

Consultation

Jersey Public Services Ombudsman

SUMMARY

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

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

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

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

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

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

CONSULTATION PROCESS

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

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

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

WAYS TO COMMENT OR ASK QUESTIONS

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

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

Closing date for comments: 11th October 2019

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

Data Protection

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

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

For further information on how we handle personal data please visit gov.je/howweuseyourinfo.

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

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

- Yes, anonymously
- Yes, attributed

If yes, name to attribute comments to:

Email address:

Organisation to attribute comments to, where applicable:

Consultation

Jersey Public Services Ombudsman

Content

This consultation document includes the following sections:

Section 1: Background to proposals

Section 2: Functions of JPSO

Section 3: Findings, recommendations and remedy

Section 4: Jurisdiction and design principles

Section 5: Healthcare providers

Section 6: Other watchdogs and regulators

Section 7: Structure and governance

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

SECTION 1: BACKGROUND TO PROPOSALS

What is an Ombudsman?

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

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

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

Note: Definition

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

Background

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

- In 2000, the Machinery of Government Review Panel (the *Clothier Review*)¹ stated that the Complaints Panel arrangements in place at that point in time were unsatisfactory and that an independent Ombudsman should be established.
- In 2017, the Jersey Law Commission Report on *Improving Administrative Redress in Jersey*, recommended changes to internal Government of Jersey (GoJ) complaints handling processes, modernisation of the Tribunals system, ending the role of the Complaints Panel and setting up a Public Services Ombudsman².

¹ <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20ClothierReport%20100331%20CC.pdf>

² https://jerseylawcommission.files.wordpress.com/2016/04/jsylawcom_topicreport_adminredress_final.pdf

- In July 2017, the Independent Jersey Care Inquiry³ noted a lack of trust and confidence in government. The Inquiry stated that the recommendations of the Clothier Review should be given further consideration and that more should be done to improve openness and transparency in government.
- In March 2018, the States Assembly considered proposition P.32/2018 *Public Services Ombudsman: Establishment of Office*⁴ 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*⁵, a detailed report which considered many of the issues raised in P.32/2018 and set out proposals and recommendations relating to the design, remit and reach of a proposed Jersey Public Services Ombudsman (JPSO).

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

Establishment of the Ombudsman

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

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

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

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

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

³<https://statesassembly.gov.je/assemblyreports/2017/r.59-2017%20independent%20jersey%20care%20inquiry%20report%20%20-complete-.pdf>

⁴<https://statesassembly.gov.je/assemblypropositions/2018/p.32-2018.pdf>

⁵https://jerseylawcommission.files.wordpress.com/2018/11/jsylawcom_designingombudsman_final.pdf

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

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

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

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

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

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

Assumptions underpinning proposals

These proposals are predicated on a number of assumptions:

1. Name of the Ombudsman

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

2. Membership of professional associations

The JPSO will be established in such a way as to ensure it meets the membership criteria of the Ombudsman Association⁶.

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

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

3. Pan-island office

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

- reduce overhead costs as these could be shared

⁶ <http://www.ombudsmanassociation.org/>

- help drive service improvement as both islands could learn from each other

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

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

Note: Precedents for pan-Island working:

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

SECTION 2: FUNCTIONS OF THE JPSO

Overview of functions

The Ombudsman Association describes the functions of Ombudsman as follows:

Ombudsmen are independent, impartial and provide a free service. They investigate complaints that haven't been solved by the organisation complained against.

Ombudsmen investigate complaints when something has been handled badly or unfairly, making someone suffer as a result.

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

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

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

What is meant by maladministration and service failure?

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

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

The UK Parliamentary and Health Service Ombudsman takes the approach of describing what good administration for public services looks like⁷, rather than describing maladministration which can be difficult to define. Good includes:

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

⁷ <https://www.ombudsman.org.uk/about-us/our-principles/principles-good-administration/summary>
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- being open and accountable
 - being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete
 - stating its criteria for decision making and giving reasons for decisions
 - handling information properly and appropriately
 - keeping proper and appropriate records
 - taking responsibility for its actions.

- acting fairly and proportionately
 - treating people impartially, with respect and courtesy
 - treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests
 - dealing with people and issues objectively and consistently
 - ensuring that decisions and actions are proportionate, appropriate and fair.

- putting things right
 - reviewing policies and procedures regularly to ensure they are effective
 - asking for feedback and using it to improve public services and performance
 - ensuring that the public service body learns lessons from complaints and uses these to improve services and performance.

Consideration of complaints

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

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

The International Ombudsman Institute sets out:

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

However, the role of an Ombudsman goes beyond legality and compliance. The Ombudsman is a promoter of human rights and good administration. In considering complaints the Ombudsman needs to be able to ask, was the outcome fair and was the outcome just? Often, the Ombudsman will look to ensure that decision makers used any discretion available to them appropriately.⁸

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

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

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

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

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

Making a complaint

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

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

The following may make a complaint to the JPSO:

- individual members of the public or, for example, married couples or groups of people subject to the same decisions
- some categories of businesses which have been affected by a decision

⁸ International Ombudsman Institute, *Developing and Reforming Ombudsman Institutions* (2017)
Consultation on a Jersey Public Services Ombudsman

- children and young people, in which case the JPSO may consult with the Children's Commissioner in order to determine who is best placed to investigate the complaint
- representatives including family members, elected officials or others will be able to make a complaint on behalf of another person, providing there is evidence of their consent

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

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

Complaints falling outside the JPSO remit

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

- decision-making relating to legal proceedings
- employment and personnel matters
- where there is an established route of redress via a tribunal or court (established routes of redress do not include the Planning Committee or a Planning appeal where the decision rests with members of the States Assembly or the Minister)
- judicial decision-making and the conduct of judges
- criminal justice and police functions⁹
- international affairs
- complaints about matters which did not negatively impact the complainant, except for where the JPSO uses its own initiative powers

The JPSO will only investigate a complaint where:

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

For example, the JPSO:

⁹ This includes the States of Jersey Police and the Police Authority. It does not include the Police Complaints Authority. See Section 6. Consultation on a Jersey Public Services Ombudsman

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

Note: Comparison with other jurisdictions

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

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

Time limit on complaints

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

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

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

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

Section 2 Questions: Functions of the JPSO

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

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

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

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

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

Comments.....
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.....

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

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

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

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

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

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

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

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

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

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

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

Comments.....

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

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

Comments.....

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

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

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

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

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

SECTION 3: FINDINGS, RECOMMENDATIONS AND REMEDY

Background

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

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

- what it needs to do to put right what went wrong (i.e. to make a different decision or take a different action) to improve, or to stop the same error happening again (i.e. seek to achieve systemic improvement), or
- that it must provide a remedy, for example an apology or a payment to compensate for loss¹⁰

The Ombudsman Association set out that:

When an ombudsman investigates a complaint he or she can either uphold it (find it in the favour of the person who has complained) or not uphold it (find that the organisation complained about has not behaved wrongly). The ombudsman can usually recommend redress: a sort of compensation for what has gone wrong.¹¹

Binding or non-binding decisions

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

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

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

¹⁰ The JPSO will not have the power to recommend disciplinary action against staff but the JPSO may find that staff made errors.

¹¹ <http://www.ombudsmanassociation.org/young-people/all-about-omb.htm>

Option 1	<p>JPSO's findings and recommendations are not binding.</p> <p>This means they can be rejected by the public body and/or the complainant.</p>						
Option 2	<p>JPSO's findings are binding, but recommendations are not binding.</p> <p>Findings could be binding between:</p> <table border="1" data-bbox="309 510 1433 703"> <tr> <td data-bbox="309 510 480 584">Option 2A</td> <td data-bbox="480 510 1433 584">the public body and the complainant, but only in relation to the specific complaint investigated by the JPSO</td> </tr> <tr> <td data-bbox="309 584 480 658">Option 2B</td> <td data-bbox="480 584 1433 658">the public body and the complainant for all purposes (for example, the ongoing service arrangements between them)</td> </tr> <tr> <td data-bbox="309 658 480 703">Option 2C</td> <td data-bbox="480 658 1433 703">the public body and any person it provides the service to</td> </tr> </table>	Option 2A	the public body and the complainant, but only in relation to the specific complaint investigated by the JPSO	Option 2B	the public body and the complainant for all purposes (for example, the ongoing service arrangements between them)	Option 2C	the public body and any person it provides the service to
Option 2A	the public body and the complainant, but only in relation to the specific complaint investigated by the JPSO						
Option 2B	the public body and the complainant for all purposes (for example, the ongoing service arrangements between them)						
Option 2C	the public body and any person it provides the service to						
Option 3	<p>JPSO's findings and recommendations are binding and enforceable.</p> <p>The means that the finding have to be accepted by the public body and complainant and that the public body must act on the recommendations.</p> <p>Findings and recommendations could be binding between:</p> <table border="1" data-bbox="309 1003 1433 1196"> <tr> <td data-bbox="309 1003 480 1077">Option 3A</td> <td data-bbox="480 1003 1433 1077">the public body and the complainant but only in relation to the specific complaint investigated by the JPSO</td> </tr> <tr> <td data-bbox="309 1077 480 1151">Option 3B</td> <td data-bbox="480 1077 1433 1151">the public body and the complainant for all purposes (for example, the ongoing service arrangements between them)</td> </tr> <tr> <td data-bbox="309 1151 480 1196">Option 3C</td> <td data-bbox="480 1151 1433 1196">the public body and any person it provides the service to</td> </tr> </table>	Option 3A	the public body and the complainant but only in relation to the specific complaint investigated by the JPSO	Option 3B	the public body and the complainant for all purposes (for example, the ongoing service arrangements between them)	Option 3C	the public body and any person it provides the service to
Option 3A	the public body and the complainant but only in relation to the specific complaint investigated by the JPSO						
Option 3B	the public body and the complainant for all purposes (for example, the ongoing service arrangements between them)						
Option 3C	the public body and any person it provides the service to						
Option 4	<p>JPSO's findings and recommendations are binding and enforceable unless rejected/successfully challenged by the public body or the complainant.</p> <p>If findings and recommendations can be challenged, consideration needs to be given as to how they are challenged.</p>						

Effect of binding decisions

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

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

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

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

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

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

In a democratic system it is the role of the parliament, i.e. the States Assembly, to have oversight of government, to promote transparency and accountability and hold elected leaders to account¹².

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

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

¹² http://ec.europa.eu/governance/docs/doc3_en.pdf

Challenging or rejecting decisions

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

- Option A: Appeal to the JPSO

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

- Option B: Judicial review of the JPSO decision

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

- Option C: Appeal to the Royal Court

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

Advantages and disadvantages of court appeal/review

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

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

- Option D: Statement to the Assembly

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

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

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

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

Remedy

The Ombudsman Association set out that:

When an ombudsman investigates a complaint he or she can either uphold it (find in favour of the person who has complained) or not uphold it (find that the organisation complained about has not behaved wrongly). The ombudsman can usually recommend redress: a sort of compensation for what has gone wrong.¹³

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

Recommendations for remedies can include:

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

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

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

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

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

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

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

¹³ <http://www.ombudsmanassociation.org/young-people/all-about-omb.htm>

Note: International Ombudsman Institute Best Practice Guide

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

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

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

Complaints that do not relate to a Minister

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

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

Note: Parish Assembly

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

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

Section 3 Questions: Findings, Recommendations and Remedy

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

Findings should be binding between:

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

Comments.....
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.....

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

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

Comments.....
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.....

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

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

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

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

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

Comments.....

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

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

Comments.....

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

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

Comments.....

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

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

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

SECTION 4: JURISDICTION AND DESIGN PRINCIPLES

Overview

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

These include:

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

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

It is proposed that the JPSO Law will include:

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

Entities falling outside the JPSO remit

The following will fall outside the JPSO's remit:

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

Healthcare providers (See Section 5)

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

Entities falling within the JPSO remit

The following will fall within the JPSO's remit:

Public bodies

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

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

Education bodies

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

Trading and arm's length entities¹⁴

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

Financial services bodies¹⁵

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

¹⁴ The following are also arm's length bodies but it is proposed that they are excluded from the remit of the JPSO because they do not meet with the design principles

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

¹⁵ The list of financial services organisations from the Jersey Law Commission report, also includes Jersey Finance Ltd which is it proposed is excluded from the remit of the JPSO because no services to the public are delivered.

Other entities

Entity	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
Citizen's Advice Jersey	Yes	
Jersey Advisory and Conciliation Service	Yes	
Jersey Arts Centre	Yes	
Jersey Arts Trust	Yes	
Jersey Community Relations Trust	Yes	
Jersey Employment Trust	Yes	
Jersey Childcare Trust	Yes	
Jersey Consumer Council	Yes	
Jersey Gambling Commission	Yes	
Jersey Health and Safety Council	Yes	
Jersey Heritage Trust	Yes	
Jersey Opera House	Yes	
Jersey Law Commission	Yes	
Jersey Overseas Aid Commission	Yes	
Jersey Safeguarding Partnership Board	Yes	
Public Employees Contributory Retirement Scheme/Jersey Teachers Superannuation Fund	Yes	
Public Lotteries Board	Yes	
Records Advisory Board	Yes	
Royal Jersey Agricultural and Horticultural Society	Yes	
Skills Jersey	Yes	
Sport Jersey	Yes	
Tourism Development Fund	Yes	
Westaway Donations Council		Managed by a panel appointed by Health Department

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

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

Case study: Ports of Jersey

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

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

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

Case Study: Education

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

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

Good practice benchmarks

The International Ombudsman Institute (IOI) sets out:

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

and

Similarly, in cases where public services which are currently in the jurisdiction of an existing Ombudsman are being privatised, the IOI strongly recommends that access to redress should remain unchanged... Ultimately, all public services, however they are provided, should fall within the jurisdiction of a public services Ombudsman.¹⁶

¹⁶ International Ombudsman Institute, *Developing and Reforming Ombudsman Institutions* (2017) page 3.
Consultation on a Jersey Public Services Ombudsman

Case Study: Court Service

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

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

Case Study: Parishes

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

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

Section 4 Questions: Jurisdiction and Design Principles

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

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

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

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

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

Comments.....
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.....

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

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

Comments.....
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.....

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

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

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

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

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

Comments.....
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.....

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

Comments.....
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SECTION 5: HEALTHCARE PROVIDERS

Overview

Jersey's healthcare system

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

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

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

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

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

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

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

Section 5 Questions: Healthcare providers

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

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

Comments.....
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.....

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

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

Comments.....
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SECTION 6: OTHER WATCHDOGS AND REGULATORS

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

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

1. Joint working: JPSO will be provided powers in law to undertake joint working with other watchdogs where those other watchdogs agree to joint working. This will include in relation to individual cases or areas where there are concerns about systemic failings
2. Oversight of complaints handling policy: JPSO will have oversight of how the watchdog designs and operates its internal complaints handling process
3. Investigate failure to act in accordance with complaints policy: JPSO will have the power to investigate complaints¹⁷ about how the watchdog applied its internal complaints processes but will not be able to investigate whether the decision of that watchdog was right

Case study

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

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

In other words, JPSO:

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

¹⁷ The UK's Parliamentary and Health Service Ombudsman remit also covers numerous commissions and commissioners, for example the Care Quality Commission, Care Commission, Competitions and Market Authority, Health and Safety Executive, Information Commissioner, Pensions Regulator

Watchdog	Joint working	Oversight of complaints policy	Investigate failure to act in accordance with complaints policy
Care Commission		Yes	Yes
Children's Commissioner	JPSO will investigate maladministration and service failure complaints. Children's Commissioner will investigate children's rights complaints. Can undertake joint investigations ¹⁸ .	Yes	Yes
Commissioner for Standards	The Commissioner for Standards may refer cases to, and share information with, the JPSO ¹⁹ .	Yes	Yes
Comptroller and Auditor General (C&AG)	C&AG may refer cases to, and share information with the JPSO.		
Jersey Appointments Commission		Yes	Yes
Jersey Competition and Regulatory Authority		Yes	Yes
Jersey Financial Services Commission		Yes	Yes
Jersey Police Complaints Authority		Yes	Yes
Information Commissioner/ Data Protection Authority		Yes	Yes

Section 6 Questions: Other Watchdogs and Regulators

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

¹⁸ A Memorandum of Understanding will be developed setting out the procedures and requirements for joint investigations.

¹⁹ Consideration will also be given as to whether the JPSO could incorporate the role of the Commissioner for Standards¹⁹ or whether there should a single access point for both as there may be some areas of significant cross over in their roles.

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

Comments.....
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SECTION 7: STRUCTURE AND GOVERNANCE ARRANGEMENTS

Body corporate

It is a key principle of ombudsman schemes that they are independent of the entities about which they consider complaints. This is a key criterion of the Ombudsman Association²⁰, and essential to ensuring public trust and confidence in their services.

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

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

Two potential structures are proposed:

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

Option 1

A non-executive Board who:

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

An Ombudsman who:

- makes decisions about findings and recommendations
- determines when and if the JPSO should use its own initiative investigation powers
- will be executive officer for the JPSO office, including oversight of the efficiency and effectiveness of case work officers

²⁰ <https://www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf>

- will lead on embedding learning in public services entities to support service improvement.

1.5 case work officers²¹ who:

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

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

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

Option 2

Board members who:

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

A principal case worker and 1.5 case work officers²² who:

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

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

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

²¹ The number of staff is based on Law Commission recommendations which were based on an analysis of the volume of complaints received by similar schemes in other small jurisdictions, and on comparable offices in Jersey.

²² The number of staff is based on Law Commission recommendations which were based on an analysis of the volume of complaints received by similar schemes in other small jurisdictions, and on comparable offices in Jersey.

Note: Ombudsman Association's independent criteria

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

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

Costs

It is estimated that the JPSO could cost:

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

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

Note: Current costs

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

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

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

Section 7 Questions: Structure and Governance Arrangements

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

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

Comments.....
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.....

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

- Too few
- The right amount
- Too many

Comments.....
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Strategic Policy, Performance and Population Department Public Services Ombudsman consultation Privacy Notice (Fair Processing Notice)

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

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

WHAT

What information do we collect about you?

We may collect the following types of information about you:

- Name
- Email address
- Postal address
- Organisation you represent

We will not hold or process the names and contact details of persons other than the person making contact (or persons authorised). Should we receive this information, it will be securely and confidentially deleted and/or disposed of.

WHY

Why do we collect information about you?

We need to collect and hold information about you, in order to:

- seek views of islanders and other stakeholders on the development and design of a public services ombudsman
- provide policy advice to Ministers
- register your interest in this subject area, in order that we can respond after the consultation closes
- respond to Freedom of Information Requests

HOW

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

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

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

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

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

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

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

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

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

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

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

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

Your rights

<p>You can ask us to stop processing your information You have the right to request that the Strategic Policy, Performance and Population Department (on behalf of the Council of Ministers) stop processing your personal data in relation to any of our services. However, this may cause delays or prevent us delivering a service to you. Where possible we</p>	<p>You request that the processing of your personal data is restricted You have the right to request that we restrict the processing of your personal information. You can exercise this right in instances where you believe the information being processed is inaccurate, out of date, or there are no legitimate grounds for the processing. We will always seek to comply with your request but we may be required</p>
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<p>will seek to comply with your request but we may be required to hold or process information to comply with a legal requirement.</p> <p>You can withdraw your consent to the processing of your information</p> <p>In the few instances when you have given your consent to process your information, you have the right to withdraw your consent to the further processing of your personal data. However, this may cause delays or prevent us delivering a service to you. We will always seek to comply with your request but we may be required to hold or process your information in order to comply with a legal requirement.</p> <p>You can ask us to correct or amend your information</p> <p>You have the right to challenge the accuracy of the information we hold about you and request that it is corrected where necessary. We will seek to ensure that corrections are made not only to the data that we hold but also any data held by other organisations/parties that process data on our behalf.</p>	<p>to continue to process your information in order to comply with a legal requirement.</p> <p>You can ask us for a copy of the information we hold about you</p> <p>You are legally entitled to request a list of, or a copy of any information that we hold about you.</p> <p>You can <u>submit a subject access request (SAR) using our online form.</u></p> <p>However where our records are not held in a way that easily identifies you, for example a land registry, we may not be able to provide you with a copy of your information, although we will do everything we can to comply with your request.</p>
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Complaints

<p>You can complain to us about the way your information is being used</p> <p>If you have an enquiry or concern regarding how the Strategic Policy, Performance and Population Department processes your personal data you can:</p> <p>Telephone: +44 (0)1534 445443</p> <p>Email: oneSPPP@gov.je</p> <p>Strategic Policy, Performance and Population Department 19 – 21 Broad Street St Helier Jersey JE2 3RR</p> <p>Or you can also complain to the Central Data Protection Unit about the way your information is being used</p> <p>Telephone: +44 (0)1534 440514</p> <p>Email: DataProtection2018@gov.je</p> <p>Central Data Protection Unit 3rd Floor 28-30 The Parade St Helier Jersey JE2 3QQ</p>	<p>You can also complain to the Information Commissioner about the way your information is being used</p> <p>The Office of the Information Commissioner can be contacted in the following ways:</p> <p>Telephone: +44 (0)1534 716530</p> <p>Email: enquiries@oicjersey.org</p> <p>Office of the Information Commissioner 2nd Floor 5 Castle Street St Helier Jersey JE2 3BT</p>
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