding by the JPSO;
- d. the requests by the Chief Minister for the Principal Ombudsperson to consider an own-initiative investigation (see paragraph 92); and
- e. performance data and other operational statistics.

Civil liability of the JPSO

39. The Law should limit the liability of the Principal Ombudsperson and the JPSO (see Article 13, Schedule Financial Services Ombudsman (Jersey) Law 2014) in relation to damages for any act whilst discharging their functions and this limitation of civil liability should also extend to any individual, who is part of the JPSO, beyond the point at which they cease to be in office (Paragraph 12 of the Schedule to the Commissioner for Children and Young People (Jersey) Law 2019).

The Principal Ombuds

Appointment of the Principal Ombuds

40. The Venice Principles state that “the Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority.” The Law will therefore state that the Chair of Scrutiny and Liaison Committee (SLC) and the Chief Minister will put forward a nomination to the States Assembly (SA) for the appointment of the Principal Ombudsperson by way of a joint proposition. This will have followed an open recruitment process overseen by the Jersey Appointments Commission (JAC). The proposition will be subject to debate in camera (in private) by the SA. This joint proposition must be presented to the SA by the Chief Minister at least two weeks before making the appointment, to ensure the SA have enough time to organise a debate on the proposition (see Article 3(4) Data Protection Authority (Jersey) Law 2018). The SA will, therefore, ultimately make the appointment by deciding whether or not to approve the proposition
41. It was initially proposed that the appointment of the Principal Ombudsperson be made by the Chair of the Board, who would have been appointed by the Public Accounts Committee (PAC) and the Chief Minister, overseen by the JAC. There were commonly held concerns from stakeholders, both in and outside of Jersey, who questioned whether this appointment procedure went far enough to ensure the independence of the JPSO.

The Venice Principles states that “the Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority.” In response to these concerns, these law drafting instructions reflect an arrangement that is more closely aligned with this idea, both in the role the SLC plays in the joint proposition and the requirement for debate in the SA. A proposition to give the SA exclusive control of the appointment of the Principal Ombudsperson was discussed but did not command support across all stakeholders in Jersey.

42. The Law should specify that the appointment of a Principal Ombudsperson should be for a minimum term of 5 years and a maximum term of 9 years, and that the Principal Ombudsperson will be ineligible for reappointment. The minimum term is in accordance with the Ombudsman Association membership criteria, while the maximum term is consistent with Jersey Appointments Commission guidelines²⁴ and broadly comparable with other jurisdictions including Wales (maximum 7 years) and Scotland (maximum 8 years).
43. The Law should provide that a person is disqualified from appointment as the Principal Ombudsperson (see Article 5, Schedule- Children’s Commissioner Law and Article 4, Schedule- Regulation of Care Law) if they:
 - a. are a member of the States Assembly or have been a member of the States Assembly at any point during the current or previous election cycle (i.e. if they were a States members at any point in election cycle 1, they cannot be appointed before election cycle 3 has commenced);
 - b. are a member of the States of Guernsey, or have been a member of the States of Guernsey at any point during the current or previous election cycle (as at a., above);
 - c. are a States employee or working under contract in an administration of the States (unless appointed as Ombudsperson before the coming into force of this Law) or the equivalent in regard to Guernsey;
 - d. are an office holder under Schedule 1 to the Employment of the States of Jersey Employees Law 2005; or
 - e. have a current interest in provision of public services in Jersey or Guernsey unless the JAC, the Chief Minister and the SLC Chair determine that interest does not represent a conflict of interest. The ability to determine that there is no conflict is provided for because not having ‘an interest in public services’ provision is too wide. However, prior involvement in the provision of public services in Jersey or Guernsey should not automatically disqualify an individual from appointment.

²⁴<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/P%20JAC%20recruiting%20guidelines%20%2020160517%20MN.pdf>

44. The Law should indicate that candidates for the role of the Principal Ombudsperson should have the appropriate qualifications and experience necessary to discharge the functions of the office (Paragraph 4 of the Schedule to the Commissioner for Children and Young People (Jersey) Law 2019 and Article 4(1), Financial Services Ombudsman (Jersey) Law 2014).

Termination of appointment of the Principal Ombuds

45. The Law should state that there are three mechanisms by which the Principal Ombudsperson may cease to hold or be removed from office (see Paragraph 6(1) of the Schedule to the Commissioner for Children and Young People (Jersey) Law 2019), including:
- a. the Principal Ombudsperson's resignation, which should be provided in writing to the Chair who will advise the Chair of SLC and the Chief Minister accordingly. The resignation must be in accordance with their terms of appointment. The SLC and the Chief Minister must, as soon as practicably possible, report the resignation to the States
 - b. revocation of the Principal Ombudsperson's appointment by the States Assembly on a proposition signed by Chair of the SLC and the Chief Minister. The Chair of the SLC and the Chief Minister may only bring forward a revocation proposition on the recommendation of the Chair.

The proposition, which must be debated by the States in camera, should state the reasons for revocation (see Paragraph 6(5) of the Schedule to the Commissioner for Children and Young People (Jersey) Law 2019 and Article 5(5)(b) of the Data Protection Authority (Jersey) Law 2018), which should be any of the following:

- i. they are guilty of serious misconduct, as determined by a panel convened by the Chief Minister and the SLC (Article 5(5)(a) of the Data Protection Authority (Jersey) Law 2018);
- ii. they have become disqualified for appointment as per paragraph 46;
- iii. they are incapacitated by physical or mental illness;
- iv. they have failed to discharge their functions without reasonable excuse;
- v. they have been convicted of a criminal offence that is sufficiently serious to cast doubt on the Principal Ombudsperson's suitability to continue in office (Article 5(5)(b) Data Protection Authority (Jersey) Law 2018);
- vi. they have become bankrupt.

- c. The expiry of the Principal Ombudsperson's term of office, as per paragraph 42.

Functions of the Principal Ombuds

46. The Principal Ombudsperson is to be responsible for discharging the functions of the Jersey Public Services Ombudsperson (see Article 6 of the Data Protection Authority (Jersey) Law 2018), but should be able to delegate those functions to other members of staff if and when necessary (see Schedule 1 Article 14, Public Services Ombudsman Wales Act 2019 and Article 12(6) and (7) of the Financial Services Ombudsman (Jersey) Law 2014). The Principal Ombudsperson may appoint other members of staff required to run the scheme at establishment, and they may perform the functions of the JPSO as authorised, in line with the budget approved in the Government Plan.
47. The Principal Ombudsperson may obtain advice, assistance and professional services, and may pay fees and allowances.
48. The Principal Ombudsperson is accountable for the discharging of the functions of the Jersey Public Services Ombudsperson to the SLC and the Chief Minister.

Remuneration of the Principal Ombuds

49. The remuneration of, and the payment of allowances, pension or gratuities to the Principal Ombudsperson and their staff, due under the terms of their appointment, must be paid out of the annual income of the States (see Article 2(4) of the Commissioner for Children and Young People (Jersey) Law 2019 and Article 2(4) of the Charities (Jersey) Law 2014).
50. The terms and conditions of the appointment of the Principal Ombudsperson must not be construed so as to create a contract of employment or agency between the States, or the Chief Minister and the Chair of SLC, and the person appointed.

The Board

51. The Law should provide for the appointment of a Board of the JPSO. The Board would be a non-executive board. The Law should provide for a Chair of the Board of the JPSO.

Appointment of the Chair of the Board

52. The Law will state that the Chair of the Board should be appointed by the Chair of SLC and the Chief Minister. This will follow a similar process as for the Principal Ombudsperson; it will be a joint proposition, overseen by the Jersey Appointments Commission (JAC), subject to the approval of the States Assembly (SA). This joint proposition must be presented to the SA by the Chief Minister at least two weeks before

making the appointment, to ensure the SA have enough time to organise a debate on the proposition (see Article 3(4) Data Protection Authority (Jersey) Law 2018).

53. The Law will specify that the appointment of the Chair of the Board should last for the same period as their appointment as a board member (see paragraph 57).
54. The other aspects of the appointment process, including disqualification, will follow a similar process to that of the Principal Ombudsperson, as set out in paragraph 45, except for the provision around eligibility to be reappointed. Unlike the Principal Ombudsperson, the Chair of the Board should be eligible for reappointment.

Termination of the appointment of the Chair of the Board

55. The Law will indicate that for the termination of the appointment of the Chair of the Board there should be three mechanisms for cessation of office as the Chair of the Board, following a similar process as with the Principal Ombudsperson, as per paragraph 45. In cases of a revocation of an appointment, the decision will be made by the Chair of SLC and the Chief Minister on a joint proposition, subject to debate in the SA.

Appointment of Board members

56. The Law should state that the minimum number of other Board members is two and the maximum number is eight. The Law should state that the Chair must nominate members of the Board for approval by Chair of SLC and the Chief Minister, who will hold joint responsibility for making appointments to the Board. The States may, by Regulation, amend the minimum and maximum number of Board members. Members of the Board will be nominated by the Chair but with the appointment made by the Chair of SLC and the Chief Minister, jointly.
57. The Law should state that the duration of the appointment of Board members should be for a maximum term of 9 years, according to the Jersey Appointments Commission guidelines.²⁵
58. The Law should provide for the inclusion of specific criteria, which should be taken into account by the Chair in making the nominations and the appointment of Board members (see Paragraph 1 of the Schedule to the Financial Services Ombudsman (Jersey) Law 2014).
59. Firstly, the Chair of the Board must seek to ensure that persons nominated or appointed are prepared to maintain the independence of the JPSO and to act in the public interest, rather than as representatives of any particular interest. As part of ensuring the maintenance of the independence of the Principal Ombudsperson, Board members must

²⁵<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/P%20JAC%20recruiting%20guidelines%20%2020160517%20MN.pdf>

be appointed so as to act with respect for the Principal Ombudsperson in the discharge of their functions, as described in paragraphs 64 to 66.

60. Secondly, the Chair of the Board must ensure that the majority of the board members are not from public service providers.
61. Thirdly, the Chair of the Board must have regard to the desirability of securing a balance between individuals with experience of:
 - a. working as, or for, public service providers;
 - b. using public services;
 - c. financial, legal or other management-related background; and
 - d. healthcare provision.
62. Fourthly, the Chair of the Board is not required to nominate individuals with experience in the discharge of the Principal Ombudsperson's functions. However, the Law should not expressly exclude appointees with this sort of experience. This is in response to concerns from stakeholders that the Board may have an undue influence on the core functions discharged by the Principal Ombudsperson – for example, influencing the outcomes of investigations. In any case, the Principal Ombudsperson is protected by the provision that they do not need the approval or support of the Board in relation to these functions, as per paragraph 65.

Termination of the appointment of Board members

63. The Law should state that there are three mechanisms for the termination of the appointment of Board members (resignation, removal, expiry of term of office) as described in the termination of the appointment of the Chair of the Board in paragraph 55. In cases of removal, the Chair of the Board may propose termination, subject to approval by the Chair of SLC and the Chief Minister.

Functions of the Board

64. The Law should state that the Board has two functions:
 - a. to advise, support and challenge the Principal Ombudsperson in discharging their functions related to finances, performance and strategic direction. One example of this is the Annual Report and Plan published by the JPSO. Operationally, this might involve ensuring that the resources of the JPSO are used economically, efficiently and effectively, and ensuring that the principles of good governance (anti-corruption, equal opportunity particularly with regards to ethnicity, gender, sexual orientation

etc.) are followed. The Board should be responsible for signing off the Annual Report and Plan.

- b. to maintain and defend the independence of the JPSO. Operationally this could mean that any meetings with Ministers, civil servants, public services and members of the States Assembly must be declared.
65. The Law should provide that the Principal Ombudsperson does not require the support of the Board in discharging their functions outlined in paragraphs 78 and 79.
66. The Law should specify the (1) procedure at Board meetings, (2) disclosure of interest and criminal charges by the Board, and (3) committees and delegation to underpin this relationship (see paragraphs 6 to 8 of Schedule 1 to the Financial Services Ombudsman (Jersey) Law 2014).

Remuneration of the Board

67. The Law should provide that the JPSO must pay to the Board members such remuneration as it may determine, subject to any maximum limit directed by the Chief Minister and reasonable out of pocket expenses occasioned in the course of discharging their functions (see Article 3 Schedule Financial Services Ombudsman (Jersey) Law 2014).

The potential to develop a Channel-wide Public Services Ombuds

68. The intention is to develop and implement the Ombudsperson scheme first for Jersey, with the potential for Guernsey to coordinate its legislation and join later should this policy be adopted. The Law should make provisions for this to be possible.
69. There is a precedent for joint ventures which operate in both islands in the Channel Islands Financial Ombudsman – Article 6 of the Financial Services Ombudsman (Jersey) Law 2014²⁶ sets out these arrangements. The Regulation of Care (Jersey) Law 2014 also allows that the Care Commission may operate across jurisdictions by imposing appointment disqualifications that mean that appointments across both jurisdictions would be coherent.
70. Subject to LDO advice, the composition of the Board, as described in paragraphs 56 to 62, could be amended under the Regulation making power requested to enable the development of a Channel Island Public Services Ombudsperson.

²⁶ <https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/13.255.aspx>

Section 3: What will the JPSO do?

Addressing maladministration and service failure

71. The creation of the JPSO will address maladministration and service failure by specified bodies in Jersey and drive a higher standard of administration by public services. This concerns administrative actions, decisions or omissions, or failures to act which have resulted, or are alleged to have resulted, in injustice or hardship.
72. The LDO may wish to consider a general reference to maladministration and service failure (see section 11 Public Services Ombudsman (Wales) Act 2019), instead of exhaustively listing the types of actions that the JPSO may investigate. In general terms, maladministration refers to an ‘administrative fault by the body in jurisdiction’ and service failure is related to a ‘failure in a service which it was the function of an authority to provide’ or a ‘failure to provide such a service’²⁷. However, subject to LDO advice, the Law might not provide a list of examples or particular circumstances related to those terms, since it appears desirable that the Ombudsperson should be able to decide whether a particular set of circumstances amount to maladministration and service failure.
73. There are, however, several matters that must be expressly excluded from the JPSO functions and these correspond to the specific bodies and authorities that do not fall under the JPSO’s remit, as described in the table following paragraph 185:
 - a. decision-making relating to legal proceedings;
 - b. employee conduct;
 - c. judicial decision-making and the conduct of judges;
 - d. criminal justice and police functions;
 - e. international affairs;
 - f. where there is an established route of redress via a tribunal or court (see paragraph 78);
 - g. where there are other statutory bodies providing redress or regulation (except where covered by requirements to consult and cooperate).

Overview of functions

74. The Law should be clear that the primary function of the JPSO, as with similar bodies in other jurisdictions, is to investigate and make decisions on alleged maladministration and

²⁷ <https://www.lgo.org.uk/information-centre/staff-guidance/guidance-on-jurisdiction?chapter=2>

service failure. The JPSO's investigations may derive from complaints from individual members of the public, referrals from public service bodies or commenced on the own-initiative of the Ombudsperson in accordance with the criteria set out in paragraphs 82 to 92. The JPSO will have powers to require information from public services as described in paragraphs 112 to 115. At the Ombudsperson's discretion, they will also be able to resolve complaints by agreement between parties or by adjudication where appropriate and where capacity/ resources allow.

75. Supplementary functions will include the power to make system-wide recommendations (paragraph 146) and to set model complaints handling procedures for other bodies, as described in paragraphs 147 to 154.

Investigative function

76. The aim of the JPSO is to address maladministration and service failure by specified bodies in Jersey. To achieve this aim, the Law should specify that the primary function of the JPSO is to investigate alleged maladministration and service failure. Examples of this investigative function can be found in section 3 of the Public Services Ombudsman (Wales) Act 2019, or section 2 of the Scottish Public Services Ombudsman Act 2002.

Opening an investigation

77. The Law should outline that investigations may be opened by the JPSO in the following circumstances:
 - a. a complaint from an individual or anyone identified in paragraphs 95 to 97 alleging maladministration and service failure by a specified body in Jersey;
 - b. a referral, with consent of the complainant, from a specified body relating to alleged maladministration or service failure;
 - c. facts, information and/or intelligence which give the Principal Ombudsperson grounds for reasonable suspicion that maladministration or service failure has taken place. In other jurisdictions, this is called an own initiative investigation; or
 - d. a concern raised by an employee/ former employee or person working on contract for a specified body ('whistleblower' - a definition is provided in paragraph 156). It is intended that the JPSO will be capable of investigating individual whistleblowing cases from establishment – see paragraphs 155 and 156, below.
78. As previously mentioned, the JPSO is intended to complement, not duplicate, existing processes addressing maladministration and service failure. The Law should therefore be clear that the Principal Ombudsperson should not open an investigation where:
 - a. the complainant has not exhausted the complaints process of the specified body.

However, the Principal Ombudsperson may decide, at their discretion, that it was not reasonable to expect the complainant to have done so – especially if the subject of the complaint may be the complaints handling process itself;

- b. the subject of the complaint is a judicial matter, for which the complainant has a right or remedy before the courts of Jersey (see Section 13 Public Services Ombudsman (Wales) Act 2019). However, the Principal Ombudsperson may decide, at their discretion, that they can address the complaint in a complementary way to the court. This might be because the complaint includes multiple instances of maladministration or service failure, of which only one component gives the complainant a legal right or remedy, or because the redress for the harm or injustice caused by the maladministration or service failure can be furthered using the specific tools at the disposal of JPSO, such as the ability to make forward-looking recommendations to prevent the maladministration from happening again, or to make wider systemic recommendations. In this case, the Law should explicitly state that the JPSO should wait until the conclusion of legal proceedings before proceeding with their investigation related to the maladministration or service failure, in order to ensure that the JPSO's investigation does not prejudice ongoing legal proceedings. However, the Principal Ombudsperson may use their discretion in exceptional circumstances, for example where the court proceeding is taking a long period of time, to carry out their own investigation in matters unrelated to the matters considered by the court.

- 79. The Principal Ombudsperson should be responsible for the decision to open an investigation, including the power to start, continue or discontinue an investigation. If the Principal Ombudsperson does so, they must communicate in writing to the complainant and the specified body, and anybody else they think appropriate, the decision regarding the status of their complaint, including giving reasons where necessary. For example, if the complainant has not exhausted the complaints process of the specified body, the JPSO should tell the complainant that they have decided not to start an investigation because they cannot do so until the complainant has made best efforts to exhaust the complaints process. Alternatively, after an investigation has been opened, it may be that the specified body has taken appropriate action to remedy the situation and the complaint to the JPSO is no longer necessary.

Onwards referral of complaints

- 80. No complainant should have to complain twice, or multiple times. The Law will provide that where maladministration or service failure comes to the JPSO's attention but falls outside of scope, or may be relevant to another body, they are expected to refer these cases onwards. However, any referral to another body is subject to the consent of the complainant.

81. It is envisaged that this referral process will help support the transition from the Jersey Complaints Panel to the new JPSO and mitigate against confusion over which body to complain to.

Own-initiative investigations

82. The primary purpose of the JPSO is to deal with individual complaints when they arise. However, subject to strict criteria to prevent an undue burden on resources, the JPSO will have the power to open an own-initiative investigation. This is in response to concerns that there could be the potential for numerous own-initiative investigations which would place a heavy burden on resources which could detract from the JPSO's ability to deal with individual complaints. There is a further concern that, without controls on opening own-initiative investigation and depending on personality, certain Principal Ombudsperson might be more proactive with this part of the investigative function.

Criteria for an own-initiative investigation

1. Reasonable grounds for suspicion that systemic maladministration or service failure has taken place
2. Public interest in opening an own-initiative investigation into this systemic maladministration or service failure
3. The own-initiative investigation is a fair and proportionate use of resources
4. There has been a consultation with relevant parties on the own-initiative investigation

83. The first criterion is that there are reasonable grounds to believe that *systemic* maladministration or service failure by the specified body or across multiple specified bodies has taken place and that maladministration or service failure has affected a group of the population. This type of investigation is not meant to look at individual cases in the same way as the general investigative power – there needs to be evidence of injustice or hardship, or risk thereof, which may affect a wider group of people. Article 10(2) of the Commissioner for Children and Young People (Jersey) Law 2019 is a comparable provision for the initiation of an investigation on the grounds that matters to be investigated are associated with issues of particular significance to a general class of people (i.e. children and young people generally).
84. In this context, “reasonable grounds to believe” means there must be facts, information and/or intelligence that indicate the likelihood that maladministration or service failure may have taken place. Examples might include:
- a. multiple complaints made or referred to the JPSO on the same issue or about the same specified body;

- b. decisions, reports or recommendations made by other bodies, including courts and tribunals, public inquiries, regulators and watchdogs;
 - c. a media source and/or wider public interest, concern or pressure about alleged systemic maladministration or service failure;
 - d. a concern is raised by an employee/ former employee of, or person working on contract for, a specified body (whistleblowing). A “whistleblower” is an employee or former employee who delivers or used to deliver services on behalf of a public service and who raises a concern in the public interest, about a public service, where an act or omission has created, or may create, a risk of harm or wrongdoing. In Wales, the Ombudsman can consider information provided to them by whistleblowers, but any resulting investigation does not substitute for any bodies’ duty to deal with the whistleblowing complaint directly. This approach should also be followed in Jersey;
 - e. indications of repeated non-compliance by specified bodies with the findings and recommendations of the JPSO;
 - f. indications of non-compliance by specified bodies with the minimum standards and the model complaints handling procedures of the JPSO; or
 - g. any combination of the above.
85. The second criterion is that the Principal Ombudsperson must demonstrate that there is a public interest in opening an investigation into this suspected systemic maladministration or service failure. In accordance with the principle that the JPSO is not intended to be duplicative, but complementary to existing mechanisms, the Principal Ombudsperson must show how the investigation raises a question of critical importance and that opening an investigation could result in a constructive outcome.
- a. As part of this requirement the Principal Ombudsperson might be expected to have regard for groups of people who traditionally are harder to reach/ under-protected and/or do not usually complain about public services. The nature of Ombudsperson as bodies can enable complaints from sections of society where complainants are already more inclined to complain and not consider those who are less inclined to complain about public services, or more broadly typically have poorer engagement with/ difficulty accessing public services.
86. The third criterion is that the Principal Ombudsperson must show that the investigation is a fair and proportionate use of resources – if the resources have not already been granted and allocated to the JPSO in response to the annual Strategic Plan. The Principal Ombudsperson should be able to draw up a timeline and methodology capable of being costed, with the overall budget having a bearing on the decision to proceed with the

investigation. With the consent of the board, the Principal Ombudsperson will then need to make an *ad hoc* request for funding from the Chief Minister. If there is a compelling case for an own-initiative investigation, but the cost of pursuing it is prohibitive, the Chief Minister must give due consideration to the request for additional budget for the own-initiative investigation.

87. The fourth criterion is that the JPSO must consult on the proposed plan with those it reasonably believes have an interest in the matter. This might include the relevant minister, the Scrutiny Liaison Committee, the Comptroller and Auditor General, regulatory bodies or watchdogs, or public or third sector bodies. The Principal Ombudsperson must outline in this consultation how the proposed investigation complies with the requirements to open an own-initiative investigation, except where evidence supporting the reasonable grounds for suspicion might enable those who are being consulted to identify individual complainants or whistleblowers.
88. The Chief Minister may request the Principal Ombudsperson to open an investigation if they believe there is a concern around maladministration or service failure by a public service and where the Chief Minister believes the JPSO is the most appropriate body to do so. The Principal Ombudsperson must consider this request and decide whether to proceed or not. Their decision should take account of the four standard requirements for commencing an own-initiative investigation.
89. Additionally, the Principal Ombudsperson should consider whether there exists a more appropriate form of public accountability than an own-initiative investigation, such as a public inquiry. Based on the grounds described above, the Principal Ombudsperson may decide not to open an own-initiative investigation. The Principal Ombudsperson must publish their reasons for not doing so.
90. The JPSO may undertake joint working in pursuance of its functions, including own-initiative investigations. In fact, another watchdog may assist the Principal Ombudsperson in meeting their criteria for such an investigation, for example, by providing further/ corroborating evidence, or by reducing the cost of the investigation through sharing resources.
91. Once these requirements have been fulfilled, the Principal Ombudsperson must notify the specified body, or bodies, the SLC, and the Chief Minister that it is opening an own-initiative investigation. This notification should clearly set out terms of reference for the investigation, including details on how the JPSO has complied with the Law in initiating the investigation and the reasons underpinning the decision to initiate the investigations. These terms of reference should also be published.
92. Below is an illustration of the application of these requirements in Northern Ireland. The Northern Ireland Ombudsman stated they were unable to meet their criteria to propose and/or commence an own-initiative investigation into restrictive practices in schools because it was considered that such an investigation would be duplicative (see third

requirement) considering other ongoing work (such as reviews and publications).²⁸ However, in another instance, the Northern Ireland Ombudsman did open an investigation into Personal Independence Payment (PIP), a non-means-tested benefit for people of working age, illustrating the application of such requirements.²⁹

- a. First requirement (are there facts, information and/ or intelligence giving rise to *reasonable grounds for suspicion* that there has been maladministration or service failure?): PIP is a non-means tested benefit for people of working age and between its introduction in 2016 and the time of proposing the investigation in 2019, the government processed 160,000 decisions. Awareness of alleged maladministration/service failure was a result of a spike in complaints and other information such as the proportion of PIP decisions overturned in court. Concerns had also been raised in the public domain and sources had reported that confidence in the treatment of certain individuals was low.
- b. Second requirement (is there a *public interest* in opening an investigation?): An independent review had been commissioned by the government and the Comptroller and Auditor General had also planned to report on PIP, but the Ombudsman had decided that testing the delivery of PIP against a framework of good administration provided a unique administrative justice lens to examine and potentially improve this area of public service.
- c. Third requirement (is the investigation a *fair and proportionate use of resources*?): It was noted that there were other areas of public service in which systemic failings were suspected as well.
- d. Fourth requirement (has there been *consultation* with appropriate others?): Following consultation with government, oversight bodies, Members of the Legislative Assembly and members of civil society, the Ombudsman decided their suspicion remained of systemic maladministration.

Whistleblowing functions

93. The JPSO will also be responsible for acting as the independent Jersey whistleblowing officer. This is a role which was extended to the Scottish Public Services Ombudsman in 2020. The aim of the role is to make sure everyone delivering services will be able to speak out to raise concerns, ultimately contributing to ensuring that public authorities are as well run as possible.
94. The Law should provide that the JPSO must publish a model complaints handling procedure for whistleblowers with the power to directly investigate whistleblowing complaints in certain circumstances – see paragraphs 155 and 156, below, for further

²⁸ <https://nipso.org.uk/site/wp-content/uploads/2021/05/Overview-Report-the-use-of-restrictive-practices-in-schools.pdf>

²⁹ <https://nipso.org.uk/site/wp-content/uploads/2021/06/NIPSO-Own-Initiative-Full-report.pdf>

information. This will apply across all public authorities which are included under the JPSO's jurisdiction.

Eligible complainants

Eligible complainants

- Individual members of the public, married couples/ civil partners and groups of people subject to the same decisions
- Microenterprises, charities, trusts, foundations and other bodies directly affected by the alleged maladministration or service failure
- Children and young people
- Representatives of any of the above, providing there is evidence of consent for the representative to act
- Family members and representatives of deceased persons, who the Ombudsperson considers an appropriate representative

95. Providing that the complaint is within the remit of the JPSO, complaints can be addressed from the following complainants as users of Jersey public services:
- a. individual members of the public, married couples/ civil partners and groups of people who are subject to the same decisions;
 - b. microenterprises, as well as charities, trusts, foundations or other bodies which have been affected by the maladministration or service failure of a public service. This should resemble section 3 Financial Services Ombudsman (Jersey) Law 2014, in which eligible complainants include microenterprises and charities, trusts, foundations or other bodies. In accordance with the meaning of Commission Recommendation 2003/361/EC of 6 May 2003, a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.³⁰ The list of charities will be specified by the Chief Minister through an Order on the recommendation of the JPSO (see Article 8(3) Financial Services Ombudsman (Jersey) Law 2014). The Law should specify that it is possible to amend the primary legislation by Regulation to add categories of business or remove categories of business;
 - c. children and young people;

³⁰ <https://eur-lex.europa.eu/eli/reco/2003/361/oj>

- d. representatives including delegates, attorneys, family members, elected officials, social care workers and providers of advocacy services, providing there is evidence of the complainant's consent for the individual to act on their behalf; and
 - e. where the individual involved in the complaint is deceased or incapacitated, family members or other representatives, who the Ombudsperson considers as appropriate representatives (see Article 7(1)(c) Public Services Ombudsman (Wales) Act 2019) should be allowed to complain on their behalf.
96. The group of eligible complainants is deliberately drawn widely to include those who are directly affected by acts and omissions of public services in Jersey. The Law should provide the power for the States to make Regulations to modify the list of complainants, if it is desired, to bring other types of complainants under the remit of the JPSO.
97. Complainants must be able to contend that they suffered an injustice or hardship as a result of the alleged maladministration and service failure. However, in cases of own-investigations by the JPSO, identified risk of alleged harm or injustice to a group within the population is sufficient to open an investigation. The purpose of the investigation is to establish if there has been systemic maladministration or service failure; facts, information and/or intelligence about actual injustice or hardship might not be available from the outset. For the purpose of clarity, risk of alleged harm only applies to own-investigations, not complaints and referrals because, if it did, the criteria for responding to complaints and referrals would be too broad.
98. Consideration has been given to excluding non-Jersey residents from access to the JPSO, or charging them for access, but this proposal was rejected on the basis that the JPSO seeks to better all public services in Jersey, regardless of the service recipient.

Making a complaint

99. Within any jurisdiction, eligible complainants will vary in their willingness and ability to pursue complaints, reflecting a range of factors including access to resources, perceptions of public authorities, communication skills and confidence etc. The Law, and by extension the JPSO, should be designed in such a way as to facilitate complaints from groups traditionally less likely to use the complaints system.
100. The process of making a complaint must be designed to be easy to follow and be set out in plain and simple language. The JPSO must design the process to ensure that complaints can be made through multiple methods (including written, electronically, and orally). Where complaints are received orally the JPSO must make arrangements with the complainant for the complaint to be confirmed in writing (see Article 8(7) Public Services Ombudsman (Wales) Act 2019).
101. The Law should indicate that while the JPSO should not be able to help complainants to the extent of providing advocacy services, or to act on their behalf, which would put the

JPSO's independence at risk, the JPSO should be able to assist those with additional needs to access the JPSO. As such, the Law should state that the JPSO should ensure that all information is produced in a disability-friendly manner and that, in instances where the complainant is hindered in making a complaint due to a condition or illness, then the JPSO should make use of their power to waive the time limit (as per paragraph 106).

102. The Law should state that no complainant should have to complain twice. The JPSO must refer complaints outside of their scope to the relevant body on behalf of the complainant, but only if the complainant consents. Consequential amendments may be required to ensure that legislation regarding other public bodies includes a similar duty to refer complaints to the most appropriate body, including to the JPSO.
103. The complaints process must be free to all eligible complainants.
104. The JPSO may refuse to commence an investigation if the complaint is considered by the JPSO to have no real chances of success, such as where the complaint is frivolous or vexatious (see Article 12(3)(a)(i) Financial Services Ombudsman (Jersey) Law 2014).

Time limits and internal complaints

105. The Law will state that the JPSO will not investigate complaints that relate to an act that happened before the date on which the States Assembly adopted the Law. However, for complaints relating to acts that happened after the adoption of the Law, the Principal Ombudsperson is allowed to investigate prior to the date of establishment, to understand and establish if there has been a course or pattern of conduct relevant to the maladministration or service failure being alleged.
106. In the context of the timelines established above (paragraph 105), the JPSO will not investigate a complaint if the complaint reaches the JPSO 12 months after the complainant could reasonably be expected to be aware that they had reason to complain to the JPSO, and that should be no more than five years after the act to which the complaint relates. However, the Principal Ombudsperson might decide to waive the time limit in certain circumstances – this might include instances where a drawn-out complaints process is part of the complaint, for example the delay in dealing with the complaint takes the complainant outside of the prescribed time limit. The Principal Ombudsperson will make such a judgment on a case-by-case basis.
107. The Law should indicate that complainants will be expected to have exhausted any internal complaints process, unless the complaint relates to not being able to do so. For example, the Government of Jersey has a new customer feedback policy and process³¹ and complainants should have exhausted this before approaching the JPSO. Entities outside the Government will have their own processes for complainants to follow in the first instance.

³¹ <https://www.gov.je/government/comments/Pages/index.aspx>

How complaints will be investigated

108. Drafters should note that the JPSO must have and publish a standard procedure that will be followed when the JPSO conducts investigations, as set out in paragraph 26.
109. Investigations will be conducted in private.
110. While only the Principal Ombudsperson is responsible for making the determination in relation to the investigation (findings and recommendations), the Principal Ombudsperson will be able to delegate case management to its staff, as set out in paragraph 46.
111. The JPSO, in the course of an investigation, may make such inquiries as they think appropriate.
112. In order to ensure that there are appropriate mechanisms in place to support their findings and inform their recommendations, the JPSO will have the authority to obtain information from public authorities and service providers as part of an investigation (see Article 19 Financial Services Ombudsman (Jersey) Law 2014, Article 8 Commissioner for Children and Young People (Jersey) Law 2019, Article 19 Public Services Ombudsman Wales Act 2019).
113. The Law should provide that the information gathering powers of the JPSO should be subject to two specific safeguards. Firstly, the Law should not require, or give the JPSO the power to compel a person or a public authority or a service provider to produce information or documents which is subject to legal professional privilege, or which it would not be lawful for that person or public authority or service provider to produce (see Article 19(14) – Financial Services Ombudsman (Jersey) Law 2014). Secondly, the Law should provide that the JPSO must give the specified authority in the complaint, or any other person who is alleged in the complaint to have taken or authorised the action, decision or made the omission complained of, an opportunity to respond to the allegations (see Article 11(2) of the Commissioner for Children and Young People (Jersey) Law 2019).

Offences

114. The Law should provide that there are specific offences if the JPSO is hindered in their information gathering powers as part of an investigation or in pursuance of their other functions. In other UK jurisdictions, obstruction offences against the Ombudsperson are framed as amounting to the offence of contempt of court (Section 14 of the Scottish Public Services Ombudsman Act 2002 and Section 20 of the Public Services Ombudsman Wales Act 2019). However, in Jersey such conduct in the cases of obstruction against a regulator, commission(er) or Ombudsperson is dealt with as a specific criminal offence in its own right. As such, the following paragraphs provide for specific offences, drawing upon precedent offences and penalty provisions across relevant Commissioner/Regulator legislation in Jersey:

Offences

- a. Failure to comply, without reasonable cause or excuse, with a request to provide information or documents to the JPSO
- b. Failure to provide information in a legible or comprehensible form
- c. Failure to appear and to answer question truthfully, without reasonable excuse
- d. Provision of false or misleading information to the JPSO
- e. Destruction of a record or any other relevant alteration to the record in order to deceive the JPSO

- a. The failure to comply, without reasonable cause or excuse, with a request to provide information or documents to the JPSO should be associated with a penalty at a level 3 fine, which is in accordance with most relevant legislation in Jersey (see Article 14(1)(b) and (2) Commissioner for Standards (Jersey) Law 2017 and Article 13(1)(e) and (3) Commissioner for Children and Young People (Jersey) Law 2019). A notable exception to these penalty provisions in Jersey is found in the Article 19(4) Financial Services Ombudsman (Jersey) Law 2014, which states that such offending is associated with an unlimited fine;
- b. The failure to provide information in a legible or comprehensible form should be associated with a level 3 fine (see Article 23(d) Comptroller and Auditor General (Jersey) Law 2014);
- c. The failure to appear and failure to answer a question truthfully, without reasonable excuse, should be associated with a level 3 fine (see Article 14(1) Commissioner for Standards (Jersey) Law 2017 and Article 23 Comptroller and Auditor General (Jersey) Law 2014);
- d. The provision of false or misleading information to the JPSO, where information is required by a written request from the JPSO or where the JPSO requires information during a hearing, should be associated with imprisonment for a term of 2 years and with a fine (see Article 19(15) Financial Services Ombudsman (Jersey) Law 2014 and Article 15(4) Commissioner for Standards (Jersey) Law 2017);
- e. The destruction of a record or any other relevant alteration to the record in order to deceive the JPSO should be associated with imprisonment for a term of 5 years and to a fine (Article 24(3) Comptroller and Auditor General (Jersey) Law 2014).

115. The Law should state that the JPSO should adhere to specific arrangements related to privacy and data protection, as described in paragraphs 118 to 126. The JPSO should

only collect and process the personal and special category data required to investigate and no more than that. Data can only be disclosed in exceptional circumstances.

Information handling and disclosure

116. The Law should state that the JPSO should be added as a scheduled public authority in the Freedom of Information (Jersey) Law 2011 and therefore will be recognised as a scheduled public authority in the Data Protection (Jersey) Law 2018. This follows the addition of the Children Commissioner as a scheduled public authority in the Freedom of Information (Jersey) Law 2011 (Schedule 1 Article 1(9)).
117. The Law should indicate that the JPSO should be able to disclose information only in specified circumstances and/or to specified parties (no disclosure except where there is lawful authority). If there is disclosure of restricted information without lawful authority, then the person is guilty of an offence if it is without the consent of the person to whom it relates and the person from whom it was received. Restricted information is information that has been obtained by the JPSO by virtue of its functions, relates to identifiable individuals, groups or businesses and has not been previously available to the public.
118. The Law should indicate that specified circumstances for permitted disclosure include for:
 - a. the purposes of an investigation;
 - b. the alternative resolution of a complaint or the purpose of a statement;
 - c. any report made in relation to a complaint or an investigation;
 - d. where either there are overlapping functions with other bodies or the functions of other bodies concern the JPSO;
 - e. the purpose of assisting an investigation of a suspected offence or for the purpose of any criminal proceedings (whether the offence or proceedings are under this Law or otherwise).
119. Following the principle of freedom of information and transparency, the JPSO can provide some information to members of the public or others, but the Law should indicate that any disclosure should be governed by the relevant provisions of the Jersey Data Protection (2018) Law, Freedom of Information (2011) Law and Human Rights (2002) Law. The JPSO might refuse a request of information disclosure if it is resource intensive. According to Article 16 of the Freedom of Information (Jersey) Law 2011 'a scheduled public authority that has been requested to supply information may refuse to supply the information if it estimates that the cost of doing so would exceed an amount determined in the manner prescribed by Regulations', which will be applied in the JPSO's case.
120. In line with the general principles of openness and accountability, the Law should state that the JPSO can proactively manage this public flow of information about the exercising

of its functions by publishing information (in the form of Annual Reports and/or public interest reports and/or thematic reports and/or case summaries from past decisions either through an online navigable search function or through a particular section/ chapter of the Annual Report).

121. The Law should provide that the JPSO can disclose information to those bodies/ watchdogs, with whom the JPSO consults and cooperates, as per paragraphs 127 and 128. The JPSO should be enabled to share information with relevant health and social care professional regulatory bodies, such as the General Dental Council, General Medical Council and General Pharmaceutical Council where fitness to practice matters overlap with a complaint of maladministration or service failure.
122. The Law should also provide the JPSO with powers to share information with bodies acting within the wider area of administrative justice, such as the Viscount (acting as Coroner; on issues related to maladministration in primary care) and tribunals.
123. The Law should enable the JPSO to disclose information if the disclosure is made for the purpose of assisting an investigation of a suspected offence or for the purposes of any criminal proceedings (whether the offence or proceedings are under this Law or otherwise). This is particularly relevant where the JPSO may come across evidence of criminality, in which case the JPSO should be expected to disclose information to the relevant law enforcement authorities.
124. The Law should indicate that any permitted information disclosure by the JPSO can be overridden by a minister, if it is considered that such a disclosure is likely to be prejudicial to the safety of the state or contrary to public interest.

Consulting and cooperating with others

125. The JPSO is not the only body dealing with maladministration and service failure by public bodies. The Law should therefore enable the JPSO to work jointly with other watchdogs and regulators where there is an overlapping interest or jurisdiction.
126. The JPSO should be able to undertake joint working where the other bodies agree, in both individual cases and own-initiative investigations where there are concerns about systemic failings. Operationally, this joint working should be underpinned by Memoranda of Understanding developed between the JPSO and others, including defining permitted information sharing. These Memoranda of Understanding should be published in the interests of transparency.
 - a. If the other body concerned has the ability to open an investigation as a result of a complaint, referral and/or of their own-initiative, and it appears to the JPSO, in deciding whether to conduct or in conducting an investigation, that the matter is or could be the subject of such an investigation, the JPSO must inform the other body, consult with the other body and, depending on the consultation, they may

choose to cooperate, including conducting a joint investigation and preparing and publishing a joint report (see section 21 Scottish Public Services Ombudsman Act 2002, section 65 Public Services Ombudsman (Wales Act)). The joint conduct of investigations of individual complaints are subject to the consent of the complainant, in the same way that the JPSO should refer cases onwards to more appropriate bodies and regulators also with consent of the complainant. In contrast, the decision to conduct own-initiative investigations jointly is not subject to any individual consent;

- b. If another body does not have an investigative function, but has other functions in relation to complaints and/or remit over the bodies concerned, then the JPSO may involve that body as a collaborator in the investigation;
 - c. Some of the bodies listed, with whom it is proposed the JPSO can undertake joint investigations, do not themselves appear to have similar enabling powers to undertake joint investigations within their legal frameworks (Commissioner for Children and Young People³², Commissioner for Standards, Comptroller and Auditor General³³). It is therefore proposed that the details of the working relationships between the JPSO and other listed bodies/ watchdogs are detailed within Memoranda of Understanding following the establishment of the JPSO. The Wales Public Services Ombudsman has developed MoUs with other public service bodies with whom it can undertake joint approaches.³⁴ The Law should provide that the JPSO should seek to enter into an MoU with other relevant bodies and allow for consequential amendments to be brought forward placing a similar duty on those bodies.
127. The Law should provide that public services for children and young people fall within the jurisdiction of the JPSO. In response to the two-year review of the Panel of the Independent Jersey Care Inquiry³⁵ it was proposed that the statutory right to raise a complaint about any aspect of a Children's Service would be incorporated into law and this has been included under Article 45 of the Children and Young People (Jersey) Law 2022.

Overlapping powers of investigation

128. The JPSO will have power to investigate where the complainant is aggrieved by the management of their complaint under the Children and Young People (Jersey) Law 2022. The Commissioner for Children and Young People also has powers to conduct investigations, at both an individual and a general level, on matters relating to the rights of

³² <https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/12.280.aspx>

³³ https://www.jerseylaw.je/laws/revised/Pages/24.140.aspx#_Toc520728798

³⁴ <https://www.ombudsman.wales/wp-content/uploads/2018/03/MoU-JPSOW-Commissioners-Signed-Eng.pdf>

³⁵ <https://statesassembly.gov.je/assemblyreports/2019/r.123-2019.pdf> p.8

children and young people in Jersey. This could be on the receipt of a complaint or on the Commissioner's own initiative.

129. The Children and Young People's Law and the JPSO Law need to dovetail, especially around the Commissioner for Children and Young People's powers of investigation.
130. As above in paragraphs 128 to 129, the JPSO must consult with the Commissioner for Children and Young People to determine who is best placed to investigate the complainant based on their respective and overlapping functions, and may cooperate jointly in an investigation, and to produce and publish a decision/ report related to that investigation. As these bodies may respond in different ways, with different focuses, there is value in them working jointly.
131. Consequential amendments are likely to be required to ensure the same duty is placed on the Commissioner for Children and Young People to consult and cooperate with the JPSO. This will help to ensure operational clarity in terms of the specific remit and functions of each body and make sure the arrangements between the two are equal.
132. Again, the complainant must be made aware of how the result of an individual investigation by each of the bodies would be different to a joint investigation, giving them the information to decide whether they consent to a joint investigation or if they would prefer to have one of the two bodies investigate. For example, an individual who complained to the Children's Commissioner might not want to have the JPSO involved or vice versa. But they may support a joint investigation upon explanation.
133. The MoU, emphasising a collaborative relationship, should outline how a joint investigation would work in order to be compliant with both pieces of legislation, as the investigative powers of the Children's Commissioner are stipulated in detail in Part 3 of the Commissioner for Children and Young People (Jersey) Law 2019.
134. A consequential amendment to Article 45 of the Children and Young People (Jersey) Law 2022 to place a duty on the Minister for Children and Education to seek the JPSO's approval of the complaints procedure which has been developed under that Article.
135. From its establishment, the JPSO will produce minimum standards of complaints handling and then in time the JPSO may produce full model complaints handling procedures (as set out in paragraphs 147 to 154). This will apply to the Children's Commissioner, who will be expected to comply, as with other similar bodies, with such procedures.

Information sharing and disclosure

136. According to paragraphs 116 to 124, the Law should provide that, given the potential of overlapping functions and joint investigations between the JPSO and the Commissioner for Children and Young People, information sharing and disclosure between the two

bodies will be permitted, as it is recognised as an exceptional circumstance for permitted disclosure.

Resolving maladministration or service failure in other ways

Parties' agreement and adjudication

137. While the principal function of the JPSO is to investigate alleged maladministration or service failure by specified bodies, the Law should enable the Principal Ombudsperson to resolve individual cases in other ways (see Article 10 Public Services Ombudsman Act (Northern Ireland) 2016 and Article 6 Public Services Ombudsman (Wales) Act 2019).
138. *The first alternative way* of resolving a complaint will be supporting the parties to the complaint in reaching an agreement. In some instances, the parties may be amenable to reaching an agreement, rendering an investigation unnecessary. The JPSO could facilitate such an agreement using alternative resolution techniques such as mediation. The process should only be sanctioned if both the complainant and the specified body agree to the process – the Principal Ombudsperson could make the determination to end an investigation if they believe that the parties are open to an agreement on a way forward.
139. The Principal Ombudsperson should be able to ask for guidance from others, including judges and lawyers, on any areas outside of their expertise, including alternative dispute resolution. This should only relate to procedural guidance and not to the content of the complaint. For example, the Principal Ombudsperson might seek advice on conducting and facilitating mediation where one of the parties communicates via sign language.
140. *The second alternative way* of resolving a complaint is through an adjudication process. This is not a common way of resolving complaints in other jurisdictions. However, it is felt that it was necessary to provide for adjudication which has been the mainstay of current complaints handling via the Complaints Panel. This sort of adversarial hearing should only be pursued if the JPSO thinks it is appropriate, either on the initiative of the parties to the complaint or on the facts of the complaint. Adjudications are presumed to take place publicly but may be held in private if the JPSO thinks it is appropriate, either on request of one of the parties and/or if the JPSO determines that, given the circumstances of the complaint, it would be more appropriate to do so.
141. On establishment, the JPSO should draw up and follow guidance on the circumstances where adjudication would be better than investigation, as set out in paragraph 26. In developing the guidance, the JPSO must consult the Chief Minister and all other persons that the JPSO reasonably believes should be consulted.
142. If adjudication is adopted, the Law should provide that an *ad hoc* panel may be convened by the Principal Ombudsperson to listen to a complaint. The associated arrangements

must be set out in the adjudication guidance. The Panel must be completely unbiased and impartial, with any conflicts of interest ruling them out of consideration. It is generally anticipated that Panel members would give their time on a voluntary basis (this is based on the appointments process of the current Complaints Panel), but the Law should not exclude potential payment of Panel members if deemed appropriate by the JPSO. The recruitment process might seek to ensure the Panel had experience or qualifications relevant to the case being adjudicated.

143. The Panel will be convened to hear the complaint and make a determination (the finding) and the JPSO will be responsible for any recommendations that flow from the finding of the Panel. The JPSO must not have any influence over the decision-making of the Panel but may issue guidance to the Panel on how to reach a decision.
144. The findings and recommendations under this section have the same status of findings and recommendations following an investigation, as set out in paragraph 159 – they are not binding on the parties.

Transparency

145. The Law should provide that both investigations and agreements between parties must be conducted in private (except where there is adjudication in public), but the findings and recommendations of investigations must be public to promote transparency. In other jurisdictions this might extend to a searchable database or an annual/ quarterly casebook. The JPSO should determine how best to make the information public. Information disclosure by the JPSO to members of the public or others is governed by the design principles of information handling and disclosure, as set out in detail in paragraphs 116 to 124. For agreements made without investigation, the Principal Ombudsperson should ensure that the result is transparent, whether this includes statistics on the proportion of complaints resolved in this way, detail on the parties involved and/or full decision-making. However, the privacy of the proceedings does not prevent the Principal Ombudsperson from exercising their power to make system-wide recommendations.

System-wide recommendations

146. While recommendations can be made about individual cases by the Principal Ombudsperson, it is important the JPSO becomes a learning champion for public services in Jersey, ensuring that lessons are learned and systemic improvements are made when maladministration and service failure are found. The Principal Ombudsperson may make system-wide recommendations following a decision related to an individual case, if there are any – these recommendations are solely for the purpose of ensuring that the maladministration and service failure do not happen again.

Model complaints handling

147. Another function of the JPSO, again with the objective of improving transparency and of driving system improvements among public services in Jersey, is the ability to have oversight and influence over the complaint handling procedures of public services.
148. The Law should provide for the JPSO to bring forward guidance on minimum standards with which specified bodies in Jersey must comply. Non-compliance with these minimum standards is maladministration or service failure that is capable of being investigated by the JPSO through an investigation of an individual complaint or through an own-initiative investigation. In Northern Ireland, Scotland and Wales, this is described as a statement of principles (see section 35 Public Services (Northern Ireland) Act 2016, section 16A Scottish Public Services Ombudsman Act 2002, section 36 Public Services (Wales) Act 2019). The JPSO must consult the Chief Minister and relevant parties on the minimum standards. Public services must be given 6 months from publication of the minimum standards to submit their complaints handling procedure to the JPSO.
- a. This guidance should specify minimum standards of signposting, referrals with consent of the complainant and explaining complaints processes. There should be a duty on all bodies to which the minimum standards apply to refer complaints (with consent from the complainant) on to the most appropriate public body to handle the complaint: for example, from a public body to the JPSO because it is the next and last stage in the complaints process or from the JPSO to the Children's Commissioner because the complaint may also fall under their remit. As previously mentioned, the JPSO will also be expected to refer cases where maladministration or service failure comes to their attention but falls outside of scope or may be relevant to another body.
149. In addition, the JPSO must bring forward as soon as reasonably practicable two specific model complaints handling procedures, addressing whistleblower complaints and vexatious complaints.
150. The Law should provide that the *first specific model complaints handling procedure* will refer to managing concerns or complaints raised by whistleblowers. This means that, if a concern is raised by a whistleblower and that concern is not dealt with in accordance with the standards, a complaint could be made by the whistleblower to the JPSO on the basis of non-compliance with standards which, as set out above, may constitute maladministration or service failure that is capable of being investigated by the JPSO through an investigation of an individual complaint or through an own-initiative investigation. See paragraphs 155 to 156, below, for further information on the JPSO's functions in relation to whistleblowers.
151. The Law should provide that the *second specific model complaints handling procedure* that must exist as soon as reasonably practicable is a procedure for responding to unacceptable behaviour by complainants (so-called vexatious, habitual, unrelenting, or unreasonably persistent complainants). This may include steps to manage the behaviour.

Ultimately, the JPSO, or specified body, must be able to refuse to look at a complaint, or any future complaints in exceptional circumstances, if a complaint continues to demonstrate unacceptable behaviour.

152. In time and in addition to the minimum standards and to the two specific model complaints handling procedures outlined above, when it is resource appropriate, the JPSO may bring forward model complaints handling procedures for specific bodies or sectors, or generally for public services. In its response to the consultation, the Scottish Public Services Ombudsman noted the challenges they have faced since gaining these powers are mainly related to resourcing. Having powers to set model procedures has had a positive impact on public service delivery, but to realise the benefits the powers must be robust, and the Ombudsman adequately resourced. The JPSO must consult relevant parties in relation to each model procedure. Following publication of the procedure, the body or bodies to which it applies at that point must adopt and work within the procedure. Not adopting and working within the procedure is capable of being addressed by the JPSO as maladministration or service failure that is capable of being investigated by the JPSO through an investigation of an individual complaint or through a own-initiative investigation. Public services must be given 6 months from publication of the model complaints handling procedure to submit their complaints handling procedure to the JPSO.
153. The Law should indicate that the JPSO will be expected to review and update the minimum standards and any model complaints handling procedures from time to time to reflect evolving best practice in Jersey.
154. The Law should provide that for those services falling outside the JPSO remit, the JPSO will not be able to investigate any non-compliance with the complaints handling procedure. Although it is anticipated that the Government of Jersey will, where there is a funding relationship or other similar lever, encourage or require uptake of the model procedures, bodies outside of the JPSO's scope will not have a duty to comply.

Handling complaints by whistleblowers

155. The Law should provide the JPSO with power investigate complaints from a whistleblower where, the whistleblower believes their concern will not be properly investigated by their employers. Comparable legislation for this is sections 6A, 6B, 16BA of the Scottish Public Services Ombudsman Act 2002. The Scottish Ombudsman has the additional role of being the Independent National Whistleblowing Officer, who is tasked with setting the standards of local NHS whistleblowing processes and examining the decision-making and outcomes of these processes. Provisions are requested which will largely mirror sections 6A, 6B, 16BA of the Scottish Public Services Ombudsman Act 2002, in this case, to provide the JPSO with oversight of whistleblowing processes across all public authorities.
156. The definition of a whistleblower refers to an employee or former employee who delivers or used to deliver services on behalf of a public service who raises a concern that relates

to speaking up, in the public interest, about a public service, where an act or omission has created, or may create, a risk of harm or wrongdoing (see Article 23 Scottish Public Services Ombudsman Act 2002).

Findings, recommendations and remedy

157. The Law should provide that the JPSO will investigate a complaint to find out the facts of what has happened and what, if anything, went wrong and will make a 'finding'. The decision-making of the JPSO may be guided by three broad categories in determining the severity levels of the alleged maladministration or service failure (see the Housing Ombudsman Scheme in England and Wales³⁶): service failure (least serious), maladministration, and severe maladministration (most serious).
158. Complaints will be upheld or not upheld. In a similar manner to the Local Government and Social Care Ombudsman (LGSCO)³⁷, the Law should enable the JPSO to make one of the following decisions:
- a. uphold all or part(s) of the complaint and recommend how the organisation should put things right;
 - b. uphold the complaint but not make any recommendations because the organisation has put things right by the time the complaint is investigated;
 - c. uphold the complaint but not make any recommendations as the fault did not have a significant effect;
 - d. not uphold the complaint;
 - e. cannot or will not investigate the complaint.
159. The Law should state that neither the findings nor the recommendations of the JPSO are binding. However, the Law should include a power so that the States may, in future, amend the Law by Regulation to enable the Ombudsperson's findings and/or recommendations to be binding on public authorities. This power should include the ability for the States to make Regulations which are consequential to the implementation of powers to enforce findings and/or recommendations.
160. Where the JPSO makes a recommendation, the JPSO must give consideration to the need to redress the injustice or hardship the individual complainant has suffered as well as wider actions that will drive and lead to system-wide improvements. This may include recommending:

³⁶ <https://www.housing-ombudsman.org.uk/useful-tools/fact-sheets/investigation/>

³⁷ <https://www.lgo.org.uk/make-a-complaint/possible-outcomes>

- a. an apology, explanation and acknowledgement of responsibility;
- b. remedial action, which may include reviewing or changing a decision on the service given to an individual complainant; revising published material; revising procedures, policies or guidance to prevent the same thing happening again; training or supervising staff; or any combination of these;
- c. where the complainant can be 'returned back' to where they were but for the maladministration/service failure, the JPSO should be able to recommend that the complainant is financially compensated to the extent that this does not interfere with any other compensation otherwise awarded. Financial compensation may be for direct or indirect financial loss, loss of opportunity, inconvenience, distress, or any combination of these³⁸.
 - i. If elements of the complaint relate to wanting redress for the unlawful administration of a public service or other illegality then this will be more appropriately addressed in court. The JPSO is not an alternative to court. It does not create a pathway for damages, breaches of contract, or negligence claims, or other claims that can be brought in relation to public services (see paragraph 78);
 - ii. the presumption, therefore, is that issues which had or have a right or remedy in the courts should not be heard by the JPSO unless in the JPSO's discretion it would be unreasonable to expect the complainant to rely on this right or remedy or that hearing the complaint would provide wider redress to the complainant and serve system improvements in public administration. For example, if a complaint wholly relates to compensation awardable by a court, it should not be investigated unless it is in the JPSO's discretion to hear it. However, it might not be in the mind of the complainant to get this compensation from the JPSO, the motivation behind their complaint might be to ensure that the public service improves its standards in the future. Alternatively, a complaint may be multifaceted and include compensation awardable by a court and compensation that is not awardable by a court, and the JPSO might recommend compensation regarding the latter;
 - iii. The compensation should take the form of an *ex gratia* payment which is not taxable, as per the Jersey Public Finances Manual³⁹, which states that examples of extra-contractual payments are *ex gratia* payments as part of complaints procedures;
 - iv. The JPSO should consider the principle of 'no more, no less' in relation to compensation, including avoiding putting the recipient in a better position

³⁸ <https://www.ombudsman.org.uk/about-us/our-principles/principles-good-complaint-handling/putting-things-right>

³⁹ <https://www.gov.je/Government/PlanningPerformance/PublicFinances/Pages/PublicFinanceManual.aspx>

than if the maladministration had not occurred, for example, where making a payment to compensate for loss of income which would have been taxable if received or earned in the normal way;

- v. Where a pattern develops, with multiple complaints raising similar points, the JPSO may recommend that an extra statutory scheme be set up;
- vi. It is envisaged that any payments made to the complainant will be subject to certain constraints, such as a cap or tariff, as may be found in the Financial Services Ombudsman (Jersey) Law 2014⁴⁰ for which the Minister may specify a maximum amount by Order. Recommendations relating to payments will not be binding, as set out above.

161. The JPSO may recommend other remedies, as it considers appropriate. However, the JPSO will not have the power to recommend disciplinary action against staff but may find that staff made errors.

162. As set out above, recommendations will not be binding or enforceable. This follows the precedent set by the Public Services Ombudsman for Wales⁴¹, the Scottish Public Services Ombudsman (recommendations on remedies are not legally binding and can be rejected) and the European Ombudsman⁴². Indeed, this non-binding nature of findings and recommendations has been contended to enhance the ability of the JPSO to non-contentiously drive system change and higher standards of public administration.

163. In the course of consultation, there were concerns from stakeholders that the non-binding nature of findings would not ensure compliance. Although findings will be non-binding, the investigative component of the JPSO's functions, including powers to compel information, inspect documents, and require hearings, will ensure that findings are an accurate reflection of what happened. A public service should take advantage of that process to share any and all relevant information to the Principal Ombudsperson. If a public service disagrees with the findings, they must publicly state this (see paragraphs 164 to 166) – if their justification involves an argument relying on information that has not been supplied to the Principal Ombudsperson in order to make the decision, then the Principal Ombudsperson will be able to respond. The requirement for public services and the Chief Minister to publicly demonstrate compliance and publicly justify non-compliance with recommendations illustrates the soft power through which the JPSO seeks to achieve

⁴⁰ <https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/13.255.aspx>

⁴¹ The Public Services Ombudsman for Wales in his response to the consultation noted that:

'...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. I'd draw your attention to a relevant judgement in R (Bradley) v Secretary of State for Work and Pensions [2008], which asserted that, although a minister was not bound to accept the findings or recommendations of the Parliamentary Commissioner for Administration, they could not rationally reject them without 'cogent reasons.'

⁴² The European Ombudsman's decisions are not legally binding and do not create legally enforceable rights or obligations for the complainant, or for the institution covered. Also an international review of Ombudsman functions and procedures clearly notes that 'Ombudsmen do not have the power to make binding or enforceable decisions. Their general guidance, their reports and their assessment standards do not have a different status; they all remain on the level of non-binding recommendations.'

compliance, rather than operating as a court. As such, the conclusion has been made that both findings and recommendations will be non-binding.

Compliance

164. The Law should outline how public services will be expected to respond to the findings and recommendations of the JPSO. A common concern from stakeholders was that the non-binding element of the findings and recommendations would excuse non-compliance. There are a number of mechanisms through which public services under the remit of the JPSO will be expected to demonstrate compliance without having to rely on binding findings and recommendations – the intent here is for public services to publicly demonstrate compliance and publicly justify non-compliance, and for the Principal Ombudsperson to publicly demonstrate compliance and non-compliance across the States of Jersey.
- a. *Following an investigation:* where maladministration or failure in service, or failure to provide a service, is found and included in a report, the public authority, service provider or office holder, has a duty to consider and within three months notify the JPSO of the action they have taken or propose to take. The JPSO may make a further report if not satisfied with the action proposed;
 - b. *Where system-wide recommendations have been made (following a decision related to an individual case as well as in own-initiative investigations):* the specified bodies which are the target of system-wide recommendations have a duty to consider them and must publish a response within three months acknowledging the findings and positioning themselves with regards to the recommendations, outlining their own body's proposed action. The JPSO may also request an overarching response from the concerned minister or ministers;
 - c. *When minimum standards of complaints handling and/or model complaints handling procedure has been published:* the Law should provide that where minimum standards of complainant handling and/or a model complaints handling procedure is relevant to a specified body, the JPSO may declare that the body is not in compliance with them, as a result of an own-initiative investigation or an investigation of an individual complaint. In this case, the JPSO must provide reasons in writing and may specify the necessary amendments to the complaints handling procedure which would result in the non-compliance declaration being withdrawn. Then the specified body should be expected to submit a description of its complaints handling procedure, having taken account of the reasons and the amendments included in the JPSO's declaration, within three months of the JPSO's declaration (see Article 16D Scottish Public Services Ombudsman Act 2002).
165. In the first three months, the specified body has a right to request that the JPSO review its findings and recommendations with respect to the above. Following this review, it is

expected that a minister or specified body must have a cogent reason for not accepting the findings and/or recommendations, and secondly that they must show that they have given the decision of the JPSO due consideration. If a minister or specified body disagrees with the decision following the review process they must publicly respond, in writing, setting out the reasons for not complying with the decision within three months of the review.

Reports

166. The Law will provide that, on completion of an investigation driven either by an individual complaint or an own investigation, the JPSO shall prepare a report. Reports may include findings of fact and recommendations on how any maladministration or failure in service, or failure to provide a service, may be put right. Copies will be sent to the complainant and the public authority, service provider or office holder complained about.
167. Reports will not include the names of individuals or any other particulars which might identify them, unless this is in the public interest. Reports and statements will be subject to safeguards designed to protect the privacy of the complainant and associated third parties. This will include, it is suggested, strengthening Standing Order 104⁴³ to ensure individuals are not named and, if they are, names are removed from the parliamentary record.
168. The JPSO may publish reports in the local press and online or make them otherwise available to the public as they deem fit.
169. Where there are system-wide recommendations, the JPSO must publish the report.
170. The JPSO may publish reports and statements, may supply copies and parts of copies and may charge reasonable costs for supplying these. Costs for publication may be recovered from the public authority, service provider or office holder, but costs must never be covered by complainants. The entire process remains free to all eligible complainants.

Special Reports

171. In the event that a minister rejects both the initial findings and recommendations and the result of the following review by the JPSO, the Principal Ombudsperson may issue a special report to the Chief Minister which must be presented to the Assembly, and when this happens, the relevant minister must make a statement to the Assembly (and, where relevant, a connétable must make a statement to a parish assembly), setting out the reasons for rejection.

Thematic Reports

⁴³ <https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/16.800.15.aspx>

172. The Principal Ombudsperson may also prepare a report on any investigation or series of investigations on matters relating to its functions, and jointly with other watchdogs and regulators, which it may present to the Chief Minister, who must lay it before the Assembly.

Challenge to the JPSO

173. Both specified bodies and complainants may seek a judicial review of power exercised by the JPSO, if they are involved with or affected by the power exercised. A judicial review of the process examines whether a public body has the power to make the decisions it did and whether the proper process was followed (see for example the Scottish Public Services Ombudsman⁴⁴ and the Parliamentary and Health Service Ombudsman in England and Wales⁴⁵).

174. The Law should provide that if a Jersey Administrative Appeals Tribunal is established, as per the recommendation by the Law Commission’s (2017) ‘Improving Administrative Redress in Jersey’ report⁴⁶, this may be the first point of contact for a judicial review.

175. The JPSO may also refer matters to the Royal Court for clarification on a point of law.

Section 4: Jurisdiction and design principles: inclusions and exclusions of the JPSO’s remit

Governing Principles	Specific design principles
<ul style="list-style-type: none"> ● JPSO’s wide remit over administrative actions, decisions and omissions of public services in Jersey ● ‘<i>Raison d’être</i>’ test for defining public service ● Accountability deficit for inferring whether bodies are included in the JPSO’s remit 	<ul style="list-style-type: none"> ● If the body is covered by the Human Rights (Jersey) Law 2000, it falls within the JPSO’s remit ● If the body is regulated by the Public Finances (Jersey) Law 2019, it falls within the JPSO’s remit ● If appointments of a body are overseen by the Jersey Appointments Committee, it falls within the JPSO’s remit ● If a body is a ‘scheduled public authority’, it falls within the JPSO’s remit.

⁴⁴ <https://www.spsso.org.uk/decision-review-process>

⁴⁵ <https://researchbriefings.files.parliament.uk/documents/CBP-7496/CBP-7496.pdf>

⁴⁶ https://jerseylawcommission.files.wordpress.com/2016/04/jsylawcom_topicreport_adminredress_final.pdf

	<ul style="list-style-type: none"> ● Public service functions of a body fall within the JPSO's remit, while commercial functions are excluded ● Exclusion from the JPSO's remit only under compelling reasons
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176. The Law should provide that the JPSO will have a wide remit, with the presumption that it covers administrative actions, decisions and omissions within all services delivered to the public in Jersey unless otherwise stated. This is in line with Principle 13 of the Venice Principles⁴⁷ which states that 'the mandate of the Ombudsman shall cover all general interest and public services provided to the public, whether delivered by the State, by the municipalities, by State bodies or by private entities.'
177. The *first key governing principle* is related to widening the scope of the definition of public service, allowing for a greater degree of flexibility and functionality in the case of the JPSO's remit over listed bodies and organisations. The key criterion of defining whether an organisation or a body undertakes a public service is not primarily associated with the proportion of government/state funding that it might receive for the delivery of its services. Instead, the primary consideration regards its '*raison d'être*': whether its services are done on behalf of the government/state and whether they are undertaking a public function and thus implementing some sort of public policy.
178. The *second key governing principle* relates to the accountability deficit as an alternative approach to separating functions or excluding offices and departments from the JPSO's remit. An accountability deficit would be created when alleged maladministration or service failure is unable to be addressed by the JPSO (because it has been generally excluded from investigation) but would remain unaddressed by any other body/ department that retains control over that general area of maladministration or service failure. In order to avoid any accountability deficit within Jersey's public services (and associated services), the JPSO should have remit over aspects of services which do not have a clear and dedicated resource for addressing maladministration and service failure, such as the administration of social housing and healthcare.
179. Specific design principles in determining the organisations and office holders who should be included (or not) in the remit of the JPSO are taken from the Jersey Law Commission report. A summary of the entities and their specific functions that will fall within the JPSO's remit are presented in the form of tables at the end of this section, whereas tables with entities to be excluded from the JPSO's remit are presented after each relevant paragraph.

⁴⁷ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e#:~:text=13.,bodies%20or%20by%20private%20entities](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e#:~:text=13.,bodies%20or%20by%20private%20entities).

180. The *first specific design principle*, as indicated by the Jersey Law Commission Report (2018)⁴⁸, is that, if all or some of the office holder's or organisation's activities are covered by the Human Rights (Jersey) Law 2000, then this creates a presumption in favour of the JPSO having jurisdiction. The JPSO can and should have a role in identifying human rights issues in the complaints it receives through considering whether the public authority concerned has acted in a way which is incompatible with the Human Rights (Jersey) Law and whether this would amount to maladministration. It should be noted that the JPSO should not conclusively determine whether there has been a breach of the Human Rights (Jersey) Law 2000 as this is a judicial function (excluded from the JPSO's remit as stated in the following paragraphs of this section).
181. The *second specific design principle* set out by the Jersey Law Commission in its Report (2018)⁴⁹ indicates that if the office holder's or organisation's finances are regulated by the Public Finances (Jersey) Law 2019, then this creates a presumption in favour of the JPSO having jurisdiction. This principle was further expanded to include the 'follow the money' principle. Entities which receive public money and manage public assets to deliver public services should fall within the JPSO's remit unless there are compelling reasons to exclude them. Public money includes both revenues collected by government and by the parishes under the Rates (Jersey) Law 2005⁵⁰. Public assets include any assets, including property and infrastructure, owned by the government and managed by government or on its behalf. In 'following the money' the Public Finances (Jersey) Law 2019⁵¹ provides guidance for how the different types of entity which will come within the JPSO's remit may be described, 'States body', 'States trading operation', 'non-Ministerial States Bodies' and 'Specified Organisations'. However, as noted in the first paragraph of this section, the 'follow the money' principle has a secondary function compared to the '*raison d'être*' test of the public service definition, when considering which bodies can be included in the JPSO's remit.
182. The *third specific design principle* outlined in the Jersey Law Commission Report (2018)⁵² indicates that if the office holder's or organisation's appointments are overseen by the Jersey Appointments Commission, then this creates a presumption in favour of the JPSO having jurisdiction.
183. The *fourth specific design principle* outlined in the Jersey Law Commission Report (2018)⁵³ indicates that if the office holder or organisation is a 'scheduled public authority' under the Freedom of Information (Jersey) Law 2011, then this creates a presumption in favour of the JPSO having jurisdiction. A list of 'scheduled public authorities' is also outlined in the Data Protection (Jersey) Law 2018⁵⁴.

⁴⁸ https://jerseylawcommission.files.wordpress.com/2018/11/jsylawcom_designingombudsman_final.pdf

⁴⁹ https://jerseylawcommission.files.wordpress.com/2018/11/jsylawcom_designingombudsman_final.pdf

⁵⁰ <https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/24.950.aspx>

⁵¹ <https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/24.900.aspx>

⁵² https://jerseylawcommission.files.wordpress.com/2018/11/jsylawcom_designingombudsman_final.pdf

⁵³ https://jerseylawcommission.files.wordpress.com/2018/11/jsylawcom_designingombudsman_final.pdf

⁵⁴ <https://www.jerseylaw.je/laws/revised/Pages/15.240.aspx>

184. The *fifth specific design principle* set out in the Jersey Law Commission Report (2018)⁵⁵ is whether there are clear public policy advantages in having the office holder or organisation within the JPSO's jurisdiction. Furthermore, as stated in paragraph 177, adopting a more flexible and functional approach to what constitutes a public service is guided by the '*raison d'être* test': a service done on behalf of the government/state, undertaking a public function and thus implementing some sort of public policy.

- a. Under these proposed design principles, the obligations of any trading or arm's length entity, which has 'public service obligations' means that it delivers services which are government functions and which a commercial organisation would not normally do, and therefore would be subject to the jurisdiction of JPSO. For example, Ports of Jersey provide the general handling of passengers at ports (for example related to security arrangements), search and rescue, aids to navigation, maintenance of harbours, and enforcement of shipping legislation, port control functions and management of the Channel Islands Control Area⁵⁶. However, the commercial and contractual decision-making of a trading or arm's length entity will be excluded from the JPSO's remit.

185. The *sixth specific design principle* by the Jersey Law Commission Report (2018)⁵⁷ indicates that the office holder or organisation should be excluded from the JPSO's remit, if there are compelling reasons for doing so. The table below shows entities which will fall outside the JPSO's remit and the reasons for this:

Entity	Exclusion
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 (including Panels and Committees)	States' proceedings benefit from parliamentary privilege and thus they

⁵⁵ https://jerseylawcommission.files.wordpress.com/2018/11/jsylawcom_designingombudsman_final.pdf

⁵⁶ <https://www.jerseylaw.je/laws/revised/Pages/03.050.aspx> Article 6

⁵⁷ https://jerseylawcommission.files.wordpress.com/2018/11/jsylawcom_designingombudsman_final.pdf

	should be excluded from the JPSO's remit. According to the States of Jersey (Amendment No.9) Law 2021 ⁵⁸ , States' proceedings are defined as all words spoken or written and acts done in the course of, or for the purposes of or necessarily incidental to, transacting the business of the States or any committee or panel established under standing orders, but not when exercising any executive or administrative powers conferred by or under any enactment other than the principal Law. As such, the executive and administrative functions of States proceedings are not bound by parliamentary privilege and they are considered to come within the ambit of the JPSO.
Judicial Greffe, including the Tribunal Service	The Judicial Greffe, including the Tribunal Service, were originally included within the remit of the Ombudsperson. In consultation with the Judicial Greffe, noting and reflecting on their concerns, it has been concluded that they should not fall within the remit of the Ombudsperson at this time.
Viscount's Department	As above.
Probation Department and After-Care Service	As above.

186. Specific arm's length bodies are excluded from the remit of the JPSO, as they do not meet with the design principles. Although these bodies are in receipt of public funding, they are not considered to deliver service to the public. The table below lists these entities:

Entity	Public Funding	Exclusion
Digital Jersey	Yes	No service to the public delivered

⁵⁸ https://www.jerseylaw.je/laws/enacted/Pages/L-09-2021.aspx#_Toc77962800

Early Years Childcare Partnership	Yes	No service to the public delivered
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

Specified bodies

187. The following tables summarise the list of entities and (where relevant) their specific functions that will fall within the JPSO's remit:

Public bodies

Specified Bodies	Note
Government of Jersey This includes any minister and any person acting on behalf of a minister or the Government of Jersey	
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 pays money to the Parish under the Rates (Jersey) Law 2005. This would include: <ul style="list-style-type: none"> - Connétable (only when discharging functions as a Parish) - Parish registrars - Parish officers

	<p>This <u>would not</u> include:</p> <ul style="list-style-type: none"> - Honorary Police - Church wardens and Church matters, except in relation to property where it is funded via parish rates - Parish Hall Enquiries
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
States Greffe	Only where the States Greffe delivers a service to the public

Education bodies

Specified bodies	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

Specified bodies	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

Specified bodies	Public funding	Provision of a public service
Jersey Bank Depositors Compensation Board (administering the Depositor Compensation Scheme)	The Depositor Compensation Scheme (DCS) is funded primarily through levies on Jersey banks, based on the proportion of protected deposits each bank holds. However, monies from the	In consultation with stakeholders, it is agreed that this body provides a public service, which is justified on the basis that it is enabled by legislation [see Banking Business (Depositors

	<p>Government's Strategic Reserve Fund, up to a maximum combined total not exceeding £100 million, should be made available if required to meet the States contribution to the DCS and/or to meet any temporary cash flow funding requirements of the Scheme.</p>	<p>Compensation) (Jersey Regulations 2009)], rather than something banks have voluntarily opted in to.</p> <p>The JPSO will not have oversight of issues related to complaints about the eligibility for compensation, the amount of compensation etc; these issues will be dealt with through an appeals process by the courts.</p> <p>However, the JPSO will have oversight of complaints related to the administrative functions of the DCS (i.e. communication with the applicant, information provided, handling of applications).</p>
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Other entities

Specified bodies	Public funding	Service delivered by GoJ employees or those who fall with jurisdiction of Jersey Appointments Commission
Association of Jersey Charities	Yes	
Bosdet Foundation	Yes	
Brussels, London and Caen Offices of the States of Jersey	Yes	Yes
Citizens 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 the Department for Health

		and Community Services
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Administration of court

188. The Law should indicate that the JPSO will not replace the already existing procedure to make a complaint to the Jersey Court Service⁵⁹ about general ‘service’ provided by the Jersey Court Service.
189. The Law should state the JPSO will not have oversight of the judicial complaints procedure where individuals can raise concerns around misconduct of a judge or the Bailiff⁶⁰/ Deputy Bailiff.
190. The Law should provide that the JPSO will not have oversight of complaints about a breach of the Code of Conduct by States Members or employees of the States Greffe, which are handled by the Commissioner for Standards.

Social housing providers

191. The Law should provide that, in relation to the JPSO’s remit over social housing providers, the JPSO may investigate complaints related to ‘any action taken in relation to its functions as a landlord’, where ‘landlord’ in this case refers to the social housing providers as per section 1 of the Income Support (Jersey) Regulation 2007: social housing under the control of the States (Minister for Housing and Communities); Andium Homes, a company prescribed under Article 2 of the Social Housing (Transfer) (Jersey) Law 2013; Jersey Homes Trust; Les Vaux Housing Trust; Christians Together in Jersey Housing Trust; FB Cottages Housing Trust; Clos de Paradis Housing Trust. This provision aligns the JPSO’s approach with other UK jurisdictions, in which housing providers fall within the Public Services Ombudsman’s remit: Northern Ireland (Schedule 3 Public Services Ombudsman Act (Northern Ireland) 2016), Scotland (Article 16A, Schedule 2 Scottish Public Services Ombudsman Act 2002) and Wales (Schedule 3 Public Services Ombudsman (Wales) Act 2019).
192. The Law should state that bodies that are not directly social housing providers themselves but are government-managed and participate in the process (e.g. Affordable Housing Gateway) should fall within the remit of the JPSO. This is to account for the particular features and complexities of the social housing landscape in Jersey.

⁵⁹ <https://www.gov.je/Government/Comments/Pages/JerseyCourtServiceComplaints.aspx#anchor-2>

⁶⁰ <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Judicial%20Complaints%20Procedure%2020160408%20JR.pdf>

193. The Law should account for the plans to introduce a Housing Regulator (circa 2023) through stating that at the point at which the Housing Regulator is established, consequential amendment may be required to the JPSO Law.

Healthcare providers as specified bodies

194. All functions of the JPSO will apply to healthcare complaints. In addition to this, the following paragraphs in this section provide details on the governing principles and the specific design principles for the integration of healthcare providers and healthcare complaints into the JPSO's remit.
195. The JPSO should have oversight of complaints over both GoJ provided healthcare providers and private healthcare providers where the service being provided is, by its nature, a public service. Wholly private services will not fall within the remit of the JSPO.
196. The Parliamentary and Health Service Ombudsman investigates healthcare complaints in the UK, including complaints about GPs which are part of the NHS⁶¹. It cannot investigate complaints about privately funded health care services but can investigate complaints about services which are provided by private providers but are funded in part by the NHS (the equivalent in Jersey being GoJ).
197. The healthcare 'market' in Jersey is very different from that of the UK, with GPs in Jersey being independent service providers but given that members of the public have no choice but to consult GPs and that GPs are in receipt of funding from the States, it is envisaged the GPs will be included in the jurisdiction of the JPSO from the point at which the legislation comes into force. This also accords with the fact that the '*raison d'être*' of GPs is to deliver primary health care services to the public.
198. The accountability deficit referenced by the Jersey Law Commission in relation to GPs' internal complaints procedure (some practice websites contained basic information about complaints procedure, some had no information), and the narrow focus of professional regulatory bodies (fitness to practice), are compelling public policy reasons to introduce the oversight of the JPSO as a last resort for complaints, for system-wide recommendations and for model complaints handling.
199. The Law should also provide a Regulation making power to include other healthcare providers under the JPSO's remit at a later date. This may include other primary care services such as dental services and pharmacists, subject to further consultation – the law should not exclude the possibility of the Law being extended over these services.
200. The type of complaints receivable by the JPSO on healthcare should be governed by the principles of avoiding duplicating existing processes, especially through the courts, and therefore should not encroach on other avenues for remedy that already exist.

⁶¹ Similarly the Public Services Ombudsman does in Scotland, and the Public Service Ombudsman in Wales.

Acknowledging that legal proceedings including clinical negligence cases are open to Jersey residents, the power to investigate health services, like the overarching function, should be limited particularly where the person has or had a right of appeal and remedy before a Jersey Court. In this case, the JPSO should not usually take up the complaint, unless in their discretion they consider it necessary to do so.

201. The JPSO should investigate complaints that relate to administrative service failure in healthcare settings. These complaints refer to the cases when a person has sustained injustice or hardship in consequence of a wide range of management and relationships-related issues, which can be further broken down in specific categories as follows:

<p>a. <u>Administrative service failure complaints related to management in healthcare settings</u></p> <ul style="list-style-type: none"> ● Bureaucracy (problems with administrative policies and procedures) ● Environment (poor accommodation, hygiene or food) ● Service issues (problems with hospital services for supporting patients) ● Staffing and resources (inadequate hospital staffing and resource levels) ● Access and admission (lack of access to services or staff) ● Delays (delays in admissions or access to treatment) ● Discharge (early, late, or unplanned discharge from the hospital) ● Referrals (problems in being referred to a healthcare service) 	<p>b. <u>Administrative service failure complaints related to relationships in healthcare settings</u></p> <ul style="list-style-type: none"> ● Communication breakdown (inadequate, delayed or absent communication with patients) ● Patient-staff dialogue (no listening to patients, lack of shared decision-making, and conflict) ● Incorrect information (communication of wrong, inadequate, or conflicting information to patients) ● Staff attitudes (poor attitudes towards patients or their families/ rude, disrespectful or insensitive behaviours to patients) ● Abuse (physical, sexual or emotional abuse of patients) ● Confidentiality (breaches of patient confidentiality) ● Consent (coercing or failing to obtain patient consent) ● Discrimination (discrimination against patients)
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202. The JPSO should be able to investigate complaints related to clinical treatment, so long as the complainant does not have a right of appeal and remedy before a Jersey Court and the JPSO considers in their discretion that it would be appropriate to open an investigation, as described in paragraph 78.

203. A claim for damages as a result of negligence arising from a complaint about clinical judgment should be the focus of legal proceedings, whereas complaints of clinical treatment associated with improvement of service quality and a more systemic patient-centric response (rather than an individual-centric financial compensation) should guide

the JPSO's decision to open an investigation. These clinical treatment complaints that the JPSO could handle refer to the cases when a person has sustained injustice or hardship in consequence of a wide range of management and relationships-related issues, which can be further broken down in specific categories as follows.

- Patient journey issues (problems in the coordination of treatment in different services by clinical staff)
- Treatment issues (poor or unsuccessful treatment)
- Quality of care issues (substandard clinical/ nursing care)
- Examination issues (inadequate patient examination by clinical staff)
- Errors in diagnosis (erroneous, missed, or slow clinical diagnosis)
- Medication errors (errors in prescribing or administering medications)
- Safety incidents (events or complications that threatened the safety of patients)

Section 5: Commencement, transitional and other provisions

204. The Law introduces a complex regime, powers are requested to commence the legislation by Appointed Day Act, alongside the power to commence different parts of the legislation at different times.
205. There should also be a specific power for anticipatory exercises, such as the appointment of the Principal Ombudsperson, Chair of the Board and board members ahead of the commencement of the regime.
206. The regime may also require other legislation to be amended by consequential amendment, specifically around the JPSO consulting and cooperating with others (paragraphs 125 to 136).