

PRESIDENT OF THE LAW SOCIETY OF JERSEY

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19 April 2011

Dear Sir,

Financial Services Ombudsman Scheme for Jersey and Guernsey (the “Scheme”)

I write to provide comments on behalf of the Jersey Law Society (the “JLS”) in response to the recently issued consultation paper (the “**Consultation Paper**”) in respect of the Scheme as follows:

1 Introduction

- 1.1 The JLS is the governing body for lawyers practising as Advocates and Solicitors of the Royal Court of Jersey.
- 1.2 The comments set out below on the utility of the Scheme, its funding and scope and how it might function in practice are thought to be generally representative of the JLS’s membership and are supported by a majority of the main committee of the JLS and of its Financial & Commercial Sub-Committee.
- 1.3 In the final section of this document, there is also a response to one of the specific matters raised in the Consultation Paper.

2 Is there a need for the Scheme?

- 2.1 Before the Scheme is adopted, the question might be raised as to whether there is a strong need for an Ombudsman Scheme in Jersey. A report to the States dated 6 June 2006 recommends that a public consultation be carried out to better determine the appetite for and preferred scope of such a scheme, before a final decision is made on whether to progress the scheme and, if so, in what manner. No such consultation has taken place and the establishment of an Ombudsman Scheme has already been approved by the States.

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- 2.2 The Consultation Paper cites that the Isle of Man Financial Services Ombudsman Scheme has received between 230 and 390 complaints a year since its inception in 2002 and states that these figures can be taken as an indication of the level of complaints that might be expected by any Jersey Ombudsman Scheme. This is not a great number and presumably includes the sorts of ineligible complaints listed in paragraph 8 of the Consultation Paper (for example, situations where there has been no financial loss, or the complaints are frivolous or vexatious).
- 2.3 The 2006 Report highlights the fact that some 94% of complaints to the Isle of Man Ombudsman are from non-residents. It highlights the inefficient allocation of resources in providing a service to persons who are not necessarily in need of such assistance. It would appear that (using the average number of complaints received by the Isle of Man Ombudsman since 2002 and the 94% / 6% non-resident / resident split cited in the 2006 Report) only about 15 to 25 complaints are received each year from Isle of Man residents. This includes ineligible complaints. It would be useful to know how many complaints the Isle of Man Ombudsman has actually upheld. The 2006 Report indicates that the average award in the Isle of Man in 2003 was small, around £600.
- 2.4 The 2006 Report suggests that the Jersey Ombudsman Scheme might anticipate handling about 50 cases a year (around one complaint a week including ineligible complaints) if it were available only to Jersey residents, and would almost certainly be under utilised.
- 2.5 The Consultation Paper highlights that the 1999 Edwards Report recommended that the Crown Dependencies introduce an Ombudsman Scheme and that the provision of such a Scheme would support the proposed application to the European Payments Council for Jersey's membership of the Single Euro Payments Area. The benefits of implementation are not considered in any detail, nor are the advantages of joining the Single European Payments Area.
- 2.6 The Consultation Paper does not highlight any cases of consumer abuse or any call from consumers (either from Jersey residents or from non-resident users of Jersey financial services) for an Ombudsman Scheme.

3 Estimated cost of the Scheme

- 3.1 It is proposed that the Scheme be funded by the Jersey finance industry.
- 3.2 The 2006 Report estimates the annual cost of the Scheme to be between £500,000 and £750,000. The Draft Annual Business Plan 2010: Sixth Amendment - Comments presented to the States on 21 September 2009 suggests that the cost of 5 full-time employees, a panel of 10 off-Island ombudsmen and the costs of premises, accommodation and travel indicate that the Scheme would cost at least £500,000 per year to operate, and anticipates that costs will have increased even further by 2011, when the Scheme might come into effect.

3.3 Assuming a cost of £750,000 and a case load similar to that of the Isle of Man Ombudsman, the cost per complaint (including all ineligible complaints and complaints resolved against the complainant) would be around £1,900 - £3,250. For each Jersey resident complainant (including all ineligible complaints and complaints resolved against the complainant) the figure would be around £30,000 - 50,000. If, say, a third of all complaints are eligible and resolved in favour of the complainant, then the cost of each complaint resolved in favour of the complainants might be roughly between £5,700 and £9,750 for all complainants (resident and non-resident) and between £90,000 and £150,000 for each complaint from a Jersey resident resolved in favour of the complainant. There is no reason to believe that the average pay-out would not roughly mirror that in the Isle of Man, of around £600.

4 What effect will the Scheme have on Jersey's financial services industry?

4.1 It might be expected that the Scheme (which will be a government initiative which does not answer directly to industry), will be expensive to the financial services industry both in terms of levies / fees to fund it, and in terms of time devoted to dealing with complaints made to it.

4.2 There may be a risk that, in certain sectors, the Scheme will be used as a subsidised way to dispute fees charged by financial services providers. As such, this further regulation could damage the Island's competitiveness.

5 Difficulty in implementation

5.1 The Consultation Paper suggests that providers of financial services in Jersey will be required to register with the Scheme. There is no indication in the Consultation Paper as to how the requirement to register will be framed. Defining the categories of business that will be required to register will be difficult. If the drafting is not clear (for instance if it is along the lines of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999), there will be considerable uncertainty as to whether the registration requirement applies to particular entities.

5.2 We expect that implementation will be all the more difficult if a joint Jersey and Guernsey Ombudsman Scheme is put in place. There will be difficulties in agreeing a common approach, particularly against a background of different law and regulation. It might be more appropriate if a joint Jersey / Guernsey Ombudsman Scheme could follow, rather than precede, the harmonisation of the Jersey and Guernsey regulatory regimes.

6 Response to specific issue raised in the Consultation Paper: "Comments are invited on the proposed categories of complainants able to use the scheme (section 7.4)"

The Jersey finance industry should be concerned that the Scheme should not catch businesses where there is already adequate redress through the Jersey Financial Services Commission ("JFSC") and court system and which currently benefit from light regulation.

Jersey residents / non-residents

We would argue that the Scheme should be available only to local residents, as non-resident users of Jersey financial services who are individuals tend to be high net worth (as the 2006 Report points out) and are therefore able to seek redress through the courts or via the JFSC, which adequately regulates financial services available to non-residents.

As the 2006 Report points out, if the Scheme were available to residents only it would be under utilised (handling perhaps one complaint a week) and in these circumstances we might question the utility of having the Scheme at all. However, there is no justification in opening the Scheme up to non-residents. We argue that this would be a hindrance to the Island's economy, with little or no benefit.

Trusts

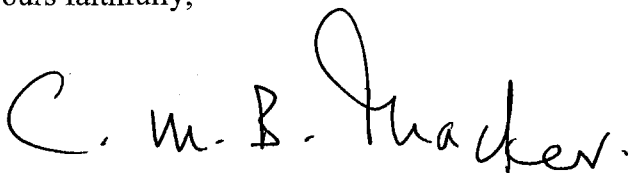
Included in the list of possible categories of complainant are beneficiaries under a trust. The Isle of Man Ombudsman has no jurisdiction in relation to trust business and it is suggested that if there is to be an Ombudsman Scheme in Jersey then a similar approach would be preferable. If the Scheme is to be made available to beneficiaries of trusts then it is suggested that access to the Scheme should only be granted to beneficiaries of trusts with assets of £1m or less.

Funds

Similarly, the Jersey funds industry will likely be keen to ensure that the scope of the Scheme does not extend to the non-retail Jersey funds market.

We would be happy to meet with the Department to discuss any of the above.

Yours faithfully,



CHARLES THACKER
President of the Law Society of Jersey