

JERSEY LAW COMMISSION

TOPIC REPORT

**DESIGNING A
PUBLIC SERVICES OMBUDSMAN
FOR JERSEY**

The Jersey Law Commission is an independent body appointed by the States Assembly to identify and examine aspects of Jersey law with a view to their development and reform. This includes in particular: the elimination of anomalies; the repeal of obsolete and unnecessary enactments; the reductions of the number of separate enactments; and generally, the simplification and modernisation of the law.

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SUMMARY

What could and should a public services Ombudsman scheme for Jersey look like? Those are the overarching questions addressed in this report of the Jersey Law Commission. To help policy makers (officials and Ministers), we identify options (the ‘could’ question). To do this, we examine international benchmarks for good design of ombudsman organisations, other design principles, the design and operation of 13 Ombudsman schemes in small jurisdictions, developments in Ombudsman organisations across the United Kingdom, knowledge of Jersey (gained from a series of research interviews and the lived experience of the Law Commissioners) and academic research. In relation to many features, the report also expresses the view of the Jersey Law Commission on what would be the best or preferable option (the ‘should’) – but the final choices will be for the Government of Jersey and the States Assembly to make.

The Ombudsman scheme could be designed to cover Jersey and the Bailiwick of Guernsey. If this political choice is made, it would be important for the Ombudsman office to have a physical presence in both main Islands to ensure that the Ombudsman is accessible to people and that the Ombudsman is able to develop effective relationships with the public sector bodies whose conduct the Ombudsman will influence (see Section 1.9).

There would be challenges in designing and operating a public services Ombudsman scheme combined with the current Channel Islands Financial Ombudsman (which looks into private sector complaints). There may, however, be opportunities for sharing resources between the two separate organisations (see Section 2.6).

Careful consideration should be given to how the new Ombudsman would fit into the existing landscape of watchdog and grievance resolution bodies in Jersey. Watchdog bodies are: the Children’s Commissioner, the Commissioner for Standards, the Information Commissioner, the Jersey Appointments Commission, the Comptroller and Auditor General, the Care Commission, States of Jersey Police, and the States Assembly and its committees and panels. Grievance resolution bodies are: internal complaints procedures in public bodies; Community Mediation; the planning appeals system; the Jersey Police Complaints Authority; appeals to tribunals (or the Jersey Administrative Appeals Tribunal previously recommended by the Jersey Law Commission), administrative appeals to the Royal Court, and the application for judicial review procedure to the Royal Court. A detailed mapping exercise is carried out in Chapter 2. There are opportunities for clarification of roles, rationalisation and joint working.

Policy makers should pause before making a final decision that the new scheme be called ‘the Jersey Public Services Ombudsman’. Other options explored in Chapter 3 include ‘Jersey Public Services Ombuds’ (a gender-neutral term) and ‘Jersey Complaints Commissioner’.

Chapter 4 of the report identifies six functions that could be carried out through the Ombudsman scheme: (1) oversight of internal complaints systems; (2) informal resolution of individual complaints; (3) formal resolution of individual complaints; (4) own-initiative investigations; (5) work to promote lesson-learning from complaints to improve services; and (6) a role that involves coordinating the whole administrative justice system. The Jersey Law Commission recommends that the design of the new Ombudsman scheme should enable the new organisation to carry out all these responsibilities.

Ombudsman schemes in other countries have a variety of different requirements and restrictions on who may make a complaint, when, and the procedure for doing so (see Chapter 5). The design of the Jersey Ombudsman should aim to maximise accessibility.

The bodies that fall within the Ombudsman's remit need to be defined. Chapter 6 provides a analysis of the surprisingly large number of bodies that may be defined as 'the public sector', organisations that receive significant public funding, and organisations that carry out functions of a public nature. The Ombudsman scheme should have a broad jurisdiction. Health and social care is likely to be by far the largest category in the Ombudsman's caseload. Complaints about clinical errors should be excluded from the Ombudsman scheme, at least initially. General Practitioners are independent professionals rather than public bodies but they are in receipt of substantial public funding for primary health care services. The Ombudsman should have power to work with GP practices to ensure that they have good quality internal complaints processes but the Ombudsman should not have jurisdiction to receive complaints from GPs' patients. Consideration needs to be given to whether regulated care providers should fall within the remit of the Ombudsman.

All Ombudsman schemes include some exclusions and restrictions on areas of decision-making that the Ombudsman may look into. There are normally cogent reasons for these. Chapter 7 examines possible exclusions and makes recommendations about which ones should apply to Jersey.

The types of faults that Ombudsman schemes can look into are defined differently in schemes around the world (see Chapter 8). There would be advantages to the Jersey scheme in using the terminology widely used across the United Kingdom – of 'maladministration' and 'service failure'. An alternative option would be to list in more detail the types of errors and failures that the Ombudsman may investigate.

The processes and outcomes that people taking a complaint to the Ombudsman will experience are important features of the design of the new scheme (see Chapter 9). The Ombudsman should adopt a range of techniques that reflect its dual role of addressing individual complaints and promoting lesson-learning. For some complainants, an informal and relatively quick process will be preferred, and where the complaint does not raise issues systemic issues or ones that may affect a wider group of individuals, this can be an appropriate technique, drawing on mediation approaches. Some complaints may require, and some complainants may prefer, an investigation. The design of the Jersey Ombudsman could include a public hearing as an alternative type of formal process: this would maintain a central characteristic of the current States of Jersey Complaints Panel scheme, which some people regard as a strength; but such a feature would be highly unusual if not unique among Ombudsman.

The extent to which the outcomes of formal resolution processes are binding on the public body complained about must be considered. There are three options, which are examined in Chapter 9: (1) findings and recommendations are not binding; (2) findings are binding or the public body must have a cogent reason for disagreeing with them, recommendations are not binding; (3) findings and recommendations, or some types of recommendations, are binding and may be enforced in the courts. The Jersey Law Commission's preferred option is that Ombudsman findings should be binding and if a Minister or other public body fails to follow a recommendation aimed at providing redress for injustice in the individual case, the aggrieved person should be able to go to court to enforce that recommendation.

The design for the Ombudsman scheme must include governance, appointment and accountability arrangements (Chapter 10). The Ombudsman could be established as a freestanding public office or as an organisation with a non-executive corporate board. Accountability would be strengthened and capacity for strategic development would be stronger if the Ombudsman organisation has a non-executive board (we suggest of four people), responsible for appointing the Ombudsman, providing strategic direction in the development and implementation of the new scheme, and defending the independence of the Ombudsman. The Ombudsman should make an annual report. Reports on individual investigations should be published on the Ombudsman's website with the name of the complainant anonymised.

On the resourcing requirements of the Ombudsman, a model is developed that consists of (1) the non-executive corporate board, (2) the Ombudsman, who would also be chief executive of the organisation and (3) a staff of two caseworkers, a part-time communications officer and an executive assistant. We estimate that the annual staff and running costs would be approximately £342,000.

| | | |
|----------|---|-----------|
| 1 | INTRODUCTION TO REPORT | 11 |
| 1.1 | Purpose of this Chapter | 11 |
| 1.2 | Aims of this report | 11 |
| 1.3 | What is a public services Ombudsman? | 11 |
| 1.4 | Issues covered in the report | 12 |
| 1.5 | About the Jersey Law Commission | 12 |
| 1.6 | The University of Essex research team | 13 |
| 1.7 | Scope and methods of work for this report | 14 |
| 1.8 | Proposition P.32/2018 | 15 |
| 1.9 | A joint Ombudsman with the Bailiwick of Guernsey? | 21 |
| 1.10 | User perspectives | 23 |
| 1.11 | Keeping 'the best elements' of the States of Jersey Complaints Panel system | 25 |
| 1.12 | Thanks and acknowledgements | 27 |
| 1.13 | Next steps | 27 |
| 2 | JERSEY'S CONSTITUTIONAL WATCHDOGS AND GRIEVANCE RESOLUTION BODIES | 28 |
| 2.1 | Purpose of this chapter: surveying the landscape and mapping future relationships | 28 |
| 2.2 | Design principles | 30 |
| 2.3 | Summary of design options | 30 |
| 2.4 | Jersey's constitutional watchdogs | 34 |
| 2.4.1 | Children's Commissioner for Jersey | 35 |
| 2.4.2 | Commissioner for Standards | 36 |
| 2.4.3 | Information Commissioner for Jersey | 37 |
| 2.4.4 | Jersey Appointments Commission | 37 |
| 2.4.5 | Office of the Comptroller and Auditor General (Jersey Audit Office). | 37 |
| 2.4.6 | Jersey Care Commission | 39 |
| 2.4.7 | States of Jersey Police | 40 |
| 2.4.8 | The States Assembly generally | 40 |
| 2.4.9 | Privileges and Procedures Committee | 41 |
| 2.4.10 | Public Accounts Committee | 42 |
| 2.4.11 | Scrutiny Panels of the States Assembly | 42 |
| 2.4.12 | States Members Remuneration Review Body | 43 |
| 2.4.13 | Referendum Commission | 43 |
| 2.5 | Jersey's grievance resolution institutions | 43 |
| 2.5.1 | Internal complaints systems | 44 |
| 2.5.2 | Community Mediation scheme | 44 |
| 2.5.3 | Planning appeals | 44 |
| 2.5.4 | States of Jersey Complaints Panel | 45 |
| 2.5.5 | Jersey Police Complaints Authority | 45 |
| 2.5.6 | Tribunal appeals | 45 |
| 2.5.7 | Appeals from public bodies to the Royal Court | 46 |
| 2.5.8 | Applications for judicial review to the Royal Court | 47 |
| 2.6 | Relations with the Channel Islands Financial Ombudsman | 47 |

| | | |
|----------|---|-----------|
| 3 | NAMING THE NEW BODY | 49 |
| 3.1 | Purpose of this chapter | 49 |
| 3.2 | Design options | 49 |
| 3.3 | Jersey Public Services Ombudsman | 49 |
| 3.4 | Jersey Public Services Ombuds | 50 |
| 3.5 | Jersey Complaints Commissioner / Jersey Commissioner for Administration | 51 |
| 3.6 | Other names | 51 |
| 3.7 | Recommendations | 52 |
| 4 | FUNCTIONS OF THE OMBUDSMAN | 53 |
| 4.1 | Purpose of this Chapter | 53 |
| 4.2 | Oversight of internal complaints system | 54 |
| 4.3 | Resolving individual complaints informally | 57 |
| 4.4 | Resolving individual complaints through investigation or adjudication | 57 |
| 4.5 | Should the Ombudsman have own-initiative powers? | 57 |
| 4.6 | Learning from complaints and enabling systematic improvements | 60 |
| 4.7 | A broader coordinating role across the administrative justice system? | 60 |
| 5 | ENSURING THE OMBUDSMAN IS ACCESSIBLE | 62 |
| 5.1 | Purpose of this chapter | 62 |
| 5.2 | International benchmarks and design principles | 62 |
| 5.3 | Raising awareness about the Ombudsman | 63 |
| 5.4 | Free at the point of use and financial support to aggrieved people | 64 |
| 5.5 | Format of complaints | 64 |
| 5.6 | Time limits for making complaints | 66 |
| 5.7 | Residency requirements for aggrieved persons | 67 |
| 5.8 | Defining impact of alleged fault | 68 |
| 5.9 | Individual aggrieved persons | 69 |
| 5.10 | Businesses | 69 |
| 6 | BODIES WITHIN AND OUTSIDE THE OMBUDSMAN'S REMIT | 70 |
| 6.1 | Purpose of this chapter | 70 |
| 6.2 | International benchmarks | 70 |
| 6.3 | Design principles | 71 |
| 6.4 | Suggested method of work | 71 |
| 6.4.1 | Human Rights (Jersey) Law 2000 | 72 |
| 6.4.2 | Public Finances (Jersey) Law 2005 | 73 |
| 6.4.3 | Employment of States of Jersey Employees (Jersey) Law 2005 | 74 |
| 6.4.4 | Freedom of Information (Jersey) Law 2011 | 74 |
| 6.5 | Analysis of bodies that should be within the Ombudsman' remit | 74 |
| 6.5.1 | Core public bodies | 75 |

| | | |
|----------|---|------------|
| 6.5.2 | Health care and social care | 76 |
| 6.5.3 | Education | 79 |
| 6.5.4 | States of Jersey trading operations | 81 |
| 6.5.5 | Financial services bodies | 82 |
| 6.5.6 | Watchdogs and regulators | 82 |
| 6.5.7 | Arm's length organisations | 83 |
| 6.5.8 | Bodies that should be outside the Ombudsman's jurisdiction | 84 |
| 6.5.9 | Law Society of Jersey | 84 |
| 7 | AREAS OF DECISION-MAKING THAT THE OMBUDSMAN MUST NOT INVESTIGATE | 85 |
| 7.1 | Purpose of this chapter | 85 |
| 7.2 | International benchmarks and design principles | 86 |
| 7.3 | Decisions relating to a public body commencing or conducting litigation | 86 |
| 7.4 | Employment disputes and personnel matters | 86 |
| 7.5 | Contractual and commercial transactions | 87 |
| 7.6 | Decision-making by courts and tribunals and their administrative staff | 88 |
| 7.7 | Criminal justice and police functions | 89 |
| 7.8 | International affairs | 90 |
| 7.9 | Education matters: schools | 91 |
| 8 | DEFINING ALLEGED FAULTS | 92 |
| 8.1 | Purpose of this chapter | 92 |
| 8.2 | International benchmarks and design principles | 92 |
| 8.3 | Other design principles | 92 |
| 8.4 | How different Ombudsman schemes define fault | 92 |
| 8.4.1 | Option 1: maladministration and service failure | 97 |
| 8.4.2 | Option 2 – listing different types of error into which a public body may fall | 99 |
| 8.4.3 | Jersey Law Commission's recommendation | 101 |
| 8.5 | Health and social care | 101 |
| 9 | PROCESSES AND OUTCOMES FOR AGGRIEVED PEOPLE FROM THE OMBUDSMAN | 102 |
| 9.1 | Purpose of this Chapter | 102 |
| 9.2 | International benchmarks of good practice | 104 |
| 9.3 | Other design principles | 105 |
| 9.4 | Attempt to resolve the complaint through public body's internal systems (stage 1a) | 105 |
| 9.5 | Using any appropriate tribunal or court proceedings instead of the Ombudsman (stage 1b) | 106 |
| 9.6 | Merits of administrative decisions taken without maladministration | 107 |
| 9.7 | Seeking help before contacting the Ombudsman (stage 2) | 108 |
| 9.8 | Intake stage (stage 3) | 108 |
| 9.9 | Assessment of Complaint by Ombudsman (stage 4) | 109 |
| 9.10 | Informal resolution including mediation (stage 5a) | 110 |
| 9.10.1 | What is informal resolution? | 110 |

| | | |
|-----------|---|------------|
| 9.10.2 | Legal frameworks and practices in other Ombudsman schemes | 111 |
| 9.10.3 | Recommendations on informal resolution | 111 |
| 9.11 | Investigation (stage 5b) | 112 |
| 9.11.1 | Step 1: defining the complaint and setting expectations | 112 |
| 9.11.2 | Step 2: gathering the evidence and planning the investigation | 113 |
| 9.11.3 | Step 3: analysing the evidence | 113 |
| 9.11.4 | Step 4: communicating the draft decision | 113 |
| 9.11.5 | Step 5: communicating the final decision | 113 |
| 9.12 | Adjudication (stage 5c) | 113 |
| 9.13 | Outcomes: the range of remedies following investigation or adjudication | 115 |
| 9.13.1 | Examples of outcomes | 116 |
| 9.14 | What happens if the public body does not accept the Ombudsman's findings or recommendations | 117 |
| 9.15 | 'Special' or 'second' reports | 118 |
| 9.16 | Outcomes: should Ombudsman findings and recommendations be binding and enforceable? | 118 |
| 9.16.1 | Arguments in favour of non-binding, non-enforceable outcomes | 119 |
| 9.16.2 | Arguments in favour of binding or enforceable outcomes | 120 |
| 9.17 | What should be the Jersey approach to enforceability/non-enforceability? | 122 |
| 9.17.1 | Option 1: Maintain a regime in which Ministers and other public bodies have discretion to decide not to accept and implement Ombudsman reports on individual cases. | 122 |
| 9.17.2 | Option 2: Drawing a distinction between 'findings' and 'recommendations' | 122 |
| 9.17.3 | Option 3: binding findings and enforceable recommendations | 122 |
| 10 | GOVERNANCE, APPOINTMENT AND ACCOUNTABILITY OF THE OMBUDSMAN | 124 |
| 10.1 | Purpose of this chapter | 124 |
| 10.2 | International benchmarks of good practice | 124 |
| 10.3 | Other design principles | 126 |
| 10.4 | Corporation sole or body corporate? | 126 |
| 10.4.1 | Corporation sole model | 127 |
| 10.4.2 | Non-executive Board model | 128 |
| 10.5 | Appointing the non-executive board | 129 |
| 10.6 | Appointment of the Ombudsman | 130 |
| 10.7 | Duration of the Ombudsman's term of office | 133 |
| 10.8 | Removal from office | 133 |
| 10.9 | Accountability | 134 |
| 10.9.1 | Legal accountability | 134 |
| 10.9.2 | Explanatory accountability | 134 |
| 10.10 | Membership of Ombudsman organisations | 135 |
| 10.10.1 | International Ombudsman Institute | 135 |
| 10.10.2 | Ombudsman Association | 136 |
| 10.10.3 | European Ombudsman Network | 137 |
| 10.10.4 | Public Services Ombudsman Network | 138 |
| 11 | WHAT RESOURCES THE OMBUDSMAN WILL NEED | 139 |
| 11.1 | Purpose of this chapter | 139 |

| | | |
|-----------|--|------------|
| 11.2 | Previous discussion of resources | 139 |
| 11.3 | The Jersey Law Commission's estimate of costs | 139 |
| 11.4 | Design decisions affecting cost | 140 |
| 11.5 | Human resources | 141 |
| 11.5.1 | Non-executive corporate board | 141 |
| 11.5.2 | A full-time salaried post of Ombudsman | 142 |
| 11.5.3 | The Island of Man model: a low-cost option | 142 |
| 11.5.4 | Staff | 143 |
| 11.6 | Premises | 144 |
| 11.7 | Other costs | 145 |
| 11.8 | A shadow Ombudsman? | 145 |
| 12 | INFORMATION ON PUBLIC SECTOR OMBUDSMAN SCHEMES IN SMALLER JURISDICTIONS | 146 |
| 12.1 | Bermuda Ombudsman | 147 |
| 12.2 | Cayman Islands Ombudsman | 157 |
| 12.3 | Gibraltar Ombudsman for Public Services | 165 |
| 12.4 | Tynwald Commissioner for Administration (Isle of Man) | 176 |
| 12.5 | Ombudsman Sint Maarten | 183 |
| 12.6 | Ombudsman Antigua and Barbuda | 191 |
| 12.7 | Barbados Ombudsman | 194 |
| 12.8 | Office of the Ombudsman, Cook Islands | 199 |
| 12.9 | Ombudsman of Curaçao | 206 |
| 12.10 | Parliamentary Ombudsman, Faroe Islands | 212 |
| 12.11 | Ombudsman for Inatsisartut (Greenland) | 218 |
| 12.12 | Office of the Ombudsman, Tonga | 224 |
| 12.13 | Office of the Ombudsman, Vanuatu | 232 |

1 INTRODUCTION TO REPORT

1.1 Purpose of this Chapter

This Chapter provides an overview of the report, defining what a public services Ombudsman is, explaining how the research was carried out and how it relates to the Proposition approved by the States Assembly in March 2018 on setting up an Ombudsman. The Chapter looks at the considerations that would come into play if the Ombudsman scheme were to extend beyond Jersey to the Bailiwick of Guernsey. The Chapter also discusses what potential users of the new Ombudsman may think and feel about it and the implications of this for further steps in the process of designing and operating the new scheme.

1.2 Aims of this report

This report of the Jersey Law Commission identifies and examines options for the design of a new public services ombudsman in Jersey.

On 22 May 2018, the States of Jersey Assembly voted in favour a Proposition (P.32/2018), agreeing in principle that there should be an Ombudsman and calling for further research to be carried out. This was a step towards implementation of a recommendation of the Jersey Law Commission in our 2017 report *Improving Administrative Redress in Jersey*.

This report aims to help policy makers (officials and Ministers), Members of the States Assembly, people working for public bodies affected by the proposal for an Ombudsman, and interested members of the public to envisage in more detail how this new organisation could operate and the impact it might have in the island. The report will also be of interest to experts in Ombudsman systems outside Jersey (and for this reason it explains some aspects of Jersey law and government that may be well-known within the island).

Some options are accompanied by specific recommendations but in relation to others it is acknowledged that there are finely balanced pros and cons, which ought to be a matter for political determination.

1.3 What is a public services Ombudsman?

The Ombudsman Association (a network of Ombudsman organisations across different parts of the world) describes Ombudsman schemes as being ‘committed to achieving redress for the individual, but also, where they identify systematic failings, to seek changes in the work of the bodies in their jurisdiction, both individually and collectively’.¹

Ombudsman schemes are widely recognised as important ways through which government is made accountable. As a recent report suggests, ‘Accountability is a part of good governance, and can increase the trustworthiness and legitimacy of the state in the eyes of the public’.² A well-designed, well-run Ombudsman scheme can help move a system from ‘a blame game’ (in which a culture of blame when things go wrong is perpetuated) to one in which there is genuine lesson learning to improve the quality of public services.

What the balance should be between ‘firefighting’ functions (looking into individual complaints) and ‘fire watching’ (working systematically to improve the quality of public administration) has been

¹ Ombudsman Association, Schedule 1 to the Rules: Criteria for the Recognition of Ombudsman Offices. <http://www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf>

² Institute for Government, *Accountability in modern government: Recommendations for Change* (October 2018).

debated and differs between different Ombudsman schemes. As we discuss in Chapter 4, Ombudsman schemes may also carry out a variety of other tasks³ including ensuring that governmental bodies have effective internal complaints processes

Different views and emphasise can also be seen on whether Ombudsman schemes should be regarded as part of the political process or the justice system.

- Placing an Ombudsman scheme within the political process could lead to emphasis on the link between the Ombudsman and members of the legislature (States Members in Jersey). The Ombudsman's powers (in this view) should be limited to making recommendations rather than determinations that are binding on Ministers and other public bodies.
- Understanding an Ombudsman scheme as part of the justice system could emphasise links with courts and tribunals. This perspective may also lead to design choices that favour findings of Ombudsman investigations to be binding on the government bodies complained against, and even the creation of court-based procedures through which the aggrieved person could seek to enforce a recommendation made by an ombudsman.

A universal feature is that Ombudsman services are free of charge to aggrieved people. Typically, the formal process is one of investigation (rather than adjudication as in the courts). But many though not all Ombudsman schemes use mediation and other informal methods to seek resolution of a grievance where possible.

1.4 Issues covered in the report

- How the Ombudsman would fit into Jersey's existing landscape of constitutional watchdogs and grievance resolution bodies (Chapter 2).
- What the Ombudsman should be called (Chapter 3).
- What functions the Ombudsman should carry out (Chapter 4).
- Ensuring that Ombudsman is accessible – who could use the service, when and how (Chapter 5).
- The bodies within and outside the Ombudsman's remit (Chapter 6).
- Areas of decision-making that the Ombudsman must not investigate (Chapter 7).
- How to define the types faults that the Ombudsman can look into (Chapter 8).
- Processes and outcomes for aggrieved people from the Ombudsman (Chapter 9).
- Governance, appointment and accountability of the Ombudsman (Chapter 10).
- What resources the Ombudsman will need (Chapter 11).

1.5 About the Jersey Law Commission

The Jersey Law Commission is the Island's independent law reform body appointed by the States Assembly to 'examine aspects of Jersey law with a view to their development and reform'. **This is a**

³ See Chapter 4 below.

Topic Report of the Jersey Law Commission, agreed by Commissioners. When the report uses ‘our’ and ‘we’, it refers to the collective opinion of the Commissioners.

This report builds on a previous report. In October 2017, the Jersey Law Commission published *Improving Administrative Redress in Jersey* (Topic Commissioner: Professor Andrew Le Sueur), which set out wide ranging recommendations for reform of Jersey’s administrative justice system, covering how public bodies deal with complaints, the tribunal system, the States of Jersey Complaints Panel, the role of the Royal Court and use of alternative dispute resolution methods including mediation.⁴

In Chapter 5 of the 2017 report, possible modifications to the current States of Jersey Complaints Panel system were considered and a series of recommendations were made on how its operation could be improved. We concluded, however, that this package of reforms would be suboptimal and that the better way forward would be to consider replacing the Complaints Panel with an Ombudsman. In Chapter 6, the Jersey Law Commission recommended that the Government of Jersey should make an ‘in principle’ decision to support next steps in the creation of a Jersey Public Services Ombudsman; and should request the Jersey Law Commission to develop institutional design options for new Ombudsman.

1.6 The University of Essex research team

The background research for this report has been conducted by a team from the University of Essex.

The University of Essex provided funding of almost £15,000 to support this project, via the Economic and Social Research Council’s Impact Acceleration Account (IAA) scheme. IAAs enable research organisations in the United Kingdom to develop knowledge exchange with users of research. The Jersey Law Commission thanks the University of Essex and the ESRC for facilitating this research.

The Topic Commissioner⁵ and principal author of this report is **Andrew Le Sueur**, who is Professor of Constitutional Justice at the University of Essex. He was joined by two other experts on Ombudsman and administrative justice to conduct the research for this project.

Margaret Doyle is a Visiting Senior Research Fellow at the University of Essex. Previously, she was the Senior Research Fellow for the United Kingdom Administrative Justice Institute (UKAJI) project, based at the University of Essex and funded by the Nuffield Foundation. She mediates in disputes involving special educational needs and disability discrimination and has published widely in the field of ADR. She is an associate member of the Ombudsman Association and serves on its Validation Committee. She is also a consultant trainer on the Queen Margaret University Certificate in Ombudsman and Complaint Handling Practice course.

Varda Bondy is an Honorary Senior Research Fellow at the University of Essex, where she was a part of the UKAJI project. Previously, she was Research Director at the Public Law Project (a national legal charity). She has published numerous empirical research projects in the field of public law and administrative justice, bringing her insights as a former legal aid practitioner into academic research.

Disclaimer: the recommendations contained in this report are those of the Jersey Law Commission are not necessarily shared by Margaret Doyle and Varda Bondy.

⁴ Topic Report 1/2017/TR, available on the Jersey Law Commission website.

⁵ Andrew Le Sueur’s five-year term of office as a Law Commissioner expired on 7 October 2018.

1.7 Scope and methods of work for this report

For most issues, the starting point was to **identify any international benchmarks of good practice and essential criteria** from the main Ombudsman networks – the Ombudsman Association (previously known as the British and Irish Ombudsman Association) and the International Ombudsman Institute. The report assumes that in creating a new Ombudsman system, policy makers in Jersey will want to meet essential criteria (for example, in relation to independence of the new body) so that the new Ombudsman would be eligible to join relevant associations as a full member.⁶

‘Design principles’ were also identified in relation to most features of the new Ombudsman, if the international benchmarks did not seem to fully capture the range of considerations that should be applied. These are the underpinning values of the design. For example, in relation to how people can access the Ombudsman system, a design could be driven by the desire to make access as easy as possible or could adopt a stance that restrictions on accessibility are needed to protect other values. (In Chapter 5, we recommend that the design principle adopted in Jersey should be maximize ease of access).

For each issue, **we looked at design solutions adopted in other Ombudsman systems**, especially those serving smaller communities and in the United Kingdom. Clearly, Jersey is not the first territory to design an Ombudsman scheme and previous developments, in other places, can provide useful points of reference. This comparative work helped identify design principles and practical models that could be adopted, adopted in modified form, or rejected for the Jersey Ombudsman scheme. We have sought to develop features for an Ombudsman scheme that would be appropriate for Jersey. In relation to some points, this has led us to reject approaches commonly adopted elsewhere – for example, most public services Ombudsman schemes exclude grievances relating to employment from the Ombudsman’s remit but in Chapter 7 we explain why our preferred option for the Ombudsman in Jersey to be able to deal with this category of complaints. In Chapter 9, we recommend that an aggrieved person should be able to go to court to enforce some types of Ombudsman recommendation if the Minister or other public body declines to follow it: this would be an unusual but not unprecedented feature.

The research team’s **understanding of the Jersey context** was aided by a series of semi-structured interviews carried out by the research team during a two-day visit to Jersey in May 2018. We are grateful to those who agreed to contribute their time, including through follow-up email exchanges, from the following organisations. None of the interviewees should be taken to necessarily agreeing (or disagreeing) with the analysis or recommendations contained in this report, which are solely the responsibility of the Jersey Law Commission:

Channel Islands Financial Ombudsman (Mr Doug Melville and Mr David Thomas)
 Children’s Commissioner for Jersey (Ms Deborah McMillan)
 Jersey Audit Office (Mr Stephen Warren)
 Jersey Citizens Advice Bureau (Mr Malcolm Ferey)
 Jersey Financial Services Commission (Mr John Everett).

Emerging themes and drafts of this report were discussed by the Jersey Law Commissioners, which provided another check on the fit of the options and recommendations with the Jersey context.

⁶ The current States of Jersey Complaints Panel does not qualify for full ombudsman status in the Ombudsman Association but is an associate member as a ‘complaints handler’ organisation.

1.8 Proposition P.32/2018

Shortly before the 2018 General Election in Jersey, the States Assembly debated Senator Philip Ozouf's proposition 'Public Services Ombudsman: Establishment of Office' (P.32/2018) on 22 March 2018.

Senator Ozouf did not consult the Jersey Law Commission about the proposition but P.32/2018 called for progression as a matter of priority of recommendations made by the Jersey Law Commission (October 2017), and previously by the Clothier *Report on the Machinery of Government in Jersey* (December 2000) for a public services Ombudsman to be established to hear and determine complaints of maladministration.

The main arguments in favour of an Ombudsman discussed during the debate can be summarised as follows.

- An Ombudsman scheme would enable expert attention to be given to complaints, which can be complex.
- The current system has not been effective in exposing and addressing systematic failures in areas of public services.
- A public services Ombudsman would complement the work of the new Children's Commissioner.
- Not having a public services Ombudsman in Jersey is unusual.
- A public services Ombudsman would have the ability to improve public sector performance, by encouraging departments to learn from their mistakes.
- An Ombudsman would reflect the maturing and modernising of the public sector and machinery of government in Jersey.
- People in Jersey feel they currently have a lack of recourse to be able to question administrative decisions. The current States of Jersey Complaints Panel has never been well publicised.
- The Clothier report into reform of the machinery of government in Jersey called for an Ombudsman in 2000 and it is time that this was implemented.

Other Members spoke against the Proposition, making the following points.

- The current States of Jersey Complaints Panel serves the island well, providing a professional and effective service.
- '... an ombudsman's office, with all their advisers and caseworkers, will be a lot more formal and therefore less welcoming to people who have got a grudge against a department or ministry'.
- There will be 'less ability for informal resolution'.
- The members of the Complaints Panel work in an honorary capacity, at little cost to the island.
- An Ombudsman office would be able to do no more than the Complaints Panel currently does, as neither has/would have power to make binding recommendations.
- If there are weaknesses in the way the Complaints Panel is designed, these should be addressed rather than embarking on a new and untested Ombudsman scheme.
- The island does not need yet another quango.

Twenty-four members voted in favour of the Proposition and eight against.⁷

The following table shows where and **how the Jersey Law Commission has addressed the elements of P.32/2018 Amd. in this report.**

⁷ Members opposing the Proposition who returned to the States Assembly after the general election are: Connétable Len Norman (who joined the new Government as Minister for Home Affairs); the Connétable of Trinity; Deputy Kevin Lewis (who joined the Minister for Infrastructure); and Deputy Richard Rondel (who joined as Minister for Health and Social Services).

| Wording of P.32/2018: | Jersey Law Commission comments: |
|---|---|
| (a) that the recommendations from the Clothier Report on the Machinery of Government in Jersey and the Jersey Law Commission that “An Ombudsman should be appointed to hear and determine complaints of maladministration” should be progressed as a matter of priority; | This report does not revisit the question whether an Ombudsman should be established. This was considered in detail in our October 2017 report <i>Improving Administrative Redress in Jersey</i> Chapters 5 and 6. |
| (b) subject to the findings of the research set out in paragraph (c), to agree that the scope of a Jersey Public Services Ombudsman should include – (i) the departments of the States of Jersey; and (ii) regulatory bodies appointed by the States of Jersey, except for the Jersey Financial Services Commission; | The range of bodies that should fall within the scope of the Ombudsman are considered in Chapter 6 below. We did not identify a compelling justification for excluding the JFSC from the Ombudsman’s remit. |
| (c) to request the Chief Minister to commission research on the costs of introducing a Public Services Ombudsman scheme in Jersey, which should encompass the matters for research set out in Appendix 1 to the accompanying Report [see next Table, below]; | Questions of the resources that would be needed by the Ombudsman scheme are addressed in Chapter 11. The eventual costs will be influenced by the design choices made by the Government of Jersey and the States Assembly. Some costs will also depend on the number of complaints handled by the Ombudsman. Our estimate is that annual running costs would be approximately £342,000. |
| (d) to request the Chief Minister to consult widely on the design of the proposed Public Services Ombudsman scheme, including with the members of the Jersey Complaints Board, which was established by the Administrative Decisions (Review) (Jersey) Law 1982, in order that the best elements of the Complaints Panel scheme are retained within the new system; | <p>The timeframe for the research leading to this report did not permit the Jersey Law Commission to carry out a public consultation.</p> <p>The research was, however, informed by a series of interviews with stakeholders – see below.</p> |

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| <p>(e) subject to the findings of the research set out in paragraph (c), to request the Chief Minister to bring forward primary legislation to establish the office of a Public Services Ombudsman, to replace the States of Jersey Complaints Board, as soon as is practicable, and to agree that the primary Law will include provisions for the detail and scope of the Ombudsman arrangements to be set out in Regulations and, where appropriate, Order-making powers;</p> | <p>This report will help inform the design of this legislation. In this report, the proposed law is referred to as the Public Services Ombudsman (Jersey) Law.</p> |
| <p>(f) subject to the findings of the research set out in paragraph (c), to request the Chief Minister to establish, and appoint with the concurrence of the Jersey Appointments Commission, a minimum of 3 suitably qualified individuals to act as a Shadow Board to oversee and drive the tasks set out in this proposition and, as soon as is practicable, for this Board to assume the role of a Shadow Public Services Ombudsman;</p> | <p>In Chapter 10 below, the governance arrangements for the Ombudsman are considered. The Jersey Law Commission agrees that the Ombudsman should be a corporate body, including a non-executive board.</p> <p>Chapter 11 considers the pros and cons of ‘shadow’ working ahead of the formal establishment of the Ombudsman scheme.</p> |
| <p>(g) to request relevant Ministers to ensure that there is good co-ordination between the work of the newly-appointed Children’s Commissioner and the proposed Public Services Ombudsman;</p> | <p>Chapter 2 below considers the network of existing institutions in Jersey into which the new Ombudsman should fit.</p> |
| <p>(h) to request that the Ombudsman Board, as described in paragraph (f), should work in close co-operation with the Financial Services Ombudsman, with a view to assessing the desirability of creating a single Ombudsman Service for Jersey, if there are tangible</p> | <p>This is addressed in Chapter 2. There report concludes that creating a single Ombudsman service, covering both the public sector and financial services, would be challenging but there may be opportunities for shared use of resources.</p> |

benefits for complainants, service providers and the 2 Ombudsman functions;

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| <p>(i) subject to the findings of the research set out in paragraph (c), to request the Chief Minister to set out a timetable for bringing such primary legislation and Regulations to the States for approval, and for appointing a Shadow Ombudsman Board and bringing an Ombudsman service into operation.</p> | <p>This is a matter for the Chief Minister.</p> |
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P.32 also contained in Appendix 1 a **Suggested Work Programme** (which was derived in part from our October 2017 report *Improving Administrative Redress in Jersey*). We comment on how this report addresses the elements of this programme in the following table.

| Senator Ozouf's suggested work programme | What the Jersey Law Commission did |
|--|---|
| Assessment of the operation and effectiveness of Ombudsman schemes in small jurisdictions, e.g. Bermuda, Gibraltar and the Cayman Islands. | <p>The research team collected information about 13 Ombudsman schemes operating on smaller jurisdictions. In relation to five, desk-based research was followed up with interviews via exchange of email or video conferencing:</p> <ol style="list-style-type: none"> 1. Ombudsman for Bermuda 2. Cayman Islands Ombudsman 3. Gibraltar Public Services Ombudsman 4. Tynwald Commissioner for Administration, Isle of Man 5. Ombudsman, Sint Maarten <p>A further eight Ombudsman schemes were studied through desk-based research only:</p> <ol style="list-style-type: none"> 6. Ombudsman for Antigua and Barbuda 7. Barbados Ombudsman 8. Office of the Ombudsman, Cook Islands 9. Ombudsman of Curaçao 10. Faroe Islands: Løgtingsins Umboðsmaður (Parliamentary Ombudsman) 11. Ombudsmanden for Inatsisartut, Greenland 12. Ombudsman Tonga 13. Ombudsman Vanuatu |

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| | <p>The Complaints Commissioner for the Turks & Caicos Islands may also fall into the category but the research team were unable to find sufficient information about it to include it in the study.</p> <p>The criteria for inclusion was that the territory had a population of less than 250k and the Ombudsman was a member of the Ombudsman Association or the International Ombudsman Institute. A questionnaire was developed to capture information available in the public domain about each Ombudsman. Follow up interviews or exchanges of emails was carried out with some Ombudsman organisations to elaborate or clarify information. The completed questionnaires are set out in Chapter 12.</p> |
| <p>What lessons can be learned for Jersey from recent developments in Ombudsman schemes across the U.K. – particularly the newer schemes in Wales, Scotland and Northern Ireland.</p> | <p>The design and experience of larger-scale Ombudsman schemes was examined, in particular:</p> <ul style="list-style-type: none"> • The UK Parliamentary and Health Service Ombudsman (PHSO). Legally is comprises two separate entities – the Parliamentary Commissioner for Administration (set up in 1967) and the Health Service Commissioners (created in 1993). • Local Government and Social Care Ombudsman (dating back to 1974) • Scottish Public Services Ombudsman (2002) • Public Services Ombudsman for Wales (2005) • Northern Ireland Public Services Ombudsman (2016). <p>Insights gained are integrated throughout the report under relevant headings. No assumptions were made that ‘UK solutions’ would be appropriate for Jersey; some are, others are not.</p> |
| <p>Consider which other public bodies in addition to those approved by the Assembly should be included within the remit of a Jersey Ombudsman.</p> | <p>Options are discussed in Chapter 6.</p> |
| <p>With regard to design and implementation, to consult widely on the design of the Jersey Ombudsman, including the members of the States of Jersey Complaints Board, to ensure that the best elements of this scheme are included.</p> | <p>This aspect of the work programme will be for the Chief Minister to take forward.</p> <p>We set out, below, our assessment of the ‘best elements’ of the current States of Jersey Complaints Panel scheme and how these might be included in the new Ombudsman scheme.</p> |

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| Consider how the proposals for a wide-ranging public sector and health remit can complement the recent appointment of the Children's Commissioner to ensure that maximum advantage of the complementary aspects of these roles is made. | The landscape of existing institutions in which the new Ombudsman scheme will operate is considered in Chapter 2. |
| Explore the procedures available to a Jersey Ombudsman, particularly alternative dispute resolution methods ("ADR"). | Considered in Chapter 9. |
| Examine the potential relationships between a Jersey Ombudsman and other mechanisms for redress (including the Royal Court and appeals to Tribunals). | Considered in Chapter 9. |
| Estimate a range of the types of potential case-loads that a Jersey Public Services Ombudsman could expect within public sector service types, e.g. Health, Social Security, Planning and non-States Departments. | Considered in Chapter 11. It is predicted that health and social services issues will form the largest category of work. |
| Explore what, if any, scope there may be for joint working between the Channel Islands Financial Ombudsman ("CIFO") and a Public Services Ombudsman. | Considered in Chapter 2. |
| Consider the political and practical feasibility of developing a Public Services Ombudsman | Considered in Chapter 1, below. |

in conjunction with Guernsey, examining whether there are lessons for joint working from the creation of CIFO.

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| To work closely with the Jersey Courts Service and associated Tribunals to ensure efficient, effective and efficacious working. | This will be for the Ombudsman, once established. |
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| To ensure that the new Ombudsman is set up in a manner which maximises the opportunity for embracing the latest digital working practices to ensure value- for- money, maximum public accessibility and transparent working. | Considered in Chapter 5. |
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| To set out the financial and staffing implications, a full costed operating model for a Jersey Ombudsman, and to ensure that the necessary resource requirements are placed before the States Assembly for approval in the 3rd Medium Term Financial Plan. | Considered in Chapter 11. |
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1.9 A joint Ombudsman with the Bailiwick of Guernsey?

P.32 referred to the ‘political and practical feasibility’ of developing a Public Services Ombudsman in conjunction with Guernsey. Detailed analysis of whether this is desirable, and if so how it could best be achieved, was not possible within the time and resources available for this project and accordingly **the we make no specific recommendations on a joint Ombudsman covering the Channel Islands**. A separate piece of research would be required looking at both the particular

features of public administration in the Bailiwick of Guernsey, and opportunities for an Ombudsman scheme spanning both Bailiwicks.⁸ Some general observations can, however be made.

The idea of a pan-island Ombudsman is not new. In 2000, the Clothier report in calling for the creation of an Ombudsman stated:⁹

There could even be an Ombudsman chosen not only by Jersey but by others of the Channel Islands, just as there is a Channel Islands Court of Appeal for legal matters. We leave the choice to the States, remarking however that the agreement of Guernsey is not a pre-requisite to the creation of the office of Ombudsman in Jersey.

When the Privileges and Procedures Committee (PPC) considered the possibility of creating an Ombudsman in 2004, members were unconvinced of the wisdom of an Ombudsman covering both Bailiwicks:¹⁰

The Clothier report suggested that an Ombudsman could be shared with other Channel Islands but this would seem to imply that the Ombudsman might not always be readily available to deal with complaints which would run contrary to the desire to provide a swift response to complaints.

PPC appeared to think that the Ombudsman would be a single person rather than an organisation with staff.

In subsequent years, a small number of public authorities have been set up covering both Jersey and Guernsey, which would provide precedents and opportunities for lesson learning.

- Most relevant is the Channel Islands Financial Ombudsman (CIFO).¹¹ The remit of this body is to resolve complaints about financial services provided in/or from the Channel Islands of Jersey, Guernsey, Alderney and Sark. It deals with private sector complaints. It was created by legislation drafted in similar terms in each Bailiwick – the Financial Services Ombudsman (Jersey) Law 2014 and the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014, both of which came into force on the same day. Its governance structure includes a part-time non-executive board of four members, to which the relevant Jersey Minister and Guernsey department each appoints two members; the board appoints the ombudsman, safeguards his independence, oversees efficiency and effectiveness, and advises on strategic direction. The ombudsman and staff are all based in Jersey.
- The Channel Islands Competition and Regulatory Authorities (CICRA) comprises the Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA). The remit of CICRA is over competition law and economic regulation. As with CIFO, there are separate legal frameworks in each Bailiwick. There are staff in both Jersey and Guernsey.
- Between 2011 and 2018, the same person held the roles of Information Commissioner in Jersey and Guernsey, but in 2017 it was reported the States of Guernsey had decided that ‘they would

⁸ It should be noted that the remit of the Jersey Law Commission does not extend to making recommendations about the reform of law and practice in the Bailiwick of Guernsey.

⁹ Sir Cecil Clothier, *Report of the Review Panel on the Machinery of Government in Jersey* (States of Jersey 2000) page 37. In fact, the Clothier report is incorrect in thinking that there is a ‘Channel Islands Court of Appeal’ – there are separate courts for Jersey and the Bailiwick of Guernsey, though there is a shared membership of judges.

¹⁰ ... paragraph 46.

¹¹ Possible relationship between CIFO and the public services Ombudsman is considered in Chapter 2 below.

like to avoid a pan-Channel Island Information Commissioner managing two different sets of legislation and are intending to establish their own Information Commission'.¹²

There would be no objection of principle to an Ombudsman being appointed to separate similar posts in Jersey and the Bailiwick of Guernsey. In the United Kingdom, the offices of Parliamentary Commissioner for Administration (created in 1967) and the Health Service Commissioner (set up in 1993 under separate legislation) have consistently been held by a single person – and the work of both Ombudsman referred to as the 'Parliamentary and Health Service Ombudsman' (PHSO).

The new Ombudsman will **need to build effective working relationships with public authorities** in each island to enable it to fulfil its full range of functions, which extend beyond resolving individual disputes.¹³ It would therefore seem advantageous for the Ombudsman and staff to spend time in each island. This would be unlike CIFO, which is based only in Jersey

To ensure that there is **good accessibility by aggrieved persons**, consideration should be given to having a 'shopfront' and staff in each Island.¹⁴ This again would be unlike CIFO, which is based only in Jersey.

A **corporate governance** model in which the Ombudsman would be appointed and supported by a board would a better basis for a pan-Island Ombudsman scheme than the alternative (which would be creating an Ombudsman as a stand-alone public officeholder with the legal status of a corporate sole).¹⁵

1.10 User perspectives

Under the terms of P.32/2018, the States Assembly requested 'the Chief Minister to consult widely on the design of the proposed Public Services Ombudsman scheme'.

In the time and resources available for this project, it was not possible for the Jersey Law Commission research team to investigate what potential complainants in Jersey might want from an Ombudsman.

Academic research conducted in the UK by others does however provide insights into lay user experiences of and ideas about Ombudsman schemes. It is also notable that in the UK, 'Ombudsman watcher' groups have been set up. These are campaign groups critical of the work of public services Ombudsman schemes, often led by people with first-hand experience of being a complainant and become dissatisfied.¹⁶ The views expressed by the Ombudsman watcher groups are not necessarily representative of people as a whole who bring complaints to an Ombudsman. Using findings from a study by Chris Gill and Naomi Creutzfeldt,¹⁷ a simplified set of concerns people have about using Ombudsman schemes in the UK include the following:

¹² Government of Jersey press release, 'Information Commissioner to leave her post (9 November 2017). <https://www.gov.je/News/2017/pages/InformationCommissionerResignation.aspx>

¹³ See Chapter 4.

¹⁴ See Chapter 5.

¹⁵ See Chapter 5.

¹⁶ These groups include Local Government Ombudsman Watch, Accountability Scotland, and PHSO the Facts.

¹⁷ C Gill and N Creutzfeldt, 'The "ombuds watchers": collective dissent and legal protest amongst users of public services ombuds' (2018) 27(3) *Social and Legal Studies* 367.

- maladministration and unsatisfactory experiences of using Ombudsman may lead to serious psychological stress
- complaining against government may be scary
- 'the experience of complaining is seen as Kafkaesque'
- the Ombudsman processes are not transparent enough and do not provide aggrieved people with sufficient opportunities to participate
- an Ombudsman may be regarded as lacking impartiality – they share similar ('cozy') perspectives to officials in the public bodies complained against.

Gill and Creutzfeldt argue that the organised critics of Ombudsman schemes 'offer two alternative visions for a reformed system'. One vision is about creating complaints handling systems that have a human face.

... a more citizen-centred and humane system, drawing on ideas of social justice and democratic engagement. One of the watcher groups favors the idea of a local system, which would allow the citizen to access the ombuds in person and facilitate '...full, honest, and sympathetic discussion of the issues' The human aspect of the system is key, with its 'sympathetic' nature required to overcome the alienating effect of bureaucracy. The idea of greater accessibility and a form of justice which is more personal is emphasized in calls for interaction with the ombuds to be 'face-to-face' Greater direct participation in the process of justice is seen as a remedy to a faceless system, which traps individuals in a maze of paperwork.

Of equal importance, the watchers call for ombuds' decision-making to be re- oriented.

Developing the criticism that the system pits the citizen against the public body's control of the official record, the watchers argue for a 'presumption of honesty', whereby the system would operate on the assumption that citizens are well- meaning. Complaints, therefore, become a form of democratically engaged participation in state administration, rather than damaging processes in which citizens fight for justice, with those in power needing to '...work with their citizens, and not against them'. This results in a vision which requires: '...a new concept of active citizenship and social justice, as well as the... depolarization of society, where concerned citizens are no longer treated as enemies of vested political interests...'.

In the other vision

... the watchers effectively seek the recreation of aspects of the court system in the ombuds context. This includes calls for: a right of appeal, requirements around legal qualifications, greater use of hearings, replacement of ombuds with administrative tribunals, replacement of ombuds with a body operating a criminal jurisdiction, legally binding decisions and enforcement powers, a statutory definition of maladministration, and a stricter application of natural justice principles. As Thomas et al (2013) note when assessing criticisms of the LGO, many of these proposals involve a rejection of the distinct contribution of ombuds and a loss of their value as a supplement to judicial approaches. But regardless of the merits of these suggestions, they demonstrate the watchers' attachment to a legal consciousness that draws its understandings of justice from those associated with the formal legal system.

These findings provide some insights for elements of the design of the Jersey Ombudsman insofar as they may reflect the experiences, feelings and thoughts of some users now and in the future.

- **Consideration should be given as to how the Jersey Ombudsman can have a human-centred approach.** The 'suggested work programme' in P.32/2018 referred to ensuing 'that the new Ombudsman is set up in a manner which maximises the opportunity for embracing the latest digital working practices to ensure value- for-money, maximum public accessibility and transparent working'. While an online presence for the new Ombudsman is essential, thought also needs to be given as to how the Ombudsman and staff will be able to interact with people face-to-face. Questions of accessibility are explored in Chapter 5 below; Chapter 9 discusses process that will be experienced by a person taking a complaint to the Ombudsman. Chapter 10 consider the premises from which the Ombudsman will operate.

- **Some users of Ombudsman schemes value characteristics of court-based systems.**

These include the use of public hearings and the Ombudsman having legally binding decisions and enforcement powers. The current States of Jersey Complaints Panel system makes use of public hearings and there is a case for incorporating hearings into the design of the Jersey Ombudsman (though they do not feature in any other Ombudsman schemes).

We also see advantages (discussed in Chapter 9) in enabling an aggrieved person to obtain a court order to enforce some types of recommendation of the Ombudsman, if the Minister or other public body declines to implement the Ombudsman report. The arrangements for the Northern Ireland Public Services Ombudsman provide a model.

1.11 Keeping ‘the best elements’ of the States of Jersey Complaints Panel system

The new Ombudsman will replace the States of Jersey Complaints Panel, which was first set up in the 1980s and currently consists of 12 people from a variety of backgrounds appointed by the States Assembly.

P.32 approved by the States Assembly in March 2018 called on the Chief Minister to ‘consult widely ... including with the members of the Jersey Complaints Board [sic] ... , in order that the best elements of the Complaints Panel Scheme are retained within the new system’.

In our October 2017 report *Improving Administrative Redress in Jersey*, the Jersey Law Commission analysed the strengths and weaknesses of the Complaints Panel set up by the Administrative Decisions (Review)(Jersey) Law 1982.

Strengths can be said to include the following:

| Strength of the current States of Jersey Complaints Panel system | How this could be carried forward into the new scheme |
|---|--|
| The Panel’s low running costs: the Panel members serve part-time without fees paid and its secretariat is provided at no direct cost to the Panel from the office of the States Greffe. | The Ombudsman will cost more to run (see Chapter 11). But it should be borne in mind that there was agreement in response to Jersey Law Commission proposals that investment would be needed if the Panel were to be retained – on training, website and communications, and to support increased case load if the Panel’s jurisdiction were to be expanded. The Ombudsman can also carry out a much wider range of functions than the Complaints Panel (Chapter 4). |
| The Panel works with transparency – holding public hearings into complaints (whereas the normal process for Ombudsman is investigation which takes place in private). | In Chapter 9 we consider whether public hearings might continue in to be available, even if investigation becomes the normal process used by the Ombudsman to look into matters. |
| Its contribution to the ideals of honorary service, which many people in the island regard as a key feature of Jersey public life. | In Chapter 10, we pose the question whether the non-executive board for the new Ombudsman could be recruited |

on a non-remunerated basis. If public hearings continue, the Ombudsman could sit with two lay members (see Chapter 9).

Volunteers with suitable training could have advisory roles in helping people understand how to make a complaint to the Ombudsman (or another body if that was more appropriate). This would need to be tied in with the work of other sources of advice in the island, including Jersey Citizens Advice Bureau.

Volunteers with expertise in mediation could be called on by the Ombudsman to seek informal resolution of complaints in suitable cases. A Community Mediation scheme already exists (sponsored by Jersey Citizens Advice Bureau and the Jersey Legal Information Board) but has not been widely used in relation to maladministration or failures in public service.

The Panel has historically had a strong relationship with States Members serving on the Procedures and Privileges Committee (PPC).

Chapter 2 examines how the Ombudsman could relate to the States Assembly, its Members, committees and panels.

Weakness of the current Panel system include the following.

| Weakness of the current States of Jersey Panel system | How this could be rectified by a new Ombudsman scheme |
|--|---|
| The Panel's low public profile over many years, leading to it receiving relatively few inquiries and complaints. | The Ombudsman will have a communications strategy that could be supported by a part-time communications officer. This will include a website and public engagement activities (see Chapter 11). |
| The Panel's limited remit, which covers only ministers and ministerial bodies, leaving people with complaints against other public bodies with no redress. | The Ombudsman should have jurisdiction over a much wider range of public sector organisations, including Parishes and arm's length bodies (see Chapter 6). |
| There is a high incidence of Ministers not accepting the Panel's findings and recommendations and being critical of its determinations. | The Ombudsman's findings and recommendations could be partly binding (see Chapter 9). The Ombudsman will need to build relationships with public bodies that support compliance. |

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| <p>The range of functions carried out by the Panel is limited – it focuses only on resolving individual cases and does not have the capacity to achieve the full range of functions normally carried out by a public services Ombudsman.</p> | <p>The Ombudsman will have a broader range of functions (Chapter 4).</p> |
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1.12 Thanks and acknowledgements

The Jersey Law Commission thanks the research interviewees listed above who spoke to the research team in Jersey during May 2018.

The Ombudsman and staff members of several UK and overseas Ombudsman schemes were generous with their time in speaking to us and supplying information (especially for some of the profiles of schemes set out in Chapter 12).

We also thank Donal Galligan, Director of the Ombudsman Association, for his interest in this project.

Former Senator Sir Philip Bailhache, at the time chairman of the Legislation Advisory Panel, provided support for the launch of the research project (but has not been involved in the project subsequently).

We thank and acknowledge former Senator Philip Ozouf for providing political impetus in instigating the States Assembly debate in March 2018, so facilitating quick steps towards implementation of this aspect of the Jersey Law Commission's recommendations from the October 2017 report *Improving Administrative Redress*. We have not discussed the contents of this report with Mr Ozouf and he should not be taken to either agree or disagree with the detailed analysis and proposals that we have developed.

1.13 Next steps

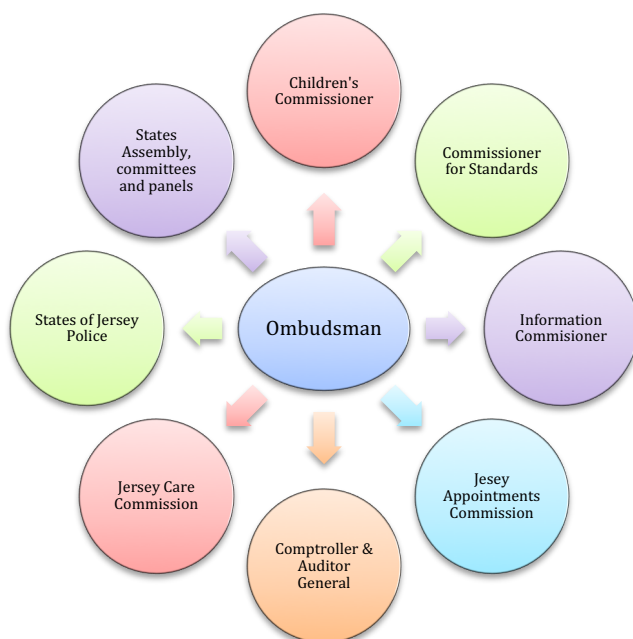
This report concludes the Jersey Law Commission's project on improving administrative justice and redress in the Island.

The analysis and recommendations on the Ombudsman contained in the report will be considered by the Government of Jersey and the States Assembly.

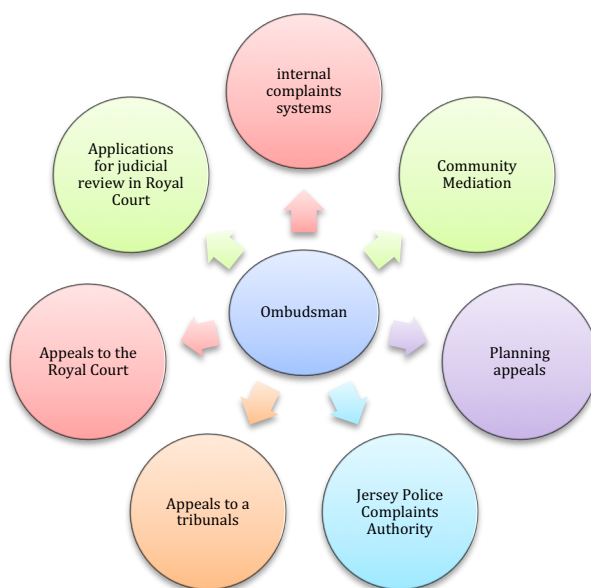
2 JERSEY'S CONSTITUTIONAL WATCHDOGS AND GRIEVANCE RESOLUTION BODIES

2.1 Purpose of this chapter: surveying the landscape and mapping future relationships

Before construction starts on a major new public building, a survey of the site is a first step. So too with the design of a new public institution such as the Ombudsman. This Chapter therefore looks at how the new Ombudsman will fit into an existing landscape of institutions with responsibilities for good governance and resolving individual grievances. There is a need to design the Ombudsman's relationships with constitutional watchdog bodies:



Similarly, consideration should be given to the Ombudsman's relationships with grievance resolution bodies:



The need to consider how the Ombudsman will relate to existing institutions was recognised in P.32/2018, which asked the States Assembly ‘to request relevant Ministers to ensure that there is good co-ordination between the work of the newly-appointed Children’s Commissioner and the proposed Public Services Ombudsman’ and ‘to request that the Ombudsman Board ... should work in close co-operation with the Financial Services Ombudsman, with a view to assessing the desirability of creating a single Ombudsman Service for Jersey, if there are tangible benefits for complainants, service providers and the 2 Ombudsman functions’. The suggested work programme in Appendix 1 to P.32/2018 also included: ‘Explore the potential relationships between a Jersey Ombudsman and other mechanisms for redress (including the Royal Court and appeals to Tribunals)’ and to similar effect ‘To work closely with the Jersey Courts Service and associated Tribunals to ensure efficient, effective and efficacious working’.

P.32/2018 did not, however, provide a comprehensive list of bodies with connected roles with which the Ombudsman will be on contact. In thinking about how the Ombudsman will operate in the Jersey political and administrative justice landscape two types of design consideration are needed.

First, **what does the legislation creating the Ombudsman need to say about relationships with other bodies?** These need to be decided at the planning stage. For convenience, we refer to the proposed legislation as the Public Services Ombudsman (Jersey) Law.

Second, **once the Ombudsman is up-and-running what professional relationships should be developed with other official bodies in Jersey?** These do not need to be specified in detail in the Public Services Ombudsman (Jersey) Law can be left to be identified and fine-tuned by the relevant officeholders.

There are two categories of institutions with which the Ombudsman will have some shared mission – **constitutional watchdogs** (sometimes also referred to as the ‘integrity branch’ of the constitution) and **grievance resolution institutions**.

The constitutional watchdogs currently established in the Island include the following bodies:

- Children’s Commissioner for Jersey
- Commissioner for Standards
- Information Commissioner for Jersey
- Jersey Appointments Commission
- Comptroller and Auditor General / Jersey Audit Office
- Jersey Care Commission – not strictly speaking a constitutional watchdog but for practical purposes an important body with which the Ombudsman’s work may overlap
- States of Jersey Police.

The Assembly of the States of Jersey – the Island’s legislature – also operates as a guardian over constitutional propriety and good governance, through the following committees, panels and associated bodies, as well as via questions to Ministers and debates on the floor of the chamber:

- The States Assembly generally
- Privileges and Procedure Committee
- Public Accounts Committee
- Scrutiny Panels
- States Members Remuneration Review Body
- Referendum Commission

The grievance resolution institutions are:

- internal complaints processes within public bodies

- Community Mediation scheme
- Planning appeals
- States of Jersey Complaints Panel
- Jersey Police Complaints Authority
- Tribunals hearing appeals against Ministers' and other administrative decisions
- Royal Court (administrative appeals and judicial review)
- Channel Islands Financial Ombudsman (private sector grievances).

2.2 Design principles

In designing a new Ombudsman for Jersey, consideration should be given to the following standards and values in relation to the Ombudsman's relationships with other bodies.

- Helping people understand the function of all relevant constitutional watchdogs and grievance resolution institutions
- Making the system as a whole as simple as possible
- Avoiding inappropriate or inadvertent overlap between the roles of different bodies
- Looking for opportunities for complementary working between different bodies
- Having regard to opportunities for rationalisation and efficiency (which may lead to simplification, better public understanding, and reducing public spending).

2.3 Summary of design options

The following table summarises options for further inquiry during the design process of the new Ombudsman that are covered in this Chapter. The overarching focus is on how the new Ombudsman scheme will relate to existing constitutional watchdogs and grievance resolution bodies. The relationships could include having the following characteristics.

- There could be opportunities for joint working between some existing bodies and the new Ombudsman, which would require legal powers for both bodies.
- Some existing bodies could be given legal power to refer issues to the Ombudsman, for the Ombudsman to consider looking into under own-initiative powers.
- Simplification and rationalisation could involve functions of two existing bodies (the Standards Commissioner and the Jersey Police Complaints Authority) being transferred to the Ombudsman.
- The Ombudsman could have power to assist some of the existing bodies with improvement and monitoring of their internal complaints handling processes.
- The Ombudsman could have power to hear complaints from people about maladministration or failure of service of some of the existing bodies.

| Existing body | Proposals on how the new Ombudsman will relate to the existing body |
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| Constitutional watchdog bodies: | |
| Children's Commissioner | The Ombudsman could have lead responsibility for investigation of allegations of maladministration or service failure by public bodies in individual cases involving children and young people. |

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| | <p>The Ombudsman could have lead oversight over how public bodies are dealing with internal complaints by children and young people.</p> <p>The Children's Commissioner and the Ombudsman could have express powers to work jointly on individual cases or areas of systematic concern.</p> <p>Children's Commissioner could have power to refer individual cases (and share relevant information) with Ombudsman, for Ombudsman to consider whether to conduct own-initiative investigation even if there is no individual complainant.</p> <p>The Ombudsman could have power to assist the Children's Commissioner with improvement and monitoring of the Children's Commissioner's internal complaints handling processes.</p> <p>The Ombudsman could have power to look into complaints made against the Children's Commissioner and staff by aggrieved people who allege maladministration or failure of service.</p> |
| Commissioner for Standards | <p>Consideration could be given to amalgamating the functions of the Commissioner for Standards with the new Ombudsman scheme.</p> |
| Information Commissioner | <p>During design and set-up phases of the new Ombudsman scheme, the office of Information Commissioner could provide lesson learning opportunities on operation of a corporate board structure in support of a watchdog body in Jersey.</p> <p>The Ombudsman could have power to assist the Information Commissioner with improvement and monitoring of its internal complaints handling processes.</p> <p>The Ombudsman could have power to look into complaints made against the Information Commissioner and staff by aggrieved people who allege maladministration or failure of service.</p> |
| Jersey Appointments Commission | <p>The Ombudsman could have power to assist the JAC with improvement and monitoring of its internal complaints handling processes.</p> <p>The Ombudsman could have power to look into complaints made against the JAC and staff by aggrieved people who allege maladministration or failure of service. This will relate mainly to how the JAC handles complaints.</p> |
| Comptroller and Auditor General | <p>The Ombudsman and C&AG could have powers to enable them to work jointly on investigating and reviewing questions of corporate governance of public bodies, whether resources are being used economically, efficiently and effectively by public bodies, and on actions needed to bring about improvement – if both the Ombudsman and the C&AG consider it desirable to do so in particular situation.</p> <p>The C&AG could have power to refer individual cases (and share relevant information) with the Ombudsman, for the Ombudsman to consider whether</p> |

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| | to conduct own-initiative investigation even if there is no individual complainant. |
| Health and Social Care Commission | <p>The Ombudsman and the Care Commission could have powers to enable them to work jointly on investigations – if both the Ombudsman and the Care Commission consider it desirable to do so in particular situation.</p> <p>The Care Commission could have power to refer individual cases (and share relevant information) with the Ombudsman, for the Ombudsman to consider whether to conduct own-initiative investigation even if there is no individual complainant.</p> <p>The Ombudsman could have power to assist the Care Commission with improvement and monitoring of its internal complaints handling processes.</p> <p>The Ombudsman could have power to look into complaints made against the Care Commission and staff by aggrieved people who allege maladministration or failure of service.</p> |
| Assembly of the States of Jersey | <p>Once set up, the Ombudsman could work with States Members to develop shared understanding of relationship between Member's constituency casework and the Ombudsman scheme.</p> <p>Consideration could be given to arrangements for answering written and oral questions in the Assembly about the work of the Ombudsman and the responses of public bodies to the findings and recommendations of the Ombudsman.</p> |
| Privileges and Procedures Committee (PPC) | Consideration could be given as to how to structure the relationship between the Ombudsman and the States Assembly and whether or not this is best done via PPC or another committee or panel. |
| Public Accounts Committee | <p>If the C&AG and Ombudsman work jointing on a report, PAC's terms of reference could permit receipt of joint reports.</p> <p>It may also be appropriate for PAC to hear from the Ombudsman on its own-initiative reports into systematic failure where these have findings and recommendations that relate to 'economy, efficiency and effectiveness in the use of resources'</p> |
| Scrutiny Panels | In carrying out scrutiny inquiries and legislative scrutiny, consideration could be given to Scrutiny Panels calling on the expertise of the Ombudsman to provide evidence to assist the Panels' work. The Ombudsman may choose to be proactive and offer written evidence to Scrutiny Panels where an inquiry raises issues within the scope of the Ombudsman's expertise. |
| States Members Remuneration Review Body | It is not anticipated that the Ombudsman will be involved in decision-making by the SMRRB because the SMRRB does not make decisions directly impacting on individual members of the public. |

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| Referendum Commission | It is not anticipated that the Ombudsman will be involved in decision-making by the Referendum Commission because the Referendum Commission does not make decisions directly impacting on individual members of the public. |
| Grievance resolution bodies: | |
| internal complaints systems within public bodies | <p>People with grievances against a public body will normally be required to go through the body's internal complaints process before taking their case to the Ombudsman.</p> <p>The Ombudsman could have power to assist public bodies with improvement and monitoring of their internal complaints handling processes.</p> |
| Community Mediation scheme | If, as recommended, the Ombudsman has power to seek to resolve complaints informally through the use of mediation, the Community Mediation scheme could provide access to qualified mediators if in any case it was thought that the mediation should be conducted outside the Ombudsman office. |
| Planning appeals | The roles of the planning appeals system and the Ombudsman are in theory distinct but in reality, this may not always be clear to the aggrieved person. It will be important for both the planning appeal system (through civil servants working in the Judicial Greffe) and the Ombudsman's office to signpost people to the appropriate scheme |
| States of Jersey Complaints Panel | This will be replaced by the new Ombudsman scheme, so there will be no ongoing relationship. |
| Jersey Police Complaints Authority | It is possible to envisage a simplified system in which police matters fall within the remit of the Ombudsman rather than have a stand-alone Jersey Police Complaints Authority. |
| Tribunal appeals | <p>The tribunal system (through civil servants working in the Tribunals Service, part of the Judicial Greffe) and the Ombudsman's office could signpost people to the appropriate scheme. In this way, in obvious cases the person would start their case in the best way – either as a tribunal appeal or a complaint to the Ombudsman.</p> <p>On occasion, it is possible to envisage that a person will start in the process that is not best, or wholly, suited to the issues they want considered and that this will not be apparent until sometime into the process. To deal with this scenario, the Ombudsman could have powers to refer issues to a tribunal (or the Royal Court) for determination, and vice versa tribunals and the Royal Court should have power to refer issues to the Ombudsman.</p> <p>The Ombudsman could have power to assist the Tribunal Service with improvement and monitoring of its internal complaints handling processes.</p> |

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| | The Ombudsman could have power to look into complaints made against the Tribunal Service by aggrieved people who allege maladministration or failure of service (but judicial decisions or administrative acts authorised by a member of the judiciary must be excluded). |
| Royal Court hearing administrative appeals | <p>The Royal Court (through civil servants working in the Judicial Greffe) and the Ombudsman's office could signpost people to the appropriate scheme. In this way, in obvious cases the person would start their case in the best way – either as an appeal to the Royal Court or a complaint to the Ombudsman.</p> <p>On occasion, it is possible to envisage that a person will start in the process that is not best, or wholly, suited to the issues they want considered and that this will not be apparent until sometime into the process. To deal with this scenario, the Ombudsman could have powers to refer issues to the Royal Court (or a tribunal) for determination, and vice versa tribunals and the Royal Court should have power to refer issues to the Ombudsman.</p> <p>The Ombudsman could have power to assist the Judicial Greffe with improvement and monitoring of its internal complaints handling processes.</p> <p>The Ombudsman could have power to look into complaints made against the Judicial Greffe by aggrieved people who allege maladministration or failure of service (but judicial decisions or administrative acts authorised by a member of the judiciary must be excluded).</p> |
| Royal Court hearing applications for judicial review | Through the judicial review process, the Royal Court will be able to ensure that the Ombudsman operates within the legal framework establishing the Ombudsman scheme, and that decision-making is procedural fair and not unreasonable. Aggrieved persons and public bodies will be able to make applications for judicial review under existing procedures set out in the Royal Court Rules. |
| Channel Islands Financial Ombudsman | The Chapter considers the ways in which CIFO and the new public services Ombudsman would be different and where there are similarities that would provide a basis for cooperation or a single organisation. |

2.4 Jersey's constitutional watchdogs

The term 'constitutional watchdog' has been coined in recent years (but not widely used, if at all, in Jersey) to describe a variety of officeholders and bodies whose remit is 'to ensure the proper conduct of public business by ministers, officials, elected representatives and others'.¹⁸ They can also be called 'the integrity' branch of the constitution.

It has been a common experience across democracies for new bodies to be set up, often in a rather uncoordinated manner, in order to restore or enhance public trust in government decision making. Jersey has not been immune from this trend.

¹⁸ Oonagh Gay and Barry Winetrobe, *Parliament's Watchdogs: At the Crossroads* (UK Study of Parliament Group/UCL Constitution Unit 2008).

There is no formal definition of a constitutional watchdog but if an institution carries out one or more of the following activities it can normally be regarded as one:

- ensuring that public funds are spent properly and achieve value for money (in Jersey relevant bodies are the Comptroller and Auditor General (Jersey Audit Office), the Public Accounts Committee, Scrutiny Panels)
- guaranteeing high standards in the processes of making of public appointments (the Jersey Appointments Commission)
- safeguarding people's rights in relation to the work of public bodies (the Children's Commission, the Information Commissioner)
- ensuring that politicians and civil servants act ethically (the Standards Commissioner and the Procedures and Privileges Committee)
- confirming that the democratic process operates fairly (the Referendum Commission)
- developing and ensuring compliance with codes of conduct, statements of good practice, and other guidance for public bodies.

Bodies concerned with the following are **not** typically regarded as falling within the category of constitutional watchdogs:

- regulation or oversight of mainly private sector activities (such as the Channel Islands Competition and Regulatory Authority, Jersey Charity Commissioner, Jersey Care Commission, Jersey Consumer Council)
- developing policy and advice for government (for example, the Jersey Law Commission, Bailiff's Consultative Panel)

Constitutional watchdogs are normally regarded as being permanently established, though ad hoc bodies (such as committees of inquiries) may also be set up to look into specific matters. A key feature of the constitutional watchdog bodies is that they must have actual and perceived independence from the decision-makers they oversee. The development of codes of conduct and other guidance has gone hand-in-hand with the proliferation of watchdogs.

Writing in 2008, commentators noted that 'Recently, the UK parliamentary Ombudsman has begun an ambitious attempt to reposition that office as an essential underpinning of the constitution'.¹⁹ This provides insight into how the new Ombudsman in Jersey could have a remit broader than dealing with individual grievances.

2.4.1 *Children's Commissioner for Jersey*

Currently working in 'shadow mode' while underpinning legislation is developed, the remit of Children's Commissioner includes promoting children's rights and being a champion for children and young people on important issues. The creation of this office fulfils a recommendation of the *Report of the Independent Jersey Care Inquiry 2017* chaired by Frances Oldham QC. The current officeholder is Deborah McMillan (since December 2017). The post is full-time, permanent and salaried.

¹⁹ Oonagh Gay and Barry Winetrobe, *Parliament's Watchdogs: At the Crossroads* (UK Study of Parliament Group/UCL Constitution Unit 2008) page 14.

In developing detailed proposals for the remit of the Children's Commissioner and the Ombudsman, consideration should be given to the following design questions.

- To what extent will the Children's Commissioner's functions include investigating fault by public bodies in individual cases (in matters relating to children and young people) or will investigations be better carried out by the Ombudsman?
- Will the Children's Commissioner have oversight of how public bodies are dealing internally with complaints by and made on behalf of children and young people or should this be a function of the Ombudsman?

Our provisional view is that the expertise of the Ombudsman in both investigating fault in individual cases and having oversight of internal complaints handling may suggest that the Ombudsman should take the lead on these functions.

The Children's Commissioner could refer such individual cases to the Ombudsman for investigation. This would require the permission of the individuals concerned and a legal framework that permitted the sharing of information.

If (as we recommend) the Ombudsman has own-initiative powers to investigate issues, consideration should be given to providing the Children's Commission with express powers to refer matters to the Ombudsman.

A further question **is whether the Children's Commissioner should be subject to the Ombudsman's jurisdiction if an aggrieved person has a complaint about the Children's Commissioner.** We recommend that this would be appropriate (this issue is considered further in Chapter 6). Occasionally, a person may be aggrieved by a decision or alleged service failure by the Children's Commissioner and it is right that, as with other public bodies, that such a person should be able to seek independent resolution of the matter if required.

2.4.2 Commissioner for Standards

Established by the Commissioner for Standards (Jersey) Law 2017, the Commissioner for Standards' remit is to investigate allegations that a States Member has breached the *Code of Conduct for Elected Members*, which previously were carried out by the Privileges and Procedures Committee, and the code of conduct and code of practice for Ministers and Assistant Ministers. The first and current officeholder is Paul Kernaghan, appointed in 2018. The post is part-time for a fixed term of up to five years, paid daily fee basis.

Our provisional view is that consideration could be given to amalgamating the office of Commissioner for Standards with that of the Ombudsman or (on completion of the current office-holders term of office) appointing the Ombudsman as Commissioner for Standards. The skills sets, including a high degree of independence and investigatory skills, are similar.

In Wales, the Public Services Ombudsman for Wales is responsible (under the Local Government Act 2000) for issuing guidance and investigating standards of members and staff of local authorities and this model could be adapted for Jersey.²⁰

In Northern Ireland, the post of Northern Ireland Local Government Commissioner for Standards is held by the same person who hold the office of Northern Ireland Public Services Ombudsman.²¹

²⁰ There is a separate office of Commissioner for Standards in relation to members of the National Assembly for Wales.

²¹ See <https://nipso.org.uk/nilgcs/>

A reform along these lines in Jersey would provide opportunities for simplifying the system and cost savings.

2.4.3 *Information Commissioner for Jersey*

The ICO has a remit to promote respect for the private lives of individuals through ensuring privacy of their personal information under the Data Protection (Jersey) Law 2018, the Data Protection Authority (Jersey) Law 2018, and the Freedom of Information (Jersey) Law 2011. The current Information Commissioner is Dr Jay Fedorak (since July 2018); and the Deputy Information Commissioner is Mr Paul Vane. The ICO has a corporate board structure, with the board currently chaired by Mr Jacob Kohnstamm.

The scope for joint working between the Ombudsman and the Information Commissioner appears to be less self-evident than with the Children's Commissioner and C&AG. However, **in the set-up phase of the Ombudsman scheme consideration could be given to lesson learning on the operation in Jersey of a corporate board structure to support a watchdog public officeholder.**

A further issue, considered in Chapter 5, is **whether the Office of the Information Commissioner should be subject to the Ombudsman's jurisdiction.** We recommend that this would be appropriate.

2.4.4 *Jersey Appointments Commission*

Established under the Employment of States of Jersey Employees (Jersey) Law 2005, the Jersey Appointments Commission consists of five commissioners and a chair (currently Dame Janet Paraskeva since September 2014). The JAC is 'an independent body that oversees the recruitment of States' employees and appointees to States supported or related bodies' and ensures 'that the selection is fair, efficient and conducted in accordance with best practice and procedures'. The JAC oversees and carries out audits of appointments but Commissioners are directly involved in decision-making only in relation to the appointment of the Chief Executive Officers of the States of Jersey.²² It publishes guides on recruitment and selection. The JAC's remit extends to independent organisations and officeholders in receipt of States funding.

The JAC also has a complaint handling role, with recent annual reports indicating that typically there is one complaint a year. Complaint handling is not expressly listed in Articles 23-29 of the Employment of States of Jersey Employees (Jersey) Law 2005, which sets out the powers and functions of the JAC. Information about how to make a complaint or how it will be determined is not readily available on the JAC webpages.

In considering the relationship between the JAC and the Ombudsman, **one issue is whether the JAC should be within the scope of the Ombudsman if an aggrieved person claims that the JAC is at fault in making a decision.** This is considered in more detail in Chapter 6, where we recommend that the JAC should be subject to the Ombudsman's jurisdiction. This would give an aggrieved person access to an independent resolution process. **The Ombudsman could also work with the JAC to ensure that its internal complaint handling process appropriate.**

2.4.5 *Office of the Comptroller and Auditor General (Jersey Audit Office).*

Under the Comptroller and Auditor General (Jersey) Law 2014, the remit of the C&AG includes the audit of financial statements and wider consideration of public funds including internal financial control, value for money and corporate governance. Current officeholders: Karen McConnell (C&AG

²² Annual Report 2016 paragraph 1.3.

since February 2013) and Stephen Warren (Deputy C&AG). The C&AG post has a fixed non-renewal term of seven years, is part-time and salaried.

There is potential for shared for working for the C&AG and Ombudsman on questions of corporate governance of public bodies (insofar as this has impact on the ability of public bodies to handle complaints effectively and to use complaints as opportunities for lesson learning), whether ‘resources are being used economically, efficiently and effectively’ by a public body and ‘actions needed to bring about improvement’.

In the United Kingdom, the National Audit Office has carried out several reviews of complaints handling published by the House of Commons, including: *Citizen Redress: What citizens can do if things go wrong with public services* (HC 21 Session 2004-05); *Department for Work and Pensions: Handling Customer Complaints* (HC 995 Session 2007-2008); and *Feeding back? Learning from complaints handling in health and social care* (HC 853 Session 2007-2008).

The C&AG’s recent report on *Governance Arrangements for Health and Social Care* (13 September 2018) raised concerns about complaint handling within the former Department for Health and Social Services.²³

Where there is a common focus of interest across the C&AG and the Ombudsman, consideration should be given as to how best the respective expertise of the two bodies is best deployed to ensure efficient and effective working.

One option would be to give both bodies the legal power to work together on projects. The power should include the ability to share information and to make joint recommendations for action. In the United Kingdom, two Ombudsman schemes set up a joint working team to look holistically at issues that span health (within the remit of the Parliamentary and Health Service Ombudsman) and social care (the Local Government and Social Care Ombudsman).²⁴ In Jersey, a similar approach could be taken to enable the Ombudsman and C&AG to work together where this would be beneficial.

Another option would be to recognise that the C&AG and Ombudsman have different functions. The Ombudsman will be a specialist in investigating specific complaints whereas the C&AG’s focus is on more systematic concerns.

Informally, the C&AG could refer initial inquiries from members of the public to the Ombudsman where this could provide the aggrieved person with a better route to resolution of their complaint.

If (as we recommend),²⁵ the Ombudsman has own-initiative powers to investigate areas of concern where there appear to be systematic failures consideration should be given to providing the C&AG with express legal power to refer a matter to the Ombudsman (and share relevant information), where it is thought that the Ombudsman would be a better fit for the project.

A further issue, considered in Chapter 6, **is whether the C&AG should be subject to the Ombudsman’s jurisdiction.** We recommend that this would be not be appropriate, as the C&AG does not make decisions affecting individuals.

²³ Considered further in Chapter 6 below.

²⁴ PHSO and LGO, *Working together to investigate health and social care complaints | Focus report: learning lessons from complaints* (2016) www.ombudsman.org.uk/sites/default/files/Joint_working_team_focus_report_December_2016_0.pdf
December 2016

²⁵ See Chapter 9 below.

2.4.6 Jersey Care Commission

The health and social care sector is likely to give rise to the largest number of complaints to the Ombudsman.²⁶ It is debatable whether the Jersey Care Commission is a ‘constitutional watchdog’ or a regulator, but it is especially important that the design of the Ombudsman scheme complements the work of the relatively new Jersey Care Commission to ensure that the two bodies work efficiently and effectively for the benefit of Islanders.

The Jersey Care Commission is established under Article 35 and Schedule 2 of the Regulation of Care (Jersey) Law 2014. The Commission is independent of the Minister for Health and Social Services, the Chief Minister and the States (Article 36). Its functions include

- serving of improvement notices on registered health and social care providers or managers
- preparation and publication of standards for compliance with requirements imposed by Regulations
- carrying out inspections of any regulated activity at such intervals as specified in Regulations.

The Jersey Care Commission, which has five Commissioners, is responsible for ‘overseeing the quality of care provided to Islanders either in their own homes (domiciliary care) or in key care services (care homes, children’s homes and adult day care services)’.²⁷

The Law came into force in late 2017 and the Commission held a launch event in May 2018. It is reported that: ‘One of the first pieces of work the Care Commission is carrying out is an independent inspection of Jersey’s Children’s Social Work Service. This was at the request of the Chief Minister following recommendations from the Jersey Care Inquiry. The Care Commission have appointed Ofsted to undertake this work and are due to report on the outcome of the inspection at the beginning of September’.²⁸

In developing an understanding of how the two bodies could work together, the following issues should be considered.

- **Should regulated care providers, who may be businesses or charities rather than public bodies, fall within the remit of the Ombudsman?** Chapter 6 considers this.
- If regulated care providers do fall within the Ombudsman’s remit, **whether the Jersey Care Commission should have power to carry out joint investigations.** The creation of the Ombudsman will bring to the Island expertise in carrying out investigations. These are, however, different in some important respects from the sort of ‘inspections’ typically carried out by regulatory bodies in the health and social care sector. Nonetheless, there may be situations in which there would be benefit in the two bodies working together on an issue.
- **Whether the Jersey Care Commission should have power to refer a matter to the Ombudsman for the Ombudsman to consider undertaking under the own-initiative powers to look into areas of concerning systematic failures.** This is considered in Chapter 9. We propose that this could be beneficial.
- **Whether the Jersey Care Commission should fall within the remit of the Ombudsman if an individual has a complaint about a decision or inaction of the Care Commission.** This is considered in Chapter 6. We conclude that the Care Commission should be within the Ombudsman’s remit, though in most cases it is anticipated an aggrieved person would be

²⁶ See Chapter 11 for further analysis.

²⁷ Government of Jersey media release <https://www.gov.je/News/2017/Pages/FifthCareCommissioner.aspx>

²⁸ Government of Jersey media release <https://www.gov.je/News/2018/pages/MeettheCareCommission.aspx>

expected to use the right of appeal to the Royal Court against formal decisions of the Commission.

2.4.7 States of Jersey Police

Another body sharing some characteristics with constitutional watchdogs could be said to be the States of Jersey Police. In relation to administrative decision-making, areas of overlap with the Ombudsman's remit would be issues of corruption related to officials, Ministers, or others exercising public powers, allegations of neglect or abuse, or crimes related to misuse of powers in public office. **The Ombudsman should have legal power to refer a matter to the States of Jersey Police if, during an investigation, it became apparent that a crime may have been committed.**

This section now turns to look at the States Assembly's constitutional watchdog functions.

2.4.8 The States Assembly generally

The relationship of the Ombudsman with PPC, PAC and Scrutiny Panels has already been considered above. The States Assembly and its Members form an integrity watchdog. A variety of questions arise in designing the Ombudsman scheme.

If a States Member in their constituency casework is advising a person with a complaint regarding a public body, when and how will it be appropriate for the Member to refer the matter to the Ombudsman?

In the United Kingdom, access to the Parliamentary and Health Service Ombudsman is controlled through the 'MP filter'. This has become controversial and it is widely criticised as outmoded for there to be requirement that a person with a complaint against a central government body can only access the PHSO via a reference from an MP. We therefore do not recommend this as a model for Jersey to follow.

Nonetheless, some people will prefer to speak to their Deputy, Connétable or a Senator about a grievance rather than going directly to the Ombudsman. In the current States of Jersey Complaints Panel scheme, States Members often support the aggrieved person at the public hearing of their complaint. Helping constituents is an important part of the role of a States Member and the design for the Ombudsman should be careful not to weaken link between elected Members and individuals. The Ombudsman will need to work with States Members to develop a shared understanding of their respective roles and working practices. We consider that this is a matter of professional relationship building rather than a feature that requires a specific provision in the legislation establishing the Ombudsman.

If a States Member has a question regarding the Ombudsman, can this be asked and who should answer it?

The Standing Orders of the States of Jersey regulates who may ask, and be asked, oral and written questions in the States Assembly.

The Ombudsman office – the non-executive board and the Ombudsman – must be independent of Ministers and the States Assembly. A Minister cannot therefore be answerable for the work of the Ombudsman; but a Minister will have official responsibility for the Government of Jersey's response to a final report by the Ombudsman relating to the Government.

It is recommended in Chapter 6 that the Ombudsman's remit covers the Parishes. The Connétable of the relevant Parish should be answerable for the Parish's response to a final report by the

Ombudsman. Where findings or recommendations affect all Parishes, the chairman of the Comité des Connétables should be answerable.

It is also recommended in Chapter 6 that the Ombudsman's remit covers a wide range of non-ministerial bodies. It will not normally be appropriate for a Minister to answer a question about an arm's length public body. Consideration therefore needs to be given to how a Member's question about arm's length bodies can be answered. For example, a Member may be concerned on behalf of his or her constituents that an arm's length body has not responded appropriately to findings and recommendations by the Ombudsman.

A further feature to be considered in the design of the Ombudsman is whether there should be a way for the Ombudsman to communicate directly with Members on the public record. The Ombudsman should make an annual report.²⁹ But what if an urgent matter arises? A model from which inspiration could be drawn is how the senior judges in the United Kingdom have been empowered to 'lay written representations before Parliament' on issues that appear to them to be a matter of importance relating to the judiciary or otherwise the administration of justice (Constitutional Reform Act 2005 section 5(1)). These powers have been exercised sparingly. The new Ombudsman in Jersey could be given power along similar lines, where it appears to the Ombudsman that there is a matter of importance relating to public administration in the Island.

2.4.9 Privileges and Procedures Committee

Under the States of Jersey Standing Orders, PPC within the States Assembly has a remit that includes keeping under review the practices and procedures of the States Assembly, 'for the enforcement of the code of conduct for members of the States and in this context to promote high standards amongst members of the States and to champion and defend the privileges of members of the States', and to keep the public informed about the work of the States. PPC consists of States Members.

Under current arrangements, PPC receives reports of the States of Jersey Complaints Panel, has annual or more frequent meetings with the chairman of the Panel, and acts as a champion for the work of the Panel.

In designing the new Ombudsman, consideration needs to be given as to how the to structure the relationship between the Ombudsman and the States Assembly and whether this is best done via PPC or another committee.

In Chapter 10, we consider the governance structure for the new Ombudsman. The main options are to create the Ombudsman as a corporation sole (a single public office) appointed by the States Assembly or to have a corporate board appointed by the States Assembly, with the corporate board responsible for appointing the Ombudsman.

If, as recommended in this report and foreshadowed in P.32/2018, a corporate board arrangement is chosen, it will be important that the relationship between the Ombudsman and the States Assembly does not undermine the working relationship between the Ombudsman and the corporate board. It might, for example, be prudent to ensure that when a States Assembly committee wishes to meet the Ombudsman the chair of the corporate board is also invited.

There should also be clarity around the purpose of meetings between the Ombudsman/chair of the corporate board and any States Assembly committee. One purpose could be to provide an accountability mechanism so that the States Assembly has assurance that the Ombudsman scheme is working effectively and providing value for money. To this end, a public meeting could be

²⁹ See Chapter 10 on the governance, appointment and accountability of the Ombudsman.

held to discuss the Ombudsman's annual report. Another purpose may be to enable backbench Members to demonstrate support for the work of the Ombudsman and to defend its independence from the executive (though it would need to be recognised that this would also be a function of the corporate board).

The creation of an Ombudsman and creating a legal base for the work of the Children's Commission provides an opportunity for the States Assembly to consider how it best calls to account and supports the work of the 'integrity branch' watchdog bodies. The Comptroller and Auditor General has a specific relationship with the Public Accounts Committee and the Commissioner for Standards with PPC. The point of connection with the Ombudsman, Children's Commissioner, Jersey Appointments Commission, and the Information Commissioner could be reviewed. But this relates to the internal operation of the States Assembly, which is not a matter for the Jersey Law Commission.

2.4.10 Public Accounts Committee

Within the States Assembly, the Public Accounts Committee (PAC) has terms of reference defined by the States of Jersey Standing Orders. These include

- receiving reports from the C&AG on audits;
- on 'the results of investigations into the economy, efficiency and effectiveness achieved in the use of resources by – (i) States funded bodies, (ii) independently audited States bodies (apart from those that are companies owned and controlled by the States), and (iii) States aided independent bodies';
- and to receive reports on the 'adequacy of the corporate governance arrangements' of these bodies.³⁰

Membership of PAC consists of a chair (who must be a States Member), at least four other members, 50 per cent of whom must be States Members and 50 per cent who are not States Members (recruited through open competition).

If, as suggested above, the C&AG and Ombudsman work jointly on a report, it would be appropriate for PAC's terms of reference to permit receipt of such joint reports. It may also be appropriate, where relevant, for PAC to hear from the Ombudsman on own initiative reports into systematic failures where these have findings and recommendations that relate to 'economy, efficiency and effectiveness in the use of resources'.

2.4.11 Scrutiny Panels of the States Assembly

Following recommendations of the Clothier report in 2000 for the introduction of ministerial government in Jersey, the States of Jersey Law 2005 requires accountability for ministerial action through the creation of Scrutiny Panels under Standing Orders. In relation to the topics assigned to a Scrutiny Panel, its terms of reference are:³¹

- '(a) to hold reviews into such issues and matters of public importance as it, after consultation with the chairmen's committee, may decide;
- (b) to consider the existing and proposed policy of the Council of Ministers;
- (c) to scrutinize draft Laws and draft subordinate enactments which are to be made by the States and consider possible amendments to them, if appropriate;
- (d) to scrutinize subordinate enactments which have been made by a Minister;
- (e) to scrutinize international conventions and agreements before they are extended to Jersey;

³⁰ States of Jersey Standing Orders 132.

³¹ States of Jersey Standing Orders 136.

- (f) to scrutinize a draft medium term financial plan, a draft budget and other financial proposals of the Council of Ministers;
- (g) if appropriate, to report to the States upon any matter reviewed, considered or scrutinized by the panel and make recommendations in respect of the matter; and
- (h) to liaise, through the chairmen's committee, with the [Public Accounts Committee] so as to ensure appropriate co-ordination of the scrutiny function'.

Each Scrutiny Panel consists of a chairman and at least four other members (all States Members).

The creation of an Ombudsman office in Jersey will bring to the island a depth and breadth of independent expertise about complaint handling and public administration that has not previously been easily accessible to Scrutiny Panels. **In carrying out scrutiny inquiries and legislative scrutiny, consideration should be given to Scrutiny Panels calling on the expertise of the Ombudsman to provide evidence to assist the Panels' work. The Ombudsman may choose to be proactive and offer written evidence to Scrutiny Panels where an inquiry raises issues within the scope of the Ombudsman's expertise.** The Ombudsman does not need to have express legal powers to make these contributions.

2.4.12 *States Members Remuneration Review Body*

Set up in 2004, the States Members Remuneration Review Body (SMRRB) makes recommendations on the appropriate level of remuneration for elected members of the States Assembly. It can be regarded as a constitutional watchdog insofar as it serves to insulate elected Members from having to determine their own salaries, which risks undermining public confidence.

The five members of SMRRB are appointed by PPC and serve in an honorary capacity. Its recommendations are implemented one month after they have been published, unless a States Member has called for debate upon them. It is not anticipated that the Ombudsman will be involved in decisions of the SMRRB as they do not directly impact on members of the public.

2.4.13 *Referendum Commission*

The Referendum Commission established under the Referendum (Jersey) Law 2017 consists of a chair and four other commissioners appointed by PPC. States Members and employees are not eligible. Its remit is to consider and give an opinion on the wording of a proposed referendum question and to designate the lead campaign groups in relation to a referendum, to safeguard public confidence in the integrity of referendums.

There do not appear to be any issues to consider in relation to the Ombudsman. The Referendum Commission is an advisory body that does not make administrative decisions affecting individuals.

2.5 **Jersey's grievance resolution institutions**

In addition to the constitutional watchdog bodies discussed so far in this Chapter, consideration in the design of the Ombudsman scheme needs to be given to the Ombudsman's relationship with existing grievance resolution institutions.

In its October 2017 report *Improving Administrative Redress in Jersey*, the Jersey Law Commission surveyed the various bodies that have responsibility for dealing with people's grievances against administrative decision making.

2.5.1 *Internal complaints systems*

Every public body has or should have procedures for dealing with expressions of dissatisfaction from people who use their services. In the 2017 report, the Jersey Law Commission was critical of the lack of consistency in internal complaint handling across the public sector in Jersey.

People with grievances against a public body will normally be required to go through the body's internal complaints process before taking their case to the Ombudsman (though the Ombudsman may have discretion to look into a case where this has not been done).³²

As well as looking into individual cases, the Ombudsman may have a role in helping public bodies develop good quality complaints handling systems and ensuring that these operate effectively.³³

2.5.2 *Community Mediation scheme*

In Jersey, there has been an increasing use and awareness of ADR in recent years, especially in relation to family breakdown, petty debts and “community mediation”.

Community Mediation is a scheme set up by the Jersey Legal Information Board in 2009 and administered by Jersey Citizens Advice Bureau. During the research interviews, we were told that approximately eight people a year use the service. Mediations have included consumer and neighbour disputes. Each party pays £20 to use the scheme and the dispute is referred to a person on a panel of trained and accredited mediators. Mediators, some of whom are Jersey qualified lawyers, provide their services under the scheme free of charge.

There has been very little if any use of the Community Mediation scheme in relation to administrative justice issues. If, as recommended, the Ombudsman has power to seek to resolve complaints informally through the use of mediation,³⁴ the Community Mediation scheme could provide access to qualified mediators if in any case it was thought that the mediation should be conducted outside the Ombudsman office.

2.5.3 *Planning appeals*

The Planning and Building (Jersey) Law 2002 creates an appeal system for people aggrieved with decisions relating to planning applications. The ultimate decision-maker on appeal is the Minister responsible for the Department of the Environment, who takes into consideration the findings and recommendations of an independent Inspector.

Where it is clear that the aggrieved person had, or still has, a right of appeal under the 2002 Law to an Inspector and the Minister it will not normally be appropriate for the Ombudsman to look into the matter.

The roles of the planning appeals system and the Ombudsman are in theory distinct but in reality, this may not always be clear to the aggrieved person. **It will be important for both the planning appeal system (through staff in the Judicial Greffe) and the Ombudsman's office to signpost people to the appropriate scheme.**

³² See Chapter 9 on the processes and outcomes for aggrieved people in the Ombudsman.

³³ See Chapter 4 on the range of functions the Ombudsman could carry out.

³⁴ See Chapter 9 below.

2.5.4 States of Jersey Complaints Panel

The Complaints Panel is established under Administrative Decisions (Review)(Jersey) Law 1982 and consists of a chair, deputy chair and currently 10 other members all of whom work in an honorary capacity. When established in 1982, it was composed of States Members but since 1996 consists wholly of appointment members.³⁵ The proposed public services Ombudsman will replace the Complaints Panel.

2.5.5 Jersey Police Complaints Authority

The Jersey Police Complaints Authority is an independent organisation set up under the Police (Complaints and Discipline) (Jersey) Law 1999 and covers complaints against members of the States of Jersey Police Force and honorary police officers in each Parish.

If an informal resolution of a complaint cannot be achieved by a person requesting this from the States Police or the Connétable of the relevant Parish (in relation to honorary police officers), or the matter involves a serious allegation, the JPCA may intervene. The JPCA consists of eight members appointed by the States of Jersey for terms of three years, on a voluntary basis. The role of the Authority is to oversee, monitor and supervise the investigation by the Professional Standards Department of the States of Jersey Police or an external police force. Members of the JPCA do not themselves carry out investigations.

The JPCA annual report for 2017 refers to a comprehensive review of the legal framework for police complaints being underway.³⁶ **The Jersey Law Commission recommends that as part of the ongoing review of the police complaints system in the Island, consideration be given to what role the new Ombudsman might have.** It is possible to envisage a simplified system in which police matters fall within the remit of the Ombudsman. The Ombudsman office will have expertise in carry out investigations – so it would be possible, for the first time, to conduct investigations other than through police officers (if this is thought appropriate in a particular case). The Ombudsman will also have expertise in overseeing how public bodies themselves conduct internal complaints. Transferring functions currently carried out by the JPCA to the Ombudsman could simplify the complaints system overall and to reduce costs.

2.5.6 Tribunal appeals

There are currently nine separate tribunals in Jersey with jurisdiction to hear appeals from specific administrative decisions. These are: the Commissioners of Appeal for Taxes; Social Security Tribunal; Social Security Medical Appeal Tribunal; Income Support Medical Appeal Tribunal; Mental Health Review Tribunal; Health and Safety Appeal Tribunal; Data Protection Tribunal; Rate Appeal Board; and the Charities Tribunal.³⁷ These are judicial bodies that adjudicate on issues of fact and law.

The Jersey Law Commission has recommended that their jurisdictions are amalgamated into a single tribunal – the Jersey Administrative Appeals Tribunal (JAAT).

The roles of a tribunal and an Ombudsman are in theory distinct. If a Law creates a right of appeal to a tribunal about a decision taken by a public body, the aggrieved person can be expected to use

³⁵ The role and future of the Panel were considered in detail by the Jersey Law Commission in *Improving Administrative Redress in Jersey* (October 2017) chapter 5.

³⁶ https://statesassembly.gov.je/assemblyreports/2018/r.19-2018.pdf?_ga=2.168509473.1687077299.1538200621-1573182843.1515935872

³⁷ See for further analysis and discussion: Jersey Law Commission, *Improving Administrative Redress in Jersey* (2017) chapter 3.

that right of appeal rather than requesting the Ombudsman to look into the matter.³⁸ In reality, however, it may not always be so clear to an aggrieved person whether the matter should go to a tribunal or be taken to the Ombudsman. There is overlap between ‘maladministration’ (and the other ways in which an Ombudsman’s jurisdiction may be defined)³⁹ and the grounds on which appeals to tribunals and the Royal Court may be brought (see below).

It will be important for both the tribunal system (through staff in the Tribunals Service, part of the Judicial Greffe) and the Ombudsman’s office to signpost people to the appropriate scheme. In this way, in obvious cases the person would start their case in the best way – either as a tribunal appeal or a complaint to the Ombudsman.

On occasion, it is possible to envisage that a person will start in the process that is not best, or wholly, suited to the issues they want considered and that this will not be apparent until sometime into the process. To deal with this scenario, **the Jersey Law Commission recommends that the Ombudsman should have powers to refer issues to a tribunal (or the Royal Court) for determination, and vice versa tribunals and the Royal Court should have power to refer issues to the Ombudsman.**

This proposal echoes a recommendation made by the Law Commission of England and Wales in its 2011 report (Recommendation 4: ‘We recommend that the Administrative Court should have an express power to stay an action before it, in order to allow a public services ombudsman to investigate or otherwise dispose of the matter. We recommend that the stay of an action should not force a public services ombudsman to accept a complaint’).⁴⁰

In the grey areas where it might be possible for either the Ombudsman or a tribunal or Royal Court to consider an issue, the Ombudsman route may be better when the case involves extensive fact-finding. A tribunal or Royal Court may be preferable where there is a dispute about the correct interpretation of statutory provisions or where an interim remedy is needed.⁴¹

A further issue is **whether administrative decision-making connected with Tribunal appeals should fall within the remit of the Ombudsman.** In Chapters 5 and 6 below we recommend that the Judicial Greffe, of which the Tribunal Service is part, should be subject to investigation by the Ombudsman but only in relation to administrative decision-making and not if a decision is taken or done under authorisation of a tribunal judge.

2.5.7 Appeals from public bodies to the Royal Court

Under numerous Laws, there are rights of appeal from administrative decisions directly to the Royal Court. Where the first right of appeal is instead to a tribunal, typically there is a second right of appeal to the Royal Court. The grounds of appeal are determined by the Law creating the appeal: sometimes this covers questions of both law and fact; sometimes only question of fact.⁴²

It will be important for both the Royal Court (through staff in the Judicial Greffe) and the Ombudsman’s office to signpost people to the appropriate scheme. The recommendation for references between the Ombudsman and the Royal Court has been discussed above.

³⁸ See Chapter 7 below on matters that may be excluded from the Ombudsman’s remit.

³⁹ See Chapter 8 below on the types of fault that the Ombudsman can look into.

⁴⁰ Law Commission of England and Wales, *Public Services Ombudsmen* (Law Com No.329, 2011), Recommendation 4.

⁴¹ See de Smith’s *Judicial Review*, 8th edn (2017) paragraph 1-096.

⁴² See for further analysis and discussion: Jersey Law Commission, *Improving Administrative Redress in Jersey* (2017) chapter 7.

2.5.8 Applications for judicial review to the Royal Court

The Royal Court also hears applications for judicial review. These are challenges to the legality of a decision which may be made where there is no specific right of appeal. The grounds of judicial review include procedural impropriety (the public body did not follow the correct procedure when making the decision), illegality (the public body correctly understand the terms of the power or duty conferred on it by a Law), and unreasonableness (the public body's determination was so irrational that no reasonable body could have reached it, and it is therefore outside the confines of a lawful decision).

The roles of the Royal Court in relation to administrative justice and the Ombudsman are in theory distinct. If a Law creates a right of appeal to the Royal about a decision taken by a public body, the aggrieved person can be expected to use that right of appeal rather than requesting the Ombudsman to look into the matter.⁴³ Similarly, if the aggrieved person could reasonably be expected to make an application of judicial review.

It will be important for both the Royal Court (through staff in the Judicial Greffe) and the Ombudsman's office to signpost people to the appropriate scheme. The recommendation for references between the Ombudsman and the Royal Court has been discussed above.

From time to time it can be anticipated that a person or a public body will be aggrieved by the findings or recommendations of the Ombudsman. It is not proposed to create a right of appeal from the Ombudsman to the Royal Court. That will leave the aggrieved person or public body with the ability to apply for judicial review to challenge the lawfulness of the Ombudsman's report. **Through the judicial review process, the Royal Court will be able to ensure that the Ombudsman operates within the legal framework establishing the Ombudsman scheme, and that decisions making is procedurally fair and not unreasonable.** There is no need for the Law establishing the Ombudsman to set this out as the source of the grounds of judicial review are previous judicial decisions. Aggrieved persons and public bodies will be able to make applications for judicial review under existing procedures set out in the Royal Court Rules.

A further issue is **whether administrative decision-making connected with Royal Court appeals and applications for judicial review should fall within the remit of the Ombudsman.** In Chapters 5 and 6 below we recommend that the Judicial Greffe should be subject to investigation by the Ombudsman but only in relation to administrative decision-making and not if a decision is taken or done under authorisation of a tribunal judge.

2.6 Relations with the Channel Islands Financial Ombudsman

P.32/2018 made express reference to the need to consider how a new public services Ombudsman scheme in Jersey could work with the existing Channel Islands Financial Ombudsman (CIFO), which is based in Jersey.⁴⁴

There are some important differences between CIFO and the proposed new Ombudsman.

- CIFO operates across both Bailiwicks whereas the current proposal for the public services Ombudsman is for it to operate in Jersey. (P.32 does, however, envisage that there may be a Channel Island-wide public services Ombudsman in due course).

⁴³ See Chapter 7 below on matters that may be excluded from the Ombudsman's remit.

⁴⁴ See 1.x above for more detailed description of remit of CIFO.

- CIFO is a private sector ombudsman scheme with a funding model in which operating costs are paid for by the finance sector. All financial services providers (FSPs) pay a fixed annual charge and there is a further user-pays charge (case fees) paid by FSPs whose cases are determined by CIFO. The public services Ombudsman would be funded by the taxpayer. It would be challenging for a single organisation, or two organisations working closely, to plan resources in ways that would be seen as fair by the different constituencies that they serve (ie the finance industries of the Channel Islands and the Jersey public sector).
- CIFO is a specialist ombudsman scheme, where the Ombudsman and case handler staff have particular expertise in financial services. This is a significantly different context to the public sector (which in itself covers a diverse range of governmental activities). It should not be assumed that it would be possible or desirable for case handlers to handle complaints from both sectors.
- The people seeking to use the two organisations – consumers of financial services and citizens aggrieved by government – are likely to have different needs.

There are also similarities.

- To state the obvious: CIFO and the public services Ombudsman are both ombudsman schemes. They would operate using some of the same techniques, and would share the same values and standards in carrying out their missions.
- There could be similarities in the back-office requirements of the two organisations, for example in running telephone advice lines, logging cases and processing decision-making. There may be opportunities for sharing of premises, technology and support staff.
- If the public sector Ombudsman develops to operate across both Bailiwicks, there could be a shared corporate board with CIFO.⁴⁵

⁴⁵ See Chapter 10.

3 NAMING THE NEW BODY

3.1 Purpose of this chapter

The name of a new institution is important: it can shape what people think, feel and understand about it. For example, in the health sector using the name ‘health centre’ as opposed to ‘GP surgery’ may help people understand the breadth of facilities and professional advice available at a location.

The public profile of the States of Jersey Complaints Panel has also been hampered by confusion over its name. Even in the debate on 22 March 2018 on P.32/2018, it was referred to as the ‘board of administrative review’ and ‘the complaints board’. One Member drew attention to this, saying ‘I have done it myself I have called it by the wrong name. We do not know what this is called and exactly what it does; it is not properly promoted’.⁴⁶

In relation to the new body which this report is about, there has to date been little debate. The Clothier report (2000), the Jersey Law Commission report (2017) and Proposition P.32/2018 all use the term Ombudsman with no discussion. The purpose of this Chapter is to consider whether that is the right name. It sets out several options. The choice of the name for the new body is important in establishing its public profile within the island (what will resonate most with potential users of its services?) and beyond (the new body will join an international network of similar bodies).

If a joint body is established with Guernsey, the term ‘Channel Islands’ could be substituted for ‘Jersey’ in each of the options.⁴⁷

3.2 Design options

We make no specific recommendations in relation to the name of the Ombudsman. The choice is a matter of political preference between

Jersey Public Services Ombudsman
 Jersey Public Services Ombuds
 Jersey Public Services Complaints Commissioner.

3.3 Jersey Public Services Ombudsman

The name ‘Ombudsman’ is used in several other smaller jurisdictions, for example: Barbados Ombudsman; Bermuda Ombudsman; Cayman Islands Ombudsman (previously the Cayman Islands Complaints Commissioner); Gibraltar Ombudsman for Public Services; Ombudsman Sint Maarten; and Office of the Ombudsman (Tonga).

In the United Kingdom, the bodies officially called the ‘Parliamentary Commissioner for Administration’ and the ‘Commission for Local Administration’ are branded and widely known as the Parliamentary and Health Service Ombudsman (investigating maladministration by UK public bodies and the NHS) and the Local Government and Social Care Ombudsman (investigating maladministration in local authorities in England).

The networks and associations through which Ombudsman schemes collaborate also use the term, for example the Ombudsman Association and the International Ombudsman Institute.

⁴⁶ States of Jersey Official Report (Hansard), 22 March 2018, 17.1.7 (Deputy A.D. Lewis).

⁴⁷ See Chapter 1.

In the United Kingdom, the Cabinet Office provides guidance that ‘unless there are overriding reasons to the contrary, use the term ‘Ombudsman’ for genuinely independent redress schemes, as it has wide and increasing national and international public use and understanding, rather than other names such as ‘Commissioner’ or ‘Adjudicator’” (*Ombudsman Schemes – Guidance to Departments*, April 2010).

Advantages of using the name Ombudsman are that it is a widely used term elsewhere. Locally, it would follow the naming precedent of the Channel Islands Financial Services Ombudsman.

3.4 Jersey Public Services Ombuds

There is debate as to whether the term ‘ombudsman’ lacks gender neutrality and should be replaced with a term that is obviously gender neutral.⁴⁸ Less gendered names would be Ombuds and Ombudsperson.

In Northern Ireland, legislation governing the Northern Ireland Public Services Ombudsman originally proposed using the term ‘ombudsperson’ in the draft Bill, although this was rejected in the Assembly. In that debate, it was argued that:⁴⁹

We understand the origin of the word “ombudsman” and the question relating to the gender issue and it being a gender-neutral word. By the same token, we believe that there has been an ongoing cultural change in the last number of years whereby people tend to move away from using the word “man”, which most people here obviously accept has a gender definition. On that basis, we would prefer that the name remained “ombudsperson”. We think that that is becoming much more prevalent in common parlance and the understanding of people throughout civic society. ... Not only is it specifically related to this particular Bill, it is part of an ongoing, changing cultural public narrative around the use of gender definitions when people are addressed in the civic world.

The ‘Ombudsman’ entry on Wikipedia explains:

An indigenous Swedish, Danish and Norwegian term, ombudsman is etymologically rooted in the Old Norse word *umboðsmaðr*, essentially meaning “representative” (with the word *umbud/ombud* meaning proxy, attorney, that is someone who is authorized to act for someone else, a meaning it still has in the Scandinavian languages). ... Modern variations of this term include “ombud,” “ombuds,” “ombudsperson,” or “ombudswoman,” and the conventional English plural is ombudsmen.

The Ombudsman Association decided in May 2017 to avoid the plural term (‘ombudsmen’) but retained the use of ‘ombudsman’, considering it to be gender neutral. The minutes of the May 2017 AGM state: ‘The Chair set out the proposals to remove any reference to ‘ombudsmen’ from the Association’s Rules, amending them to ‘an ombudsman’, ‘ombudsman schemes’, or ‘ombudsman services’ as appropriate, in keeping with the Association’s position that the term ‘ombudsman’ is gender neutral.’

⁴⁸ This section of the report is adapted from M Doyle, ‘How an attempt to introduce a gender-neutral title was rejected by the legislature’ and M Doyle, ‘Manning’ the ombuds barricades’, which are posts on the *Ombuds Research* blog: see <https://ombudsresearch.org.uk/2017/04/25/how-an-attempt-to-introduce-a-gender-neutral-title-was-rejected-by-the-legislature/> and <https://ombudsresearch.org.uk/2015/06/09/manning-the-ombuds-barricades/>. And see V Bondy and M Doyle, ‘What’s in a name? A discussion paper on ombud terminology’, Chapter 26 in R Kirkham and M Hertogh (eds) *Research Handbook on the Ombudsman* (Edward Elgar 2018, forthcoming) <https://www.e-elgar.com/shop/research-handbook-on-the-ombudsman>.

⁴⁹ Northern Ireland Official Report (Hansard), Monday 30 November 2015 Volume 109, No 10.

Ombuds is becoming more frequently used in the USA and in academic circles. Use of the term ‘ombuds’ goes back at least to 2006, when the well-known OmbudsBlog was set up.

‘Ombudsperson’ is also recognised by the online Free Dictionary: ‘A public official who acts as an impartial intermediary between the public and government or bureaucracy, or an employee of an organisation who mediates disputes between employees and management’. This term is used by the European Network of Ombudspersons for Children (ENOC). ‘Ombudspersons for children’ is the term used by the EU for the European Forum on the Rights of the Child. It is also the term used by the UN Security Council. It is used interchangeably with ‘ombudsman’ by the Forum of Canadian Ombudsmen.

A further consideration is that many jurisdictions are adopting gender neutral drafting techniques in designing legislation. For example, in the United Kingdom the Office of Parliamentary Counsel advocates ‘avoiding nouns that might appear to assume that a person of a particular gender will do a particular job or perform a particular role (eg “chairman”)’.⁵⁰

A possible disadvantage is that ‘Ombuds’ may be less familiar to the public than ‘Ombudsman’ (though neither term probably

3.5 Jersey Complaints Commissioner / Jersey Commissioner for Administration

There is precedent for the use of the term ‘Commissioner’ in Jersey to refer to independent investigatory and oversight bodies, for example: the Children’s Commissioner (promoting and protecting children’s rights); the Information Commissioner (promoting respect for the private lives of individuals through ensuring privacy of their personal information); and the Commissioner for Standards (investigating breaches of the code of conduct for States Members including Ministers and States Greffe employees). Temporary judges of the Royal Court are also known as Commissioners.

There is also precedent elsewhere in the British Isles. In the Isle of Man, the ‘Tynwald Commissioner for Administration’ has recently been established, with a complaints handling function similar to that of an ombudsman scheme. And in the United Kingdom, the bodies now widely known as the Parliamentary and Health Service Ombudsman (investigating maladministration by UK public bodies and the NHS) and the Local Government and Social Care Ombudsman (investigating maladministration in local authorities in England) are in law formally called the ‘Parliamentary Commissioner for Administration’ and the ‘Commission for Local Administration’. The fact that the PHSO and the LGSCO are now generally referred to as ‘Ombudsman’ may, however, be better evidence that Ombudsman is a better name than Commissioner.

There would also be a risk of confusion in Jersey between the ombudsman scheme (if it included ‘Commissioner’ in its title) and the Commissioner for Standards (who is referred to prominently as the ‘Complaints Commissioner’ on the States Assembly website).

3.6 Other names

A number of Ombudsman schemes use alternative terminology, such as Defensor del Pueblo (Defender of the People) (Spain), Public Protector (South Africa), Le Protecteur du citoyen (Quebec) and Mediateur (France). Many of these titles reflect particular circumstances or cultural expectations, such as the primacy of enforcing human rights in a new democracy or explicitly addressing endemic corruption in government.

⁵⁰ Office of the Parliamentary Council, *Drafting Guidance* (July 2018) para 2.1.3.

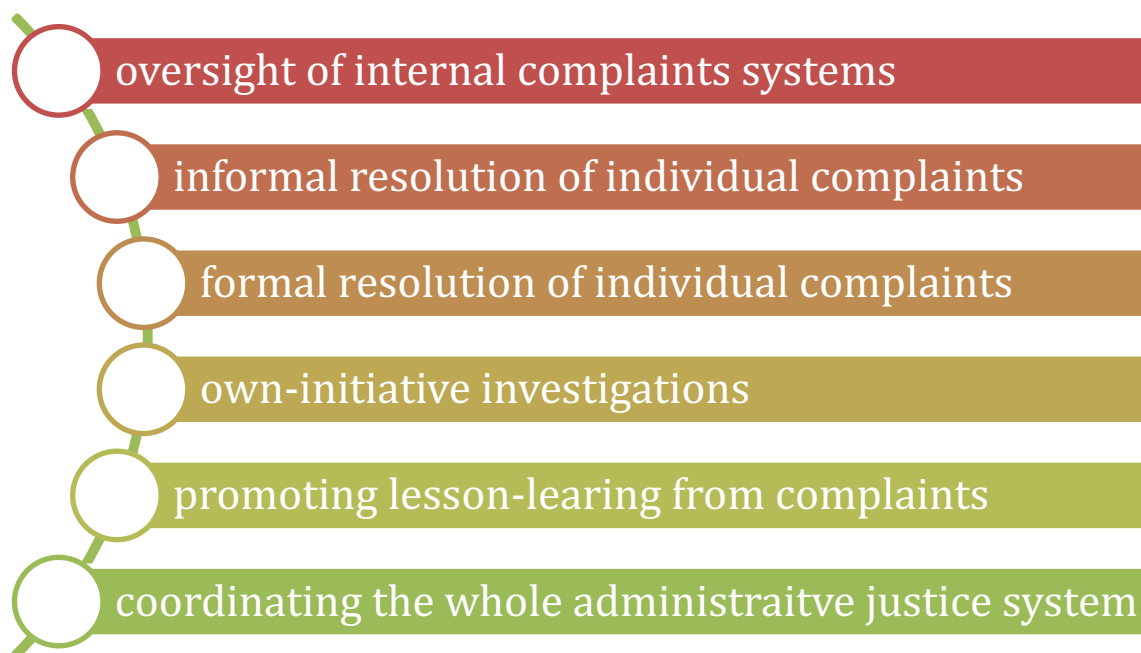
3.7 Recommendations

There are pros and cons with each of the naming options set out above. We make no firm recommendation, concluding that the name of the new body is a matter of political preference for the Government of Jersey and the States Assembly.

4 FUNCTIONS OF THE OMBUDSMAN

4.1 Purpose of this Chapter

This Chapter is about the functions that could be carried out by the new public services Ombudsman in Jersey. If Jersey follows designs of Ombudsman schemes elsewhere, the range of functions will be much broader than those of the current States of Jersey Complaints Panel, where the sole focus is on the resolution of individual grievances. Some of the functions will be considered in more detail in other Chapters of the report; but listing the full range of possible functions together helps envisage the whole of the Ombudsman's remit.



We recommend that the Ombudsman scheme should have the following as its principal functions.

- **Oversight of how public bodies design and operate internal complaints handling procedures.** This work will involve publishing guidance and providing training and advice to staff at different levels within the bodies covered by the Ombudsman scheme.
- The independent **resolution of individual complaints about maladministration and failure of service using appropriate dispute resolution techniques, including mediation.** The output of this type of resolution will be an agreement between the aggrieved person and the public body.
- The **formal resolution of individual complaints.** This should mainly be through the method of investigation (the standard process used by Ombudsman); the Ombudsman should also have power to hold a public hearing (not typically regarded as an Ombudsman technique). The output of this type of resolution would be a formal report by the Ombudsman containing findings and recommendations.
- Carrying out **own initiative investigations** where there is no individual aggrieved person but the Ombudsman is concerned that there is systematic maladministration or service failure. The output would be a report containing findings and recommendations.
- **Enabling lesson learning** from complaints and **achieving systematic improvements.**
- A **coordinating role in relation to the whole administrative justice system** in Jersey.

Many laws establishing Ombudsman schemes do not list the range of functions clearly or comprehensively: a person reading the legislation for the first time would be forgiven for finding it

hard to work out what an Ombudsman actually does. **It would aid transparency and public understanding Jersey's Ombudsman scheme if the Public Services Ombudsman (Jersey) Law in Jersey were to list the different functions of the Ombudsman.**

4.2 Oversight of internal complaints system

When a person is dissatisfied with a decision or service by a public body, the best institution to first look again at the decision or alleged service failure is the public body itself. This can help catch mistakes quickly and nip problems in the bud – or may demonstrate to the person that they have been listened to, the initial decision was correct and the service standards were reasonable (which may be achieved by a well-expressed explanation).

It is therefore important that public bodies have clear, easy to use internal procedures for a person to question decisions and service standards. **Ombudsman schemes can be designed to have an oversight role of internal complaints systems, to ensure that people have opportunities for access to good quality internal complaint handling** in the public body without needing to escalate the matter to an external agency such as an ombudsman, tribunal or legal proceedings in a court.

The effectiveness and efficiency of internal complaints processes within public bodies in the Island will have an impact on the workload and the credibility of the Jersey Ombudsman

In our October 2017 report *Improving Administrative Redress in Jersey*, we found evidence of variable practices across departments of the Government of Jersey and other public bodies in relation to the information they provided about internal complaints procedures. We made recommendations for improving the quality of internal complaint handling, including the creation of a legal duty on the Chief Minister to issue guidance to public bodies about fair and effective handling of complaints.⁵¹ The Chief Minister was selected as the duty-holder but we stated that if an Ombudsman were to be set-up in the Island, the Ombudsman would be a more expert and independent body to carry out this function. We therefore modify our 2017 recommendation and **recommend that the Ombudsman have a legal duty to issue guidance to public bodies about fair and effective handling of complaints.**

Since our October 2017 report, the Government of Jersey has taken steps to improve complaint handling, led by officials in the new Customer and Local Services department.⁵²

We noted that there was no commonly used definition of 'complaint' across public bodies in Jersey and recommended that a definition should be adopted. We have been told that a standard definition is now used:

The current definition of a complaint is: ... 'An expression of dissatisfaction by one or more members of the public about the organisation's action or lack of action, or about the standard of service provided by or on behalf of the organisation.'

A complaint may relate to: failure to provide a service; inadequate standard of service; dissatisfaction with the States of Jersey policy; treatment by or attitude of a member of staff; disagreement with a decision where the customer cannot use another procedure (for example an appeal) to resolve the matter; the States of Jersey's failure to follow the appropriate administrative process.

⁵¹ Jersey Law Commission, *Improving Administrative Justice in Jersey* (October 2017) Recommendation 2.1.

⁵² See 'States announces "one front door" for customer services'
<https://www.gov.je/news/2018/pages/StatesAnnouncesOneFrontDoor.aspx>

By July 2018, phase 1 of an improvement project had been completed. This included a single online customer feedback page and web form,⁵³ a centralised co-ordinating function established within Customer and Local Services, having a named feedback coordinator identified in each Department, and internal communications about States of Jersey wide customer feedback policy.

Phase 2, we were told, covers: introduction of process and system for staff to record complaints when raised face to face/by phone/letter; an online system with workflow to record and produce MI; standard operating procedures; standardised written response templates; development and rollout of appropriate training; and monitoring and evaluation of feedback received and trends.

Recent initiatives on the role of Ombudsman schemes in different parts of the United Kingdom in relation to internal complaint handling would provide opportunities for the Jersey Ombudsman to ensure that best practice is transferred and adapted to the Island's needs.

Single portals for making complaints, shared definitions of 'complaint', frameworks for recording and reporting complaint numbers, and opportunities to share best practice are all important features of standardised complaints processes and cross-government complaint networks. This is best illustrated by the efforts made in Scotland, where moves towards a standardised complaints-handling process across each public sector was kickstarted with the Crerar Review in 2006 and developed by the Fit for Purpose Complaint System Action Group, one of several action groups set up following Crerar in 2008.⁵⁴

The Fit for Purpose group made several recommendations in its 2008 report to Ministers,⁵⁵ including:

- A set of principles based on the Scottish Public Services Ombudsman guidance (Valuing Complaints) should underpin all public service complaints handling processes; for example, to make the consumer journey as consistent as possible all processes should include stages for informal resolution, formal internal review and then external review and remain flexible enough to meet the needs of individual consumers.
- There should be a standardised complaints handling process for each public service sector based on these principles.
- A signposting service, with a single point of contact, should be established to provide guidance and general advice to consumers on complaining.
- Mediation for providers and consumers as well as advocacy for consumers in need of support should be introduced where appropriate, and Government should consider how best to resource mediation and advocacy in complaints handling.
- All public service organisations should review their schemes of delegation to ensure that the authority to resolve complaints at the front line and by complaints handlers is maximized and that the chain of decision making is as short as possible;

⁵³ <https://www.gov.je/government/comments/Pages/index.aspx>

⁵⁴ Further detail on the development of standardised complaints handling in Scottish public services is available in T Mullen, C Gill, and N Vivian, 'Scotland's Model Complaint Handling Procedures: Exploring recent developments and the usefulness of complaint data for administrative justice research' (University of Glasgow and Queen Margaret University 2017), published by UK Administrative Justice Institute (UKAJI), https://www.gla.ac.uk/media/media_555877_en.pdf

⁵⁵ The report is available at: <https://www.webarchive.org.uk/wayback/archive/20180705152547/http://www.gov.scot/Topics/Government/PublicServiceReform/IndependentReviewofReg/ActionGroups/ReporttoMinisters>

- The training needs of front-line complaints handlers should be reviewed to ensure they have the skill and confidence to exercise authority delegated to them in handling complaints.
- The status of public-sector complaint handlers should be enhanced and a cross-sectoral network of complaints handlers should be established for sharing best practice.

Further, the group recommended that the Scottish Public Service Ombudsman (SPSO) should lead in coordinating the training for complaints handlers; developing a recognised qualification for complaints handlers; and improving the way in which the learning from complaints is used to drive improvement.

Subsequently, the Public Services Reform (Scotland) Act 2010 gave the necessary powers to the SPSO to take the lead on the standardisation of complaints processes; this included a duty to publish governing principles and model complaint-handling procedures (CHP). The CHP introduced a two-stage process, with timescales for each; encouraged mediation and informal early resolution; set out requirements for recording and reporting on complaints; provided a definition of 'complaint' to be used across the public sector; and encouraged learning from complaints. The SPSO established a separate internal unit, the Complaints Standards Authority (CSA), to implement these new duties.

Research conducted in 2017 on the work of the CSA concluded that the CHP had been welcomed by complaint handlers within public authorities for bringing improvements, with some challenges:⁵⁶

- **Benefits** identified by interviewees were improvements in simplicity and speed for complainants and the beginnings of a more positive culture around complaints in local authorities. The 'complainant journey' had been simplified. The publication of complaints data was seen by most interviewees as focusing minds on complaints and providing opportunities for learning.
- The researchers highlighted that **challenges** for government complaint handlers related to inconsistency between authorities/departments in collecting data, how complaint data should be interpreted, and how performance indicators on complainant satisfaction and learning from complaints should be reported.

Among the recommendations made to address these challenges were the development of further guidance for authorities and their complaint handlers. The researchers also recommended that the approach taken in Scotland (with a model CHP and the Ombudsman having a role in setting and overseeing standards in complaint handling) should be adopted in other jurisdictions.

This was included in the legislation for the Northern Ireland Public Services Ombudsman (NIPSO) and the Public Services Ombudsman for Wales (PSOW). It has not, however, been proposed as part of the reform of the English and UK Parliamentary and Health Services Ombudsman.

The introduction of a CSA role for the Ombudsman has been described as a 'a genuinely British innovation': 'The idea behind the innovation is that as an expert in complaint-handling, the ombudsman should become a promoter and, up to a point, a regulator of good complaint-handling practice in other public bodies. This is important because in practice most complaints are dealt with by service providers and are better dealt with there.'⁵⁷

⁵⁶ For a summary of the research findings, see <https://ukaji.org/2017/10/26/research-into-scotlands-new-arrangements-for-public-service-complaint-handling/>

⁵⁷ See R Kirkham (2017), 'The Proactive Model of the Ombudsman: proposed reform in Wales', <https://ukaji.org/2017/03/03/the-proactive-model-of-the-ombudsman-proposed-reform-in-wales/>

We recommend that the Jersey Ombudsman has a role in relation to the continuous improvement of internal complaints processes by public bodies and bodies in receipt of significant public funding. While it is encouraging that the Government of Jersey is implementing reforms in this area, the work needs to be continuous. It should also extend beyond the departments of the Government of Jersey to other public bodies, including Parishes and the many other bodies carrying out public functions or in receipt of substantial public funding.⁵⁸

Section 16G of the Scottish Public Services Ombudsman Act 2002 provides a model which could be the starting point for detailed design of a comparable legal duty for the Jersey Ombudsman.

Complaints handling procedures: promotion of best practice etc.

(1) The Ombudsman must —

- (a) monitor practice and identify any trends in practice as respects the way in which listed authorities handle complaints,
- (b) promote best practice in relation to such complaints handling,
- (c) encourage co-operation and the sharing of best practice among listed authorities in relation to complaints handling.

(2) A listed authority must co-operate with the Ombudsman in the exercise of the function in subsection (1).

(3) The duty in subsection (2) does not apply to the extent that—

- (a) the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duty, or
- (b) the duty is inconsistent with any other enactment.

4.3 Resolving individual complaints informally

This is considered further in Chapter 9 below.

4.4 Resolving individual complaints through investigation or adjudication

This is considered further in Chapter 9 below. Adding adjudication to the suite of techniques would be highly unusual, but we examine the case for doing so in the particular circumstances of Jersey.

4.5 Should the Ombudsman have own-initiative powers?

Most investigations of the Ombudsman will be triggered by a person requesting that an individual grievance is looked into. Another trigger for an Ombudsman investigation could be for the Ombudsman to exercise ‘own-initiative’ or ‘own-motion’ powers.⁵⁹ The key feature of own-initiative powers is that the Ombudsman would not have to wait to receive an individual complaint before starting an investigation.

Many public services Ombudsman schemes internationally permit this; some do not. Looking at the Ombudsman schemes in smaller jurisdictions there is a mixed picture. The Ombudsman schemes in Bermuda and the Cayman Islands do have own-initiative powers, whereas the Gibraltar Ombudsman for Public Services and the Tynwald Commissioner for Administration does not.

⁵⁸ See Chapter 4.

⁵⁹ For a useful survey, see Northern Ireland Assembly, Research and Information Service Briefing Paper 80/15 (Ray McCaffrey) <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2015/ofmdfm/8015.pdf>

Giving evidence in the United Kingdom to a House of Commons committee in 2012, the Parliamentary and Health Service Ombudsman (who does not have such powers) defined own-initiative powers:⁶⁰

This allows them [Ombudsman schemes] to use evidence gathered through their own research, by another agency or regulator, by Parliament, or prompted by a specific public concern, to carry out a systemic investigation. The decision to carry out an own-initiative investigation would of course need to be both evidence-based and taken independently by the Ombudsman.

The advantages of own-initiative powers include the following factors.

- It would enable the Ombudsman to investigate where no member of the public is willing or able to make a complaint or where the Ombudsman receives an anonymous complaint. During the research interviews, we were told that in a small island people may be deterred from ‘putting their head above the parapet’ for fear of being labelled a trouble-maker.
- Own-initiative powers would be well-suited to dealing with systematic problems, where a whole type of decisions or group of people have been affected by suspected maladministration or failure in service.
- If the Ombudsman has own-initiative powers, this could facilitate closer working with other integrity branch bodies such as the Children’s Commission and Comptroller and Auditor General. These watchdog bodies could provide information to the Ombudsman, who in turn would consider whether to exercise own-initiative investigation into the matter referred (see Chapter 2).
- This could enable the Ombudsman to act more quickly to look into matters of concern compared with waiting for an individual to make a complaint about maladministration or failure of service. The Institute for Government in a recent report highlighted that the UK Ombudsman schemes ‘... lack the ability to initiate investigations on the basis of their own concerns, in the absence of a specific referral. This means that where early warnings are raised, they are not escalated early enough to those who could make meaningful changes – specifically within Parliament and the Government’.⁶¹
- The Ombudsman would be more proactive, able to have a greater impact on improving the quality of public administration.
- Own-initiative powers would not involve a major extension in the type of role carried out by the Ombudsman, i.e. investigation of instances of maladministration and failure in service; nor would they be a ‘wasteful diversion of resources away from’ the Ombudsman’s primary task.⁶²

Possible disadvantages may include the following.

- Own-initiative powers might weaken the Ombudsman’s focus as a service based on the needs of individual complainants.

⁶⁰ Liaison Committee, Second Report of Session 2012-13, Select Committee effectiveness, resources and powers, HC 697, Ev w64.

⁶¹ Benoit Guerin, Julian McCrae, Marcus Shephard, *Accountability in modern government: Recommendations for change* (October 2017).

⁶² This last point was made in relation the UK Parliamentary Commissioner for Administration (now the PHSO) by the Report of the Committee of the JUSTICE-All Souls’ Review of Administrative Law in the United Kingdom, *Administrative Justice: Some Necessary Reforms* (1988) para 5.14.

- The powers could enable the Ombudsman to be more proactive but this might create a risk of mission creep whereby the Ombudsman intervenes in inappropriate matters or blur the boundaries with the work of other bodies (such as the Comptroller and Auditor General).
- Own-initiative investigations would increase the operating costs of the Ombudsman scheme, perhaps considerably if the matters looked into were large scale ones.

The Parliamentary and Health Service Ombudsman in the United Kingdom – which looks into complaints about central government and the National Health Service – does not currently have own-initiative powers, despite long-standing calls from experts for this reform. The UK Government has rejected calls for the PHSO to have these powers, stating: ‘Whilst we understand the attraction of ‘own initiative’ investigations, there is a risk that the introduction of such powers could detract from PSO’s role in putting things right for the individual citizen. Consequently we do not propose to create these powers for the PSO’.⁶³

If the new Ombudsman in Jersey does have own-initiative powers, the further question is what restrictions or conditions should apply when the Ombudsman is considering whether to look into a matter.

For example, the Northern Ireland Public Services Ombudsman (NIPSO) must have a ‘reasonable suspicion’ or ‘systematic maladministration’ and must publish criteria for exercising the power (Northern Ireland Public Services Ombudsman Act 2016 sections 8-9). These criteria were published in October 2018 and require at least one of the following to apply:

- The issue of concern has been identified by the Ombudsman to be one of public interest;
- The issue of concern affects a number of individuals or a particular group of people;
- The investigation has the potential to improve public services.

Additionally, NIPSO will only investigate if investigation of the chosen issue is the best and most proportionate use of investigative resources.

Some other jurisdictions define own-initiative powers more simply.

We recommend that the Ombudsman should have powers to start own-initiative investigations where there is an issue of concern of public interest and the investigation has the potential to improve public services.

Similarly to the Northern Ireland model, **in Jersey an own-initiative investigation should take place if the Ombudsman is satisfied that: there is an issue of concern that is one of public interest; the issue of concern affects a number of individuals or a particular group of people; the investigation has the potential to improve public services; the investigation would be a proportionate use of resources.**

The Ombudsman’s decision to launch and own-initiative investigation should require the concurrence of the non-executive board.⁶⁴ Own-initiative investigations may have resource implications and may be politically sensitive. Collective decision-making within the Ombudsman organisation should ensure that there is agreement at the outset; thereafter, the non-executive board should not be involved in the conduct of the investigation, its findings or recommendations.

⁶³ Cabinet Office, *A Public Service Ombudsman: Government Response to Consultation* (December 2015).

⁶⁴ See Chapter 10 on proposals for a non-executive board.

4.6 Learning from complaints and enabling systematic improvements

In England, the Local Government and Social Care Ombudsman has said ‘But it is not enough to fix people’s problems one by one. We must harness our unique insight into where things are going wrong to help councils and care providers improve services for everyone’s benefit’.⁶⁵

This captures an essential function – the creation of a professional culture of improvement – widely accepted as being at the heart of the idea of an Ombudsman service.⁶⁶

Providing the Ombudsman with powers to enable learning from complaints and driving forward systematic improvements in the quality of administration would enable the new organisation to carry out a function that was beyond the capacity and legal powers of the States of Jersey Complaints Panel to do.

4.7 A broader coordinating role across the administrative justice system?

In our October 2017 report *Improving Administrative Redress in Jersey*, we posed the question whether an Ombudsman in Jersey could have a wider role of working with public bodies to improve the quality of public administration. This is a major emphasis of many ombudsman schemes and something that the States of Jersey Complaints Panel is unable to provide in a systematic way.

In a written response to our Consultation Report, Dr Chris Gill (of the University of Glasgow) draw our attention to his research on complaints handling in England. Dr Gill’s study investigated questions about the practical impact of the work of ombudsman, courts and tribunals have on the day-to-day work of public bodies. One of Dr Gill’s policy recommendations is that ombudsmen should be ‘learning champions’, which would have three facets:

Spokesperson: working collaboratively with courts and tribunals, the ombudsman could distil and disseminate important decisions taken by other redress mechanisms. This would draw on the institution’s skill in packaging messages in ways that are accessible to administrators. Rather than only drawing on its own casework, it could bring together and disseminate important, cross-cutting administrative justice principles. Drawing on its closer understanding of bureaucratic decision-makers, the ombudsman could be charged with the coherent presentation of administrative justice principles to bureaucratic audiences.

Relationship manager: here the ombudsman would function as a conduit for interchange between decision-makers and redress mechanisms. The ombudsman could either create professional networks or develop existing ones, which would function as spaces in which administrative justice principles could be disseminated and as fora in which shared understandings of good practice could be jointly developed. This would capitalise on the ombudsman’s ability to enter into professional networks and would allow it to extend its scope as a policy actor. This would also allow the ombudsman to identify more clearly areas where the decision-makers require training or guidance.

System fixer: The third dimension of the ombudsman as learning agent would require new powers of own-initiative investigation, which could be harnessed to trouble-shoot problem areas within the administrative justice system. For example, the ombudsman might launch an investigation in areas where there are high levels of successful appeals, or in response to concerns raised in the annual reports of the Senior President of Tribunals. The ombudsman might also investigate where new initiatives have a significant knock on effect on the administrative justice system, such as currently in relation to mandatory reconsideration. There is also potential for the ombudsman to follow up individual cases. Particularly where important legal

⁶⁵ <https://www.lgo.org.uk/information-centre/news/2017/jul/Ombudsman-investigations-are-making-a-difference-and-changing-services-for-the-better>

⁶⁶ For further discussion of professional culture of improvement, see Benoit Guerin, Julian McCrae, Marcus Shephard, *Accountability in modern government: Recommendations for change* (October 2017).

precedents are set, the ombudsman could have a role akin to Special Masters in the US court system (Cannon 2004). Here, judges might refer cases to the ombudsman for follow up where public interest issues appear to be at stake. Such a proactive role is quite different from the fire-fighting approach currently adopted by the [Local Government Ombudsman in England]; however, this thesis' findings suggest that the potential benefits of the ombudsman within the administrative justice system are currently underdeveloped".

We see merit in this approach for Jersey and suggest that consideration be given to Dr Gill's model by policy makers.

5 ENSURING THE OMBUDSMAN IS ACCESSIBLE

5.1 Purpose of this chapter

In the built environment, nowadays questions of how people will access a new building are central to the design process. This includes ensuring that people who use wheelchairs or have hearing or sight impairments can get into the building and use its services. Interior designers understand the importance of planning how people will circulate in the building and respond to colours and textures.

Access to a new institution is also important from a legal perspective. The design of a law setting up a new body could create barriers to people being able to use a service – requiring payment of fees, imposing formalities, setting a short time for people to come forward. Alternatively, the design could seek to maximise accessibility.

This Chapter examines which individuals and bodies may use the new Ombudsman scheme, with what pre-conditions, and more generally how the scheme can be designed to eliminate or reduce barriers to its use.

5.2 International benchmarks and design principles

The International Ombudsman Institute provides the following guidance for new Ombudsman schemes:⁶⁷

Ombudsman offices should be free to use, and readily available to all service users. The Ombudsman will generally expect complainants to have given the body complained about an opportunity to resolve the matter first, but should have discretion to accept complaints where this has not happened if circumstances warrant it.

Complaints should be accepted in any appropriate format, written, verbal or electronic. Representatives including family members, elected officials or advocates, should be able to complain on behalf of an individual provided there is evidence of consent. There should be no requirement, however, that a complaint must be channelled through a representative.

It is important that complaints reflect the broad spectra of users of public services so access should be available in all commonly used languages and special arrangements should be made to ensure that the communication requirements of people with disabilities are catered for. Other groups may also need special arrangements, for example, prisoners will want to be reassured that they can communicate privately with the Ombudsman.

The Ombudsman Association (formerly the British and Irish Ombudsman Association) lists as one of the 'principal features of an Ombudsman scheme'⁶⁸

Access to Ombudsman schemes is free for citizens/consumers, and they are not at risk of an order for costs. Ombudsman schemes handle enquiries as well as complaints, because dealing with an enquiry may head off a complaint (for example, by resolving a misunderstanding)

The citizen/consumer first complains to the body/business, accessing the Ombudsman scheme if dissatisfied with the body/business's response (or if it does not respond within a reasonable time).

In its *Service Standards Framework* (2017), the Ombudsman Association requires its member to make the following commitments in respect of accessibility:

- Members' service should be free to complainants.

⁶⁷ International Ombudsman Institute, *Developing and Reforming Ombudsman Institutions* (2017) page 7.

⁶⁸ See <http://Ombudsmanassociation.org/about-principle-features-of-an-Ombudsman-scheme.php>.

- Members should ensure that their procedures are customer focused.
- Members should work with complainants to understand their needs, in order for complainants to access their service easily.
- Members should make reasonable efforts to support access to their services for any user, including working with representatives and others to support complainants through their service, and publish their procedures for doing this.
- Members should listen to what complainants want from them and ensure they understand their complaint. If a complainant is complaining about an organisation or issue that the member cannot consider complaints about, where possible they should direct the complainant to the relevant Association member, or another organisation who may be able to help.

5.3 Raising awareness about the Ombudsman

Rather than sit back and wait for people to approach, the Ombudsman should have a strategy to help members of the public in Jersey become aware that the Ombudsman scheme exists and what may be expected from it.

Examples of actions taken by other Ombudsman include: having a user-friendly website, advertising, using of social media, periodically having a stall in a main shopping street, and outreach meetings with different community groups.⁶⁹

Jersey is a multi-lingual island and information about the Ombudsman should be available in the most commonly used languages (English, Portuguese, and Polish).

In developing a communications strategy, consideration should be given on reaching out to different groups of people (including young people and elderly people).

When a public body concludes an internal complaint process, there should be a requirement for the decision letter to state that if the person remains aggrieved, he or she may contact the Ombudsman (and provide specific contact details to facilitate this along with information about time limits).

The Ombudsman should also build relationships with staff in the public bodies within its remit, for example running training sessions on effective complaint handling and raising awareness of the role of the Ombudsman.

Similarly, the Ombudsman should ensure there is a good working relation with bodies providing advice to people with complaints (including the Jersey Citizens Advice Bureau, Members of the States of Jersey, and the legal profession).

The detail of the outreach and communications activities would not need to be specified in the legislation establishing the Ombudsman, but **the Jersey Law Commission recommends that the Public Services (Ombudsman) Jersey Law should contain a broad duty on the Ombudsman to undertake activities to inform people and public bodies within its remit about its role.**

We have not found any precedent for such a duty in other Ombudsman schemes but most (though not all) schemes have in practice recognised the importance of these activities. Creating such a duty would minimise the risk that a new Ombudsman scheme in Jersey remains as low profile as the current States of Jersey Complaints Panel. Research for our previous report *Improving Administrative Redress in Jersey* (October 2017) found that there was a longstanding and widely held view that the work for the Complaints Panel should be promoted better, including having a website. But nobody acted to achieve this. The proposed duty would make clear that promoting the

⁶⁹ See profiles of different Ombudsman schemes from smaller jurisdictions in Chapter 12.

work of the Ombudsman scheme is a core activity (that would need to be planned and funded), not an optional extra.

5.4 Free at the point of use and financial support to aggrieved people

There is strong consensus that public services Ombudsman schemes should be free of charge to people making inquiries and complaints. This principle must apply to the new Ombudsman scheme in Jersey. Access free of charge is a requirement for membership of the Ombudsman Association.

In seeking to make the Ombudsman as accessible as possible, thought needs to be given to financial considerations as a possible deterrent to people deciding whether or not to take a complaint to the Ombudsman (for example, documents may need to be copied and time taken off work for meetings). The Jersey Law Commission therefore **recommends that the Public Services Ombudsman (Jersey) Law should contain a discretionary power for the Ombudsman to pay reasonable expenses and compensation for time.** We do not envisage that such payments would be made routinely but where appropriate the Ombudsman should have power to do so.

The Local Government Act 1974 section 28, in relation to the Local Government and Social Care Ombudsman (LGSCO) in England, provides a precedent that could be adapted for Jersey:

The Local Commissioner [the formal legal name for the LGSCO] may, if he thinks fit, pay to the person by whom the complaint was made, and to any other person who attends or furnishes information for the purposes of an investigation under this Part of this Act —

- (a) sums in respect of the expenses properly incurred by them;
- (b) allowances by way of compensation for the loss of their time, in accordance with such scales and subject to such conditions as may be determined by the Treasury.

5.5 Format of complaints

Most public services Ombudsman schemes have requirements about the format in which complaints must be presented (for example, in writing). The legislation creating Ombudsman in other jurisdictions has adopted a variety of different requirements relating to the format and formalities of making a complaint.

We recommend that there should be as few formal requirements as possible in respect of how a complaint is presented to the Ombudsman.

As in Bermuda, complaints should be able to be made orally, electronically or in writing. Where an aggrieved person wants to make an oral complaint (in person at the Ombudsman's office or by telephone), it would be part of the role of the Ombudsman to help the person identify the issues about which there is a grievance. Oral complaints should be as of right and not (as in the Scottish Public Services Ombudsman or the (English) Local Government and Social Care Ombudsman permitted only if there are exceptional circumstances.

We also recommend that specific consideration be given to how complaints to the Ombudsman can be made by people detained in custody.⁷⁰ Here too, the Ombudsman scheme in Bermuda provides a model of maximizing accessibility:⁷¹

- (3) Where a complaint is made to the Ombudsman, he shall record—
 - (a) the complainant's name, address and telephone number;

⁷⁰ See chapter x on the Ombudsman remit over HM Prison La Moye.

⁷¹ The Ombudsman Act 2004 s 7(3).

- (b) the subject matter of the complaint; and
 - (c) the date when the complaint was made.
- (3) Where a person who is detained in custody or otherwise confined in an institution informs the person in charge or another person performing duties in connection with his detention or confinement, that he wishes to make a complaint to the Ombudsman, the person so informed –
- (a) shall take all steps necessary to facilitate the making of the complaint including the provision of an unsealed envelope; and
 - (b) without delay, shall send such envelope to the Ombudsman, sealed.
- (4) A communication from the Ombudsman to a person confined or in custody as described in subsection (3) shall be forwarded to that person in a sealed envelope.
- (5) The Ombudsman shall write to a complainant acknowledging receipt of the complaint.

The following table, drawing on a sample of Ombudsman schemes in smaller jurisdictions (see Chapter 12) and those in the United Kingdom, shows a range of requirements about format in which complaints must be made.

| Requirement on format of complaint | Ombudsman scheme | Where found in legislation |
|--|---|--|
| (1) A complaint to the Ombudsman about any administrative action of an authority – (a) shall be made by the person aggrieved, but may be made on his behalf by a member of his family or other suitable person if the person by whom the complaint might have made is unable to act for himself; (b) may be made orally, electronically or in writing; ... | Bermuda Ombudsman | The Ombudsman Act 2004 section 7 |
| A complaint must be made in writing or electronically unless the Ombudsman is satisfied that there are special circumstances which make it appropriate to consider a complaint made orally. | Scottish Public Services Ombudsman | Scottish Public Services Ombudsman 2002 section 10(3) |
| the complaint must be made in writing | Public Services Ombudsman for Wales | Public Services Ombudsman (Wales) Act 2005 section 5(1)(a) |
| where a written complaint is made by or on behalf of a member of the public who claims to have sustained injustice – but recent amendments give LGSCO discretion to disapply the requirement of writing in relation to a particular complaint | Local Government and Social Care Ombudsman (England) | Local Government Act 1974 section 26(1) as amended by Local Government and Public Involvement in Health Act 2007 |
| A complaint may be made— (a) by the complainant; or (b) by a person authorised in writing for the purpose by the complainant. | Tynwald Commissioner for Administration (Isle of Man) | Tynwald Commissioner for Administration Act 2011 section 12(1) |
| a written complaint is duly made to the Ombudsman by a member of the public who claims to have sustained injustice | Ombudsman for Public Services (Gibraltar) | Public Services Ombudsman Act 1998 section 13(1) |

5.6 Time limits for making complaints

All public services Ombudsman schemes set time limits within which a complaint must be made. It is in the aggrieved person's and the public body's interests that matters are resolved as quickly as possible but a reasonable period of time must be allowed for the aggrieved person to seek advice, collect relevant evidence, and to decide to approach the Ombudsman.

We looked at time limits in a small sample of Ombudsman schemes. These range from 6 months to a year, for example:

| Requirement on time limits | Ombudsman scheme | Where found in legislation |
|--|---|---|
| within one year after the day the complainant first had notice of the administrative action | Bermuda Ombudsman | The Ombudsman Act 2004 s 7 |
| The Ombudsman must not consider a complaint made more than 12 months after the day on which the person aggrieved first had notice of the matter complained of, unless the Ombudsman is satisfied that there are special circumstances which make it appropriate to consider a complaint made outwith that period. | Scottish Public Services Ombudsman | Scottish Public Services Ombudsman 2002 s 10(1) |
| the complaint must be made to the Ombudsman before the end of the period of one year starting on the day on which the person aggrieved first has notice of the matters alleged in the complaint. | Public Services Ombudsman for Wales | Public Services Ombudsman (Wales) Act 2005 s 5(1)(a) |
| In subsection (1)(b), "the permitted period" means the period of 12 months beginning with — (a) the day on which the person affected first had notice of the matter, or (b) if the person affected has died without having notice of the matter— (i) the day on which the personal representatives of the person affected first had notice of the matter, or (ii) if earlier, the day on which the complainant first had notice of the matter. (3) A Local Commissioner may disapply either or both of the requirements in subsection (1)(a) and (b) in relation to a particular complaint. | Local Government and Social Care Ombudsman (England) | Local Government Act 1974 s 26B as inserted by Local Government and Public Involvement in Health Act 2007 |
| The Commissioner must not consider a complaint made more than 6 months after a final decision of the listed authority has been notified to the complainant. | Tynwald Commissioner for Administration (Isle of Man) | Tynwald Commissioner for Administration Act 2011 s 13 |
| (1) A complaint under this Act shall not be entertained unless it is made to the Ombudsman not later than six months from the day on which the person aggrieved first had notice of the matters alleged, or in the event of the death or inability of the person aggrieved to act for | Ombudsman for Public Services (Gibraltar) | Public Services Ombudsman Act 1998 s 12 |

himself, occurring within such period of six months of the death of the person aggrieved or of his becoming so incapable.

(2) Notwithstanding the provisions of subsection (1), the Ombudsman may conduct an investigation pursuant to a complaint not made within the period therein limited, if he considers that there are special circumstances which make it proper to do so.

In light of these points of reference, and having regard to the desirability of maximizing accessibility, **we recommend that the time limit for making a complaint to the Ombudsman should be 12 months, with a discretion for the Ombudsman to disapply this requirement in particular cases.**

We further recommend that the time limit should start to count down from the point at which the aggrieved person and the body complained against conclude the use of any internal complaints process. This, in our view, would be a more satisfactory starting point than ‘the day on which the person aggrieved first had notice of the matters alleged’. Some private sector Ombudsman schemes make use of ‘deadlock letters’, in which the aggrieved person or the organisation complained against signal the end of the attempt to achieve resolution through a process of internal complaint handling.⁷² We are not aware of deadlock letters being used in public sector Ombudsman schemes but see no reason of principle or practice why they should not be used.

5.7 Residency requirements for aggrieved persons

It would be possible for the Public Services Ombudsman (Jersey) Law could impose restrictions on who may take a complaint to the Ombudsman by requiring a residential or similar connection to the Island.

A design choice along these lines was made in the Isle of Man. The Tynwald Commissioner for Administration Act 2011 section 12 states:

(3) The complainant must be resident in the Island at the time the complaint is made (or, if the person has died, must have been so resident at the time of death).

This is subject to subsection (4),

(4) Subsection (3) does not apply if the complaint relates to action taken —

(a) in relation to a person while the person was present —

(i) in the Island; or

(ii) aboard a ship or aircraft registered in, or operating on a scheduled service to or from, the Island; or

(b) in relation to rights or obligations which accrued or arose in the Island or on such a ship or aircraft.

We do not recommend a residency restriction as either necessary or desirable. This would complicate the Public Services Ombudsman (Jersey) Law for little obvious benefit; it seems

⁷² See e.g. Which?, Letter of deadlock before going to the ombudsman <https://www.which.co.uk/consumer-rights/letter/letter-of-deadlock-request-before-going-to-the-ombudsman>

improbable that a person with no connection to the Island would seek to make a complaint to the Ombudsman.

5.8 Defining impact of alleged fault

In Chapter 8, we consider how the Public Services Ombudsman (Jersey) Law should define the types of fault that the Ombudsman can look into. There are two models – using the language of ‘maladministration’ and ‘service failure’ or listing more precisely the different categories of fault.

Ombudsman schemes typically require a person aggrieved to demonstrate ‘injustice’, ‘hardship’, or that they have been ‘adversely affected’ by the matter complained about. For example:

| | |
|---|---|
| <p>Bermuda Ombudsman</p> <p>Ombudsman Act 2004</p> | <p>... where a complaint is made to him by a person who <u>claims to have been treated unjustly</u> as a result of maladministration arising from or in connection with the administrative action taken by the authority</p> |
| <p>Cayman Islands Ombudsman</p> <p>Complaints (Maladministration) Law (2018 Revision)</p> | <p>... The purpose of an investigation by the Ombudsman <u>shall be to ascertain whether injustice has been caused</u> by improper, unreasonable or inadequate administrative conduct on the part of any government entity subject to this Law</p> |
| <p>Gibraltar</p> <p>Public Services Ombudsman Act 1998</p> | <p>13.(1) Subject to the provisions of this Part, the Ombudsman may investigate any administrative action taken by or on behalf of any Authority to which this Part applies in any case where -</p> <p>(a) a written complaint is duly made to the Ombudsman by a member of the public <u>who claims to have sustained injustice in consequence of maladministration in connection with the action so taken;</u> and</p> <p>(b) the Ombudsman considers that it is right and proper to conduct an investigation in respect of such complaint.</p> |
| <p>Isle of Man</p> <p>Tynwald Commissioner for Administration Act 2011</p> | <p>10 Complaints from members of the public</p> <p>(1) The Commissioner may investigate a matter falling within section 9(1) by virtue of a complaint only if —</p> <p>(a) a member of the public <u>claims to have sustained injustice or hardship</u> in consequence of —</p> <p>(i) maladministration in connection with an action falling within paragraph (a) of that subsection; or</p> <p>(ii) a service failure</p> |

The Ombudsman scheme should focus on righting real, not hypothetical or insubstantial wrongs. **It would therefore be appropriate for the Public Services Ombudsman (Jersey) Law to include reference to ‘injustice’ or ‘hardship’ as the threshold for investigation.**

We note that the Tynwald Commissioner for Administration Act 2011 draws a distinction between ‘injustice’ and ‘hardship’. The difference between these is not clear to us. The Law Draftsman’s Office will need to take a view on this.

5.9 Individual aggrieved persons

In most cases, it can be anticipated that the aggrieved person will be a single individual. The Public Services Ombudsman (Jersey) Law should also make provision for:

- joint complaints (for example, where a husband and wife are subject to the same decision)
- complaints made on behalf of an individual by a representative
- complaints made by or on behalf of children and young people. The Children’s Commissioner should be consulted on the model to be used.

5.10 Businesses

Where a business – whether a sole trader, partnership, a limited company – is affected by an administrative decision which it considers flawed, the business should be able to complain to the Ombudsman on a similar basis as an individual aggrieved person.

6 BODIES WITHIN AND OUTSIDE THE OMBUDSMAN'S REMIT

6.1 Purpose of this chapter

Clarity around which organisations and officeholders fall within the Ombudsman's jurisdiction is important for all concerned. People with grievances need to know whether they can take their case to the Ombudsman. Bodies need to know whether their decision-making and service delivery is subject to the Ombudsman jurisdiction.

The exercise of developing a list of bodies amenable to the Ombudsman is complex at a number of levels, and is presented by the Jersey Law Commission as an initial piece of work that will need to be taken forward by others as the design for the Jersey Ombudsman is developed. One challenge is that there is a (perhaps surprisingly) large number of officeholders, official bodies, organisations in receipt of States of Jersey funding, carrying out public functions.

The Chapter seeks to make two contributions to that ongoing work. First, it proposes a method for generating a presumption on whether or not an organisation or officeholder should be with the Ombudsman's jurisdiction. Second, it provides a first draft of what the list of organisations and officeholders within the Ombudsman's remit might look like. The Jersey Law Commission has not consulted the bodies discussed in this Chapter.

Some of the design choices may be sensitive, including the following:

- Should decision-making within schools fall within the Ombudsman's remit?
- Should questions of medical clinical judgement be open to investigation by the Ombudsman?
- Should General Practitioners, who are independent professionals, be within the Ombudsman's remit?
- Should care providers, regulated by the Care Commission, be within the Ombudsman's remit?

The presence of a body's name on a list of organisations within the Ombudsman's jurisdiction does not imply that *all* of its functions will be open to investigation if there is a complaint. Some areas of decision-making may be excluded (Chapter 7) and some general exclusions may also apply (Chapter 8).

6.2 International benchmarks

The International Ombudsman Institute provides the following guidance for new Ombudsman schemes:⁷³

The IOI promotes the development of Ombudsman institutions to 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. The IOI has produced a separate policy paper on this issue which is

⁷³ International Ombudsman Institute, *Developing and Reforming Ombudsman Institutions* (2017) page 3.

available on the IOI website. Ultimately, all public services, however they are provided, should fall within the jurisdiction of a public services Ombudsman.

The Ombudsman Association (formerly the British and Irish Ombudsman Association) stresses the need for ‘clarity of purpose’. This means ‘ensuring that stakeholders know why the scheme exists and what it does, and what to expect from it’, including ‘clarity of extent of jurisdiction’.⁷⁴

6.3 Design principles

The **Ombudsman scheme’s remit should be as broad as possible** (consistent with its focus on public services). The allocation of decision-making responsibilities and functions to different public bodies under Laws passed by the States Assembly or customary law – to Ministers, Parishes, corporate entities, arm’s length bodies, etc – has taken place over many years with little regard to any overall pattern.

During consultations on the Jersey Law Commission’s project on *Improving Administrative Redress in Jersey*, there was broad agreement that the current range of bodies falling within the remit of the States of Jersey Complaints Panel was too narrow. Accordingly, the Jersey Law Commission recommended that if the Complaints Panel was retained, its ‘jurisdiction should be broadened to include a wider range of public bodies’ (Alternative Recommendation 5.4).⁷⁵ The same applies to designing the remit the new Ombudsman.

6.4 Suggested method of work

In developing policy as to which bodies should fall within the Ombudsman scheme’s remit, the following questions can be posed in relation to each organisation and officeholder. These questions build on the principle that there should, so far as possible, be alignment across regulatory frameworks.

1. Are all or some of the officeholder’s or organisation’s activities covered by the Human Rights (Jersey) Law 2000? If so, that creates a presumption in favour of the Ombudsman having jurisdiction.
2. Are the officeholder’s or organisation’s finances regulated by the Public Finances (Jersey) Law 2005? If so, that creates a presumption in favour of the Ombudsman having jurisdiction.
3. Are the officeholder’s or organisation’s appointments overseen by the Jersey Appointments Commission? If so, that creates a presumption in favour of the Ombudsman having jurisdiction.
4. Is the officeholder or organisation a ‘scheduled public authority’ under the Freedom of Information (Jersey) Law 2011? If so, that creates a presumption in favour of the Ombudsman having jurisdiction.
5. Are there clear public policy advantages in having the officeholder or organisation within the Ombudsman’s jurisdiction?
6. Are there any compelling reasons for excluding the officeholder or organisation from the Ombudsman’s remit?

⁷⁴ British and Irish Ombudsman Association, *Guide to Principles of Good Governance* (October 2009) available online at <http://www.Ombudsmanassociation.org/docs/BIOAGovernanceGuideOct09.pdf>

⁷⁵ Jersey Law Commission, *Improving Administrative Redress in Jersey* (October 2017).

6.4.1 Human Rights (Jersey) Law 2000

The Human Rights (Jersey) Law 2000 places duties on bodies carrying out functions of a public nature to respect rights contained in the European Convention on Human Rights. The 2000 Law, which is closely based on the UK's Human Rights Act 1998, does not set out a list of bodies to which it applies.

Core public bodies are required to respect Convention rights in everything they do. These bodies are not expressly enumerated but include Ministers and Parishes.

The duty to give effect to Convention rights extends to 'any person certain of whose functions are functions of a public nature' in respect of those functions (Article 7(2)(b)). This phrase is also used in the UK Human Rights Act 1998 and has caused considerable uncertainty. For example, there was doubt over whether a care home run by a charity or business was carrying out 'a function of a public nature' when looking after an elderly person whose fees were paid for by a local authority. The House of Lords (at the time, the UK's highest court) said 'no' but the UK Parliament subsequently passed legislation stating that in a scenario in which an organisation 'provides accommodation, together with nursing and personal care, in a care home for an individual' that is publicly funded or part-funded, that organisation is to be taken to be exercising a function of a public nature under the Human Rights Act 1998.⁷⁶

In developing policy on which organisations and officeholders fall within the Ombudsman's jurisdiction, it should be presumed that if a body is covered by the Human Rights (Jersey) Law, it should also be within the remit of the Ombudsman. An Ombudsman investigation can provide a practical mechanism through which an individual's human rights to be recognised and protected.

In Jersey, the Ombudsman scheme will not conclusively determine whether there has been a breach of the Human Rights (Jersey) Law 2000 as this is a judicial function; but the Ombudsman scheme can and should have a role in identifying human rights issues in the complaints it receives.

A useful resource is the *Human Rights Manual* for Ombudsman caseworkers produced by the Northern Ireland Human Rights Commission and the Northern Ireland Public Services Ombudsman.⁷⁷ The manual draws upon a set of values known as the FREDA principles (Freedom, Respect, Equality, Dignity, and Autonomy) to apply international and domestic human rights instruments to complaint handling.

The Public Services Ombudsman for Wales (PSOW) publishes a leaflet explaining that in deciding whether to investigate a complaint of maladministration by a public body, the Ombudsman must consider whether the public authority concerned has acted in a way which is incompatible with a Convention right. In a factsheet about remedies, the PSOW states:⁷⁸

'The Ombudsman can:

- consider whether it appears that the authority may not have considered the [Human Rights Act 1998] and whether this would amount to maladministration;
- ask the authority to reconsider its decision based on this view;
- recommend the actions that the authority needs to take to put things right.'

⁷⁶ See the House of Lords' judgment *YL v Birmingham City Council* [2007] UKHL 27, [2008] 1 AC 95, the effect of which was reversed by the Health and Social Care Act 2008.

⁷⁷ See <http://niopa.qub.ac.uk/bitstream/NIOPA/5583/1/NIPSO-Human-Rights-Manual.pdf>

⁷⁸ Public Services Ombudsman for Wales, *Human Rights Fact Sheet* <https://www.ombudsman.wales/wp-content/uploads/2018/03/Factsheet-Human-Rights-Act-Version-2.0.pdf>

6.4.2 Public Finances (Jersey) Law 2005

The Public Finances (Jersey) Law 2005 sets out the legal framework for administration of the public finances of Jersey and creates powers for the Comptroller and Auditor General to ensure propriety and value for money in spending by public bodies. The Law sets out various categories of officeholders and organisations that are in receipt of public funds.

| ‘independently audited States body’ means ... | <p>... (a) a person (including a corporation sole), office or body, whether or not incorporated, established by this or any other enactment or by an Act of the States where the establishing enactment or Act provides for the person, office or body to be audited otherwise than by the Comptroller and Auditor General; and</p> <p>(b) any company, wherever incorporated, that is owned or controlled by the States</p> | | | | |
|---|--|--------|--------|---|--|
| ‘non-Ministerial States funded body’ means ... | <p>a States funded body specified in Part 1 or Part 2 of Schedule 1</p> <table border="1"> <thead> <tr> <th data-bbox="422 835 499 869">Part 1</th><th data-bbox="1045 824 1128 857">Part 2</th></tr> </thead> <tbody> <tr> <td data-bbox="422 875 861 1077"> Bailiff’s Department Office of the Lieutenant Governor Office of the Dean of Jersey Comptroller and Auditor General Official Analyst States Assembly </td><td data-bbox="1045 857 1377 1059"> Viscount’s Department Judicial Greffe Law Officers Department Probation Department Data Protection Commissioner </td></tr> </tbody> </table> | Part 1 | Part 2 | Bailiff’s Department Office of the Lieutenant Governor Office of the Dean of Jersey Comptroller and Auditor General Official Analyst States Assembly | Viscount’s Department Judicial Greffe Law Officers Department Probation Department Data Protection Commissioner |
| Part 1 | Part 2 | | | | |
| Bailiff’s Department Office of the Lieutenant Governor Office of the Dean of Jersey Comptroller and Auditor General Official Analyst States Assembly | Viscount’s Department Judicial Greffe Law Officers Department Probation Department Data Protection Commissioner | | | | |
| ‘States funded body’ means ... | <p>(a) a Ministry;</p> <p>(b) a department of the States (including one or any part of one that has been designated a States trading operation);</p> <p>(c) a committee or other body established by an Act of the States;</p> <p>(d) the holder of a Crown or States appointment funded by the States including any associated establishment of the holder</p> | | | | |
| ‘States trading operation’ or ‘trading operation’ means ... | <p>... an area of operation of the States designated by the States by Regulations to be a States trading operation in accordance with Article 25(1)</p> | | | | |
| ‘States aided independent body’ means ... | <p>... a body (including an individual and a corporation sole), whether or not incorporated, that in a financial year receives an amount of money from the States to aid it to carry out its activities’. The amount is £5,000 or more</p> | | | | |

In developing policy on which organisations and officeholders fall within the Ombudsman’s jurisdiction, a presumption of **‘following the Jersey £’** should be used as another way of identifying which bodies are within the remit of the Ombudsman. Propriety in the expenditure of public funds should include decision-making and service delivery free from maladministration. The Ombudsman scheme can work proactively with bodies to ensure high

standards of decision-making and deal with individual complaints where there is alleged failure to meet those standards.

6.4.3 *Employment of States of Jersey Employees (Jersey) Law 2005*

The Employment of States Employees (Jersey) Law 2005 confers oversight powers on the Jersey Appointments Commission to ensure proper processes are applied in making employment decisions and appointments to public offices. In relation to the remit of the Jersey Appointments Commission, the Law provides: “administration of the States” means – (a) a department established on behalf of the States; and (b) a body, office, or unit of administration, established on behalf of the States (including under an enactment), the employees of which are employed by the States Employment Board’.

Part 4 of the 2005 Law is extended to ‘independent bodies’ – so ‘The States Employment Board and the Commission may, for the purposes of paragraph (2), agree a list of offices, or classes of office, being offices in which persons are employed by independent bodies.’

In its 2014 annual report, the Jersey Appointments Commission noted that ‘it has been difficult to assemble a complete list of Quangos, particularly those run by dedicated unenumerated individuals, despite the Commission having instigated a data gathering exercise in 2012’ (para 4.3). 2016 annual report has a list in Appendix 1.

The JAC’s list of quangos provides another point of reference and presumption in favour an officeholder or organisation being within the Ombudsman’s remit. This is not because employment matters will be investigated but because it is an indicator that an organisation or officeholder is performing functions of a sufficiently public character.

6.4.4 *Freedom of Information (Jersey) Law 2011*

The Freedom of Information (Jersey) Law 2011 establishes rights to access information held by public bodies enforceable by the Information Commissioner. The Law sets out in Schedule 1 ‘scheduled public authorities’ to which the Law applies:

- 1 The States Assembly including the States Greffe.
- 2 A Minister.
- 3 A committee or other body established by resolution of the States or by or in accordance with standing orders of the States Assembly.
- 4 A department established on behalf of the States.
- 5 The Judicial Greffe.
- 6 The Viscount’s department.
- 6A Andium Homes Limited, registered on 13th May 2014 under registration number 115713.
- 7 The States of Jersey Police Force.
- 8 A parish.

The ‘schedule public bodies’ listed in the Freedom of Information (Jersey) Law 2011 provides another point of reference and presumption in favour an officeholder or organisation being within the Ombudsman’s remit. This is an indicator that the organisation or officeholder is performing functions of a sufficiently public character.

6.5 *Analysis of bodies that should be within the Ombudsman’ remit*

The following section of this Chapter lists bodies or officeholder and provides a provisional assessment on whether they should or should not be within the Ombudsman’s jurisdiction. Further

work is needed to describe correctly each body or officeholder. We have not consulted with the bodies listed; this will be necessary in the next phases of the design work.

6.5.1 Core public bodies

Any Minister or the Government of Jersey and any person acting on behalf of a Minister or the Government of Jersey
 Chief Officers and other officers on whom duties and powers are conferred by Laws
 Parishes
 Comité des Connétables
 The States of Jersey Police Force
 Probation Department
 The Lieutenant Governor
 Office of the Lieutenant Governor
 The Bailiff and Deputy Bailiff
 Bailiff's Chambers
 The Attorney General and Solicitor General (the Law Officers)
 Law Officers' Department
 Judicial Greffe, including the Tribunal Service
 Viscount's Department

This category is intended to list organisations and officeholders that carry out core governmental functions in Jersey.

In describing Ministers, regard must now be had to the Machinery of Government (Miscellaneous Amendments)(Jersey) Law 2018, which amends Article 26 of the States of Jersey Law 2005, stating 'The Ministers, including the Chief Minister, shall be referred to collectively as the Government of Jersey', 'The Government of Jersey shall be a corporation aggregate', and 'Functions (whether or not statutory functions) may be conferred on the Government of Jersey by that name'.

Parishes are included. Currently they fall outside the scope of the States of Jersey Complaints Panel. The Chief Executive has remarked that 'Islanders identify strongly with the 12 parishes and value the parish tradition of independence from the States and from each other. At the same time, customers are increasingly frustrated by the complex delivery model, duplication and bureaucracy associated between the different parish systems and States departments – all delivering what are considered to be public services'.⁷⁹

We have included the Comité des Connétables as separate body. Its functions are to 'discharge such functions as by custom or under any enactment are or have been discharged or exercised by the Connétables of the 12 Parishes, acting together'.⁸⁰

A significant area of decision-making by the Lieutenant Governor is in relation asylum and deportation, though in June 2017 the States Assembly agreed that these functions should be transferred to the Minister for Home Affairs. Other functions include: arranging for people to receive congratulatory messages from Her Majesty the Queen for notable birthdays and anniversaries; the

⁷⁹ Chief Executive's six-month report to the States Assembly, 9 July 2018.

⁸⁰ Rules of the Comité des Connétables <https://parish.gov.je/PublishingImages/Pages/Comité-des-Connétables/RULES%20OF%20THE%20COMITE%20DES%20CONNETABLES%20March%202011.pdf>

patronage of charities and other organisations; and co-chairing (with the Bailiff) of the Jersey Honours and Awards Committee.⁸¹

The States of Jersey Police is listed, but many complaints will be more suitable for the Jersey Police Complaints Authority rather than the Ombudsman (see Chapter 2). The design of the Ombudsman scheme may exclude some aspects of policing (see Chapter 7).

The Bailiff and Deputy Bailiff are listed, but significant functions will be excluded. Judicial decision making should not be subject to Ombudsman investigation (see Chapter 7); nor should proceedings in the States Assembly.

The Law Officers are listed but significant functions may be excluded in relation to the conduct of civil and criminal proceedings and criminal justice functions (see Chapter 7).

The position of the Judicial Greffe is considered further in Chapter 7.

Further work would be needed to map out the different functions of the Viscount. Some would not be suitable for Ombudsman investigation, for example those in relation to coroner's proceedings (which are judicial in nature), and acting as Autorisé (Returning Officer) at public elections.

6.5.2 *Health care and social care*

The Minister
General Practitioners and other primary health providers
The Hospital and other secondary health providers
Family Nursing and Home Care (a charity)
Registered care providers

Overview of health care in Jersey. In Jersey, General Practitioners (GPs) have the status of private businesses.⁸² There appear to be 11 practices in the island, some of them operating from more than one location. For the first six months of residence, people living in Jersey pay the full cost of visiting a GP. After six months residence, if a person is paying social security contributions, the GP will give the patient a discount of £20 off their standard fee. Typical discounted fees for adults are £40 or more for a 10-minute consultation at the surgery and around £80-£90 for a home visit; additional fees are charged for services (such as ante-natal clinics), vaccines, some examinations and procedures. Dentists and pharmacists also operate as private businesses.

Hospital services are publicly funded by the Government of Jersey (through the Health and Community Services Department).⁸³ The Emergency Department is free to all. Other treatments and services are free to most Jersey residents.⁸⁴ The Department also has responsibilities for all secondary care, community care, social services, and ambulance services.

A Jersey charity, Family Nursing & Home Care (FNHC), provides community nursing and home care.

⁸¹ See further http://governmenthouse.gov.je/?_ga=2.50463201.916093432.1541151575-1792804152.1539428785

⁸² See <https://www.gov.je/Health/DoctorDentist/Doctors/Pages/HealthCard.aspx>

⁸³ Previously known as the Department of Health and Social Services.

⁸⁴ <https://www.gov.je/Health/DoctorDentist/Doctors/Pages/HealthCard.aspx>

Complaint handling. Some GP practice websites contain basic information about whom to contact in case of complaint; others do not. (We note that a March 2016 report in *England* found that nearly half of GP practices were failing to investigate complaints properly).⁸⁵

In relation to complaints about services operating under the auspices of the Department for Health and Community Services, there is an internal 3-step complaints structure, culminating in unresolved matters being looked into by civil servants in Guernsey. An internal panel known as the Charges Appeals Panel hears appeals in relation to charges for publicly funded services.⁸⁶

On 13 September 2018, the Comptroller and Auditor General published a report setting out findings on the governance arrangements for the former Department of Health and Social Care, concluding that they were not fit for purpose. Among the areas of concern was that ‘there has been insufficient focus on the effective use of complaints and whistleblowing as tools of governance’. The C&AG’s report does however note that ‘HSSD’s Complaints Policy was refreshed in 2018. It sets out clearly the purpose of the policy and roles and responsibilities. It also promotes early resolution’.⁸⁷ The report notes:

... performance on handling complaints has been poor. The target for responding to a complaint is 25 days but in July 2017 compliance with this target was only 39% for complaints relating to the General Hospital and 25% for complaints relating to CSSD. External training on handling complaints has subsequently been provided to 25 key staff and HSSD has adopted a structured action plan to improve complaints handling.

Recommendations included: ‘R16 Develop public reporting on complaints, including their incidence, nature, handling (including speed of handling), resolution and learning’ and ‘R17 Extend the requirement for reporting on complaints to all primary care providers’.

Ombudsman schemes and health care. To provide context to discussion of what role a new Jersey Ombudsman might have in relation to health care, it is helpful to understand how other Ombudsman schemes look at grievances relating to health services. There are three main models.

1. In some schemes, health related matters are excluded from the Ombudsman’s remit. The Isle of Man has taken this route in setting up the Tynwald Commissioner for Complaints.

2. ‘Administrative’ decision-making relating to health is within the Ombudsman scheme but issues of medical clinical judgement are excluded. This is the design choice taken in Gibraltar. Since April 2015, the Ombudsman for Public Services has a remit over the Gibraltar Health Authority (GHA) but if ‘the Ombudsman considers that the Complainant has a more appropriate remedy by way of legal action for a claim relating to medical negligence or malpractice by medical professionals’, he will ‘not normally look at complaints related to ... the Ombudsman considers that the Complainant has a more appropriate remedy by way of legal action for a claim relating to medical negligence or malpractice by medical professionals’. In the 2017 Annual Report,⁸⁸ the Ombudsman announces a simplification of arrangements for dealing with hospital complaints to encourage the GHA to deal with them more expeditiously themselves. A large proportion of the Ombudsman’s work relates to complaints about the GHA – of the 731 complaints within the Ombudsman’s jurisdiction received in 2017, 402 were about the GHA (55 per cent).

⁸⁵ PHSO and others, *An opportunity to improve: General practice complaint handling across England: a thematic review* (2016) https://www.ombudsman.org.uk/sites/default/files/GP_Complaint_handling_report.pdf

⁸⁶

<https://www.gov.je/SiteCollectionDocuments/Health%20and%20wellbeing/P%20Charges%20Appeals%20Policy%2020140829%20MM.pdf>

⁸⁷

⁸⁸ Annual Report 2017.

3. A full remit over health-related matters for an Ombudsman would include power to look into clinical matters as well as administrative decision-making. This is the model that now operates in the United Kingdom. The National Health Service (NHS) was not included within the remit of Parliamentary Ombudsman (formally ‘the Commissioner for Administration’) when it was created in 1967 with jurisdiction over UK government departments. This gap was filled by the creation of a Health Service Ombudsman (formally ‘Health Service Commissioners’) by the NHS Reorganisation Act 1973. Since then, although formally separate public offices, the Parliamentary Ombudsman and the Health Service Ombudsman roles have been held by the same person and the organisation is branded as the ‘the Parliamentary and Health Service Ombudsman’ (PHSO). Initially, the scope of the Health Service Ombudsman’s remit was restricted to maladministration. The legislation stated expressly that ‘no investigation to be conducted of action taken in consequence of exercise of clinical judgment’). This restriction was removed in 1996.⁸⁹

Examples PHSO findings in relation to clinical judgement are: Mrs R complained that a biopsy was not done correctly, leaving her with lasting numbness – the NHS trust accepted the PHSO’s request to pay Mrs R £4,000 compensation; and Mr R complained that mismanagement of his warfarin medication had resulted in him suffering two strokes. After PHSO investigation, Mr R received an apology and £1,500 compensation.

In 2016-17, the PHSO received a total of 31,249 complaints of which 22,965 related to the NHS in England (73 per cent). The Patients Association (a charity that acts as an advocacy group for NHS patients) has been highly critical of the PHSO’s handling of health complaints.⁹⁰

Policy issues for design of Jersey Ombudsman. In thinking about what the role of the Ombudsman should be in relation to health services in the island, there are two central questions that need to be addressed in designing the new scheme.

- Which of the models outlined above – no remit, remit only over administrative decisions, remit extended to include issues of clinical judgment – should be adopted?
- Should GPs in receipt of States of Jersey funding fall within the remit of the Ombudsman?

We see no justification for excluding health services from the remit of the Ombudsman. This is because:

- The former Department of Health and Social Services generated the largest number of internal complaints, indicating that there is a demand for grievance resolution in this sector. If the Ombudsman is to have impact on a sizable number of individual complaints each year, health must be within remit. It is notable that in, for example, the United Kingdom and Gibraltar, health related complaints make up a large proportion of the Ombudsman’s caseload.
- The September 2018 report by the Comptroller and Auditor General is critical of the Department’s approach to complaint handling and lesson learning – areas in which an Ombudsman’s intervention could have a transformative impact on the quality of services

The question then arises whether the remit over health should be confined to maladministration or extend to grievances about clinical judgements. **Our provisional view is that the Gibraltar model should be used for Jersey’s Ombudsman – excluding complaints about clinical judgements.**

In relation to primary health care providers in Jersey (GPs, dentists, pharmacists): our provisional view is that they should not be fully within the Ombudsman’s jurisdiction. While they are subject to public law regulation, and are in receipt of funding from the States, they are in essence independent professionals who enter into private contractual relationships with patients.

⁸⁹ Health Service Commissioners (Amendment) Act 1996.

⁹⁰ See <https://www.patients-association.org.uk/News/position-statement-phso>

They do not provide ‘public services’ in the same way as public bodies, including the Department for Health, do. **We do, however, see a case for the Ombudsman having an oversight role in relation to the internal complaints systems they have (or should have).** The Ombudsman should have power in the Public Services Ombudsman (Jersey) Law to work proactively with primary health care providers to improve the quality of their complaints handling.

Care provision. The Regulation of Care (Jersey) Law 2014 regulate health and social care in the Island, but is it and Regulations made under it are not yet fully in force. The regulated activities that it will cover are ‘health care’, ‘social care’, ‘nursing care’, ‘personal care’, and ‘personal support’. Care homes are those that offer care, support and residential accommodation. A registration system will seek to ensure that providers of regulated activities are ‘fit persons’ to do so and inspections will seek to ensure that provision is appropriate, safe, and of a high standard. Draft Regulations propose that ‘The registered person is required to have in place a complaints procedure that includes keeping adequate records and advising the complainant, and if requested the Commission, of the outcome of the investigation into their complaint’.⁹¹ The 2014 Law establishes a Care Commission. In Chapter 2 we considered how the Ombudsman could work with the Care Commission.

A question for policy makers is whether providers of regulated care and support activities should fall within the remit of the Ombudsman, enabling the Ombudsman to have oversight of the quality of internal complaints systems and receiving complaints from individuals about service standards and decision-making by care providers.

More detailed consideration will be needed in making a final design choice. Points of reference can be the Local Government and Social Care Ombudsman in England (which investigates complaints about adult care provision regardless of whether there has been public funding for the aggrieved person’s care) and the Care Quality Commission (which has the function of monitoring, inspecting and regulating health and care services). Both bodies work closely with each other.

6.5.3 Education

The Minister
 Chief Officer of the administration of the States relating to education
 Head teachers exercising functions under Education (Jersey) Law 1999
 Governing bodies of schools exercising functions under Education (Jersey) Law 1999
 ‘Provided schools’ (listed in Schedule 1 to the Education (Jersey) Law 1999)
 Jersey Curriculum Council
 Religious Education Advisory Council

The Education (Jersey) Law 1999 provides the main regulatory framework for education in the Island, creating a range of powers and duties. Where the Minister or Chief Officer is the decision-maker, the Ombudsman should have jurisdiction on the basis that these officeholders fall into the ‘core public bodies’ category described above.

It seems unlikely that the Jersey Curriculum Council and Religious Education Advisory Council (both established by the Education (Jersey) Law 1999) make individualised decisions that could form a complaint by an aggrieved person to the Ombudsman.

Policy makers will need to consider whether the Ombudsman should have a remit over internal decision-making within schools by teachers and governing bodies. Further work is

⁹¹ See Regulation of Care (Jersey) Law 2014: Draft Regulations for Care Homes, Care at Home and Adult Day Care Services
<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/C%20Regulation%20of%20Care%20Consultation%20Report%2020170227%20DS.pdf>

needed to identify what would be best in the Jersey context in relation to Ombudsman jurisdiction over decision-making within schools. The Children’s Commission should be consulted.

Some Ombudsman schemes have been designed to exclude Ombudsman investigations into the functions of schools (while permitting the Ombudsman scheme deal with some other education matters). To develop points of reference, we looked at the jurisdictions of a sample of Ombudsman schemes to understand whether or not there were exclusions relating to education.

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|--|--|
| Bermuda Ombudsman | No exclusions |
| Cayman Islands Ombudsman | No exclusions |
| Gibraltar Ombudsman for Public Services | No exclusions |
| Tynwald Commissioner for Administration | ‘Teaching and related matters in schools’ excluded. |
| LGSCO | Any action concerning — (a) the giving of instruction, whether secular or religious, or (b) conduct, curriculum, internal organisation, management or discipline, in any school or other educational establishment maintained by the authority |
| Scottish Public Services Ombudsman | Action concerning —(a) the giving of instruction, whether secular or religious, or (b) conduct, curriculum or discipline, in any educational establishment under the management of an education authority. |
| Public Services Ombudsman for Wales | Action taken by an authority specified in sub-paragraph (2) and relating to — (a) the giving of instruction, or (b) conduct, curriculum, internal organisation, management or discipline, in a school or other educational establishment maintained by a local authority in Wales. |
| Northern Ireland Public Services Ombudsman | No exclusion. Jurisdiction recently extended to cover further and higher education. |

Whether there should be Ombudsman jurisdiction over schools is a complex question that, in England has seen changes in policy.⁹² In England, in April 2010, a pilot project for a new procedure for handling complaints about schools in England was created by the LGO (now the LGSCO), with plans for a national roll-out by September 2011 after the conclusion of a pilot and its evaluation. This came about as a result of the Apprenticeships, Skills, Children and Learning Act 2009, which conferred jurisdiction on the LGO to deal with internal school matters (in addition to its existing remit over education matters). Speaking in the House of Commons, the then Secretary of State (Ed Balls) said: ‘Strengthening the role of parents in schools is an important part of the children’s plan, but we also want to ensure that when parents feel that their complaints are not being properly listened to, they have a proper right of resort. In our consultation, parents made clear their view that the opportunity to complain to the local government Ombudsman would be welcome, and we are taking that step in the Bill. That is the right approach, and it will be used in a very small minority of cases’.

⁹² This paragraph draws on V Bondy and A Le Sueur, *Designing redress: a study about grievances against public bodies* (Public Law Project 2012) page 39.

This new LGO jurisdiction was abolished unceremoniously by the incoming Coalition government before it was even fully tested, without an alternative provision being put in place. The White Paper *The Importance of Teaching* simply stated that 'Schools are best placed to address parents' concerns - and in almost every case, teachers and head teachers can resolve concerns and issues quickly and easily. Sometimes parents and schools have issues that cannot be resolved locally, and so we will make sure that parents have a route to complain in the most cost effective way, repealing recent legislation which introduced a role for the Local Government Ombudsman.'

6.5.4 States of Jersey trading operations

Jersey Airport
Jersey Harbours
Jersey Car Parking
Jersey Fleet Management
Andium Homes

Five entities are currently designated as 'States' trading operations' under the Public Finances (Jersey) Law 2005. As noted above, an international benchmark in Ombudsman design prompted by the International Ombudsman Institute is '... the development of Ombudsman institutions to 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'.

If government chooses to structure its functions to enable delivery through corporate entities separate from Ministers and departments, this should not deprive people using a service from a source of independent redress. This appears, however, to have happened in Jersey in 2014 following the transfer of States-owned social housing stock (about 4,500 properties to Andium Homes, which is a private company limited by guarantee wholly-owned by the States of Jersey. Previously, housing matters had been a significant strand in the work of the States of Jersey Complaints Panel, but after the transfer housing fell outside its jurisdiction. Andium Homes has a published complaints and appeals policy, in which 'The Company Secretary is responsible for maintaining a log and dealing with all of the formal complaints and appeals'.⁹³ The company's annual reports do not provide information on operation of the policy.

We recommend that the Ombudsman scheme should cover complaints against Andium Homes. If this is accepted, consideration will need to be given as to how to define the Ombudsman's investigatory role for this category of complaints. In other jurisdictions, it has been recognised that housing providers do not make 'administrative decisions' and therefore an Ombudsman's remit needs to be defined in a different way. Reference to maladministration and service failure (option 1 discussed in Chapter 8 below) or an itemised list of possible faults with an administrative decision would not be a good fit for the types of complaints likely to emerge in relation to housing.

In England, some categories of complaints about housing go to the Local Government and Social Care Ombudsman and others go to the specialist Housing Ombudsman Service, which provides dispute resolution for social housing complaints. Under the Housing Ombudsman Scheme, the Ombudsman 'will consider complaints about the action or omission' of housing authorities 'with its housing activities so far as they relate to the provision or management of housing and of other members in respect of all their housing activities'.⁹⁴ Aggrieved persons must be 'adversely affected'

⁹³ A15 - Complaints & Appeals Policy

[https://www.andiumhomes.je/about/PublishingImages/Pages/OurPolicies/Download%20Appeals%20and%20Complaints%20policy%20\(size%2090.8kb\).pdf](https://www.andiumhomes.je/about/PublishingImages/Pages/OurPolicies/Download%20Appeals%20and%20Complaints%20policy%20(size%2090.8kb).pdf)

⁹⁴ <https://www.housing-Ombudsman.org.uk/wp-content/uploads/2018/05/Housing-Ombudsman-Scheme-May-2018.pdf>

by those actions. They must be a ‘person who is or has been in a landlord/tenant relationship’ with the housing authority or ‘an applicant for a property owned or managed by a member’.

When setting up their public services Ombudsman, both Scotland and Wales opted for an integrated approach with all complaints relating to housing going to their respective public services Ombudsman schemes. The investigatory role in Scotland in relation to a registered social landlord is defined as covering ‘any action taken by or on behalf of the landlord’.⁹⁵ In the Welsh legislation, the Ombudsman role covers ‘... in the case of a ... a social landlord ..., action taken by the authority in discharge of any of its functions’.⁹⁶

In relation to Andium Homes, we recommend that the Ombudsman’s remit be defined as covering ‘any action taken in relation to its functions as a landlord’ (or words to similar effect).

In developing policy on the application of the Ombudsman scheme to the other trading operations, consideration should be given to the desirability or otherwise of the Ombudsman having jurisdiction over contractual and commercial decision-making. This is discussed in Chapter 7, where it is noted that this is excluded from some but not all public services Ombudsman schemes.

6.5.5 *Financial services bodies*

Jersey Finance Ltd
Jersey Financial Services Commission (JFSC)
Depositor’s Compensation Scheme
Jersey Bank Depositors Compensation Board

We separate into a distinct category bodies with regulatory responsibility for financial services. We do so in part because of the significance of the sector to Jersey’s economy but also because the infrastructure should be understood as an integrated whole.

Proposition P.32/2018 anticipated that the JFSC would be outside the remit of the Ombudsman. We have not, however, identified any compelling policy reason for this exclusion and understand that the JFSC does not have any in principle objection to falling within the Ombudsman’s jurisdiction. As with all other bodies, the Ombudsman would not normally investigate until an aggrieved person has exhausted internal complaints processes and will not investigate if there is a right of appeal against a decision to a tribunal or court that it is reasonable for the person to exercise.

6.5.6 *Watchdogs and regulators*

Comptroller and Auditor General
Jersey Competition Regulatory Authority
Office of the Information Commissioner
Jersey Appointments Commission
Data Protection Authority / Commissioner
Children’s Commissioner
Jersey Police Complaints Authority
Care Commission

⁹⁵ Scottish Public Services Ombudsman Act 2002 section 5(1)(e).

⁹⁶ Public Services Ombudsman (Wales) Act 2005 section 7(3(a)).

The work of many of the bodies in this category and their possible relationship to the Ombudsman has been discussed in Chapter 2, where we sought to place the new Ombudsman scheme in the context of the institutional landscape in which it will operate.

6.5.7 *Arm's length organisations*

Early Years Childcare Partnership
 Jersey Childcare Trust
 Jersey Community Relations Trust
 Jersey Consumer Council
 Jersey Gambling Commission
 Jersey Health and Safety Council
 Jersey Innovation Fund
 Jersey Post Ltd
 Jersey Safeguarding Partnership Board
 JT Group Ltd (Jersey Telecom)
 Public Employees Contributory Retirement Scheme/Jersey Teachers Superannuation Fund
 Skills Jersey
 Sport Jersey
 States of Jersey Development Company
 Tourism Development Fund
 Visit Jersey
 Association of Jersey Charities
 Digital Jersey
 Jersey Advisory and Conciliation Service
 Jersey Arts Centre
 Jersey Arts Trust
 Jersey Business Ltd
 Jersey Employment Trust
 Jersey Heritage Trust
 Jersey Opera House
 Jersey Overseas Aid Commission
 Royal Jersey Agricultural and Horticultural Society
 Greville Bathe Fund
 Jersey Dental Scheme of Management
 Pharmaceutical Benefit Advisory Committee
 Public Lotteries Board
 Records Advisory Board
 Westaway Donations Council
 Brussels, London and Caen Offices of the States of Jersey
 Citizen's Advice Jersey
 Official Analyst
 Office of the Dean of Jersey
 Jersey Law Commission

This category brings together bodies that are (1) 'States aided independent bodies' within the meaning of the Public Finances (Jersey) Law 2005, (2) 'independent bodies' for the purposes of the Jersey Appointments Commission under the Employment of States of Jersey Employees (Jersey) Law 2005, or (3) both.

The importance of good quality corporate governance for arm's length organisations (ALOs) in Jersey has been recognised by the Comptroller and Auditor General's report *Oversight of Arm's Length Organisations* (June 2017).⁹⁷ The report stated:

Modern government relies on delivery of services not only directly by ministerial departments but indirectly through other bodies. Such organisations may be:

- established by government; and/or
- substantially funded by government; and/or
- given a statutory power to levy charges to cover some or all of their costs.

The report noted 'the establishment or funding of an ALO does not relieve government from a responsibility for ensuring that good governance is being demonstrated' (paragraph 1.4) and 'ALOs can be a valuable part of the framework for service delivery. But there is a risk that they are out of sight and out of mind. As a result individual decisions, rooted in history and developed by individual departments in the absence of corporate frameworks, are not reviewed and a myriad of different arrangements is perpetuated' (paragraph 6.1).

Consideration should be given to providing users of ALO services, or people impacted by their decisions, access to the Ombudsman. As with all other bodies, the Ombudsman would not normally investigate until an aggrieved person has exhausted internal complaints processes and will not investigate if there is a right of appeal against a decision to a tribunal or court that it is reasonable for the person to exercise.

6.5.8 *Bodies that should be outside the Ombudsman's jurisdiction*

States of Jersey Assembly, its committees and panels
States Greffe
Channel Islands Financial Ombudsman

In this category, we have gathered together bodies that at first sight may not apt to be included within the Ombudsman's remit.

Like other legislatures, the States Assembly (and by extension the States Greffe) has a constitutional status that has traditionally been understood to require self-regulation rather than external supervision in its decision-making functions in order to protect 'privilege' and 'exclusive cognisance'.⁹⁸ In Chapter 2 we noted the creation of the post of Commissioner for Standards and discussed whether the Ombudsman could in future carry out this function of investigating alleged breaches of standards codes that apply to States Members.

CIFO is an Ombudsman organisation it is would seem inappropriate for one Ombudsman scheme to supervise the work of another.

6.5.9 *Law Society of Jersey*

The Law Society of Jersey is a body created by the Law Society of Jersey Law 2005. Its functions are set out Article 8:

The objects of the Law Society shall be –

- (a) to encourage and promote the upholding of the rule of law;
- (b) to promote high standards of professional conduct among practitioners;

⁹⁷ <https://statesassembly.gov.je/assemblyreports/2017/r.76-2017.pdf>

⁹⁸ See further States of Jersey, Parliamentary Privilege: Report to the Privileges and Procedures Committee from Sir Malcolm Jack, R.109/2017.

- (c) to regulate, foster and protect the interests of its members and the practice of law in Jersey;
- (d) to encourage and promote the study of law;
- (e) to make representations, as appropriate, on any matter affecting –
 - (i) the administration of the law, the judicial system or the legal profession,
 - (ii) civil rights or liberties or matters of public interest, or
 - (iii) the enactment of legislation or the review or reform of existing laws; and
- (f) to do everything that is reasonably incidental or conducive to the attainment of those objects.

Some of these objectives are of a public character, whereas others are principally internal. Policy makers should consider what, if any, functions of the Law Society should fall within the jurisdiction of the Ombudsman.

7 AREAS OF DECISION-MAKING THAT THE OMBUDSMAN MUST NOT INVESTIGATE

7.1 Purpose of this chapter

A ‘matter’ (or category of decision-making) may be excluded from an Ombudsman scheme on several different bases.

- A body carrying out a whole category of administration can be left out the remit of the Ombudsman scheme altogether. For example, in the design of the Isle of Man’s Tynwald Commissioner for Administration in 2011 a policy decision was made to exclude the health service. In this report, the range of bodies that should be covered by the Jersey Ombudsman is considered in Chapter 6 above.
- There may be a general exclusion applicable in principle to all types of decision-making, such as that there should be no investigation if the aggrieved person has or had a right of appeal to a tribunal or court. This is considered in Chapter 9 in the context of the Ombudsman process.
- **This Chapter is concerned with the question: assuming that a public body is within the remit of the Ombudsman, are there any areas of its decision-making that should be exempt from investigation (no-go areas).**

Perhaps surprisingly, the current States of Jersey Complaints Panel scheme does not have any no-go areas set out in Administrative Decisions (Review) (Jersey) Law 1982. In consequence, the Complaints Panel has been able to look into complaints that would have been excluded in some Ombudsman schemes. These areas include contractual/commercial transactions by public bodies and employment matters. **An initial question for policy makers is therefore whether the new Ombudsman scheme should be excluded from looking into some areas of decision-making which do not currently apply to the States of Jersey Complaints Panel scheme.** This is a policy question on which the Jersey Law Commission does not express a view. On the one hand, it may be thought desirable to maintain the current absence of no-go areas so as not to diminish people’s ability to seek redress. On the other hand, it may be thought prudent to put in place exclusions that apply in many Ombudsman schemes.

If it is decided that there should be some no-go areas for the new Ombudsman, the question is: what exclusions are necessary or desirable? To help identify options for policy makers, we looked at exclusions that have been put in place elsewhere. In particular, we examined the four small jurisdictions Ombudsman schemes that we were able to study most closely (those in Bermuda, Cayman Islands, Gibraltar and the Isle of Man). We also considered restrictions that apply in the UK Ombudsman schemes.

7.2 International benchmarks and design principles

There appear to be no benchmarks looking specifically at exclusions from the remit of Ombudsman schemes. It is, however, a common feature of Ombudsman schemes to have exclusions. Relevant design principles could include the following.

- The exclusions should not unduly restrict the Ombudsman's capacity to provide remedies to individuals and to work with public bodies to drive improvements in the quality of decision-making (the two core Ombudsman tasks).
- There may be areas of decision-making where it would be inappropriate for an Ombudsman to have investigatory powers but a cogent reason is needed to justify exclusion.
- Exclusions can help align the work of an Ombudsman scheme with other watchdog and grievance resolution processes to ensure the system as a whole is coherent.

In the rest of this Chapter, we consider seven possible no-go areas for the Jersey Ombudsman. Each section starts with excerpts from the legislation relating to the different Ombudsman schemes (details for the for smaller jurisdictions are set out in Chapter 12).

7.3 Decisions relating to a public body commencing or conducting litigation

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|---|---|
| Bermuda Ombudsman | The commencement or conduct of any proceedings, whether civil or criminal, before a court of law or tribunal in Bermuda, including any decision whether or not to prosecute any person for an offence |
| Cayman Islands Ombudsman | The commencement or conduct of civil or criminal proceedings before any court of law in the Islands. |
| Gibraltar Ombudsman for Public Services | other issues that may be subject to legal proceedings before the courts or independent tribunals |
| Tynwald Commissioner for Administration | The taking or pursuing of proceedings before a court or tribunal. |
| PHSO | The commencement or conduct of civil or criminal proceedings before any court of law in the United Kingdom, ... or of proceedings before any international court or tribunal |

There is strong consensus across our small sample that decisions of a public body about starting, conducting, or ending legal proceedings should be excluded from investigation by the Ombudsman. We agree. Investigations into these matters would require analysis of legal opinions commissioned by the public body. It would not be appropriate for an Ombudsman to assess the merits of legal advice. Looking into the conduct of litigation would also risk multiplicity of processes, if a person affected by litigation sought to question that via an Ombudsman scheme. We conclude that: **The Public Services Ombudsman (Jersey) Law should exclude decision-making relating to legal proceedings from the Ombudsman's remit.**

7.4 Employment disputes and personnel matters

| | |
|-------------------|--|
| Bermuda Ombudsman | Any administrative action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority |
|-------------------|--|

| | |
|---|--|
| Cayman Islands Ombudsman | Action taken in respect of appointments or removals, pay, discipline, or other personal matters in relation to – (a) service in any office or employment under the Government; or (b) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in the Government. |
| Gibraltar Ombudsman for Public Services | Employment issues such as recruitment; pay and conditions of employment; and contracts of employment |
| Tynwald Commissioner for Administration | personnel matters generally |
| PHSO | Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters, in relation to—(a) service in any of the armed forces of the Crown, including reserve and auxiliary and cadet forces; (b) service in any office or employment under the Crown or under any authority to which this Act applies; or (c) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in Her Majesty, any Minister of the Crown or any such authority as aforesaid |
| LGSCO | Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters |

A second no-go area about which there is strong consensus across the small sample relates to employment and personnel issues. One justification for this exclusion could be that Ombudsman schemes should focus on the grievances of citizens vis-à-vis public bodies and not be used by officials and officeholders within public bodies. In many cases, it would also be relevant that employment issue could be addressed in proceedings before a tribunal or court (in Jersey, the Jersey Employment and Discrimination Tribunal, possibly the Petty Debts Court, and the Royal Court).

In deciding whether this exclusion should apply to the new Ombudsman scheme in Jersey, policy makers should take into account as a relevant consideration that the exclusion would be a significant change from current practices in the States of Jersey Complaints Panel.

Employment matters have been a significant strand in the Complaints Panel's (small) case load in recent years.⁹⁹ It would be undesirable to create a gap where an aggrieved person's complaint fell outside the jurisdiction of the Jersey Employment and Discrimination Tribunal and courts, and there was no other way to pursue a legitimate concern.

7.5 Contractual and commercial transactions

| | |
|--------------------------|---------------|
| Bermuda Ombudsman | No exclusions |
| Cayman Islands Ombudsman | No exclusions |

⁹⁹ e.g. Mrs X, a lab technician (R.53/2017), withdrawal of offer of employment as a consultant ophthalmologist (R.75/2016), dismissal of Deputy Chief Officer of the States Police (R.157/2013).

| | |
|---|--|
| Gibraltar Ombudsman for Public Services | No exclusions |
| Tynwald Commissioner for Administration | Contractual or commercial issues, except those relating to the compulsory acquisition of land, or where the procedures prescribed in law have not been complied with |
| PHSO | Action taken in matters relating to contractual or other commercial transactions, whether within the United Kingdom or elsewhere, being transactions of a government department or authority to which this Act applies or of any such authority or body as is mentioned in paragraph (a) or (b) of subsection (1) of section 6 of this Act and not being transactions for or relating to — (a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily; (b) the disposal as surplus of land acquired compulsorily or in such circumstances as aforesaid. |

The Isle of Man and the UK PHSO Ombudsman schemes expressly exclude contractual and commercial issues from being investigated. If Jersey were to follow suit, this would introduce a no-go area that does not currently apply to the States of Jersey Complaints Panel. The Panel does look at disputes which are in essence contractual/commercial transactions.¹⁰⁰

One justification for this as a no-go area might be that contractual and commercial disputes are a better fit for legal proceedings than to Ombudsman investigation. But, as we recommend in Chapter 9, there should be a general exclusion on the Ombudsman investigating any matter where the aggrieved person has, or had, a right to commence legal proceedings and it would be reasonable to expect them to do so.

Another rationale could be that Ombudsman schemes should prioritise administrative decision-making not commercial dealings. Arguably, however, this overlooks the reality of modern methods of public administration in which contractual relations are more central than in the past.

On balance, we take the view that the general exclusion of investigating matters that are, or could be, subject to legal proceedings (see Chapter 9) is sufficient to prevent ‘pure’ contractual and commercial matters being looked into by the Ombudsman. A stand-alone exclusion for contractual and commercial matters is probably unnecessary.

7.6 Decision-making by courts and tribunals and their administrative staff

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|---|---|
| Bermuda Ombudsman | No exclusions |
| Cayman Islands Ombudsman | Any judicial function not specifically excluded by paragraphs 1 to 12 [of the Schedule to Complaints (Maladministration) Law (2018 Revision)] |
| Gibraltar Ombudsman for Public Services | other issues that may be subject to legal proceedings before the courts or independent tribunals |
| Tynwald Commissioner for Administration | Courts fall outside the remit of the scheme |
| PHSO | Action taken by any person appointed by the Lord Chancellor as a member of the administrative staff of any court or tribunal, so far as that action is taken at the direction, or on the authority (whether |

¹⁰⁰ e.g. actions taken under a bus contract (R.31/2016), alleged overcharging on a loan (R.67/2014).

express or implied), of any person acting in a judicial capacity or in his capacity as a member of the tribunal.

Action taken by any member of the administrative staff of a relevant tribunal, so far as that action is taken at the direction, or on the authority (whether express or implied), of any person acting in his capacity as a member of the tribunal.

Action not otherwise within this Schedule which is taken in the course of administrative functions exercised at the direction, or on the authority (whether express or implied), of a judge of any court established under the law of England and Wales or Northern Ireland.

In our view, a distinction can be drawn between judicial decisions (made by judges or members of a tribunal) and administrative functions carried out by tribunal or court staff.

The Public Services Ombudsman (Jersey) Law should exclude judicial decision-making, and the conduct of judges, from the Ombudsman's remit. The constitutional principle of the independence of the judiciary makes it inappropriate for another public body to seek to question judicial decisions. There will typically be a right of appeal to a higher court which the aggrieved person could pursue. There is also a procedure for investigating complaints about judicial officeholders.¹⁰¹

Administrative action by tribunal and court staff may be treated differently and there need not a complete prohibition. **Where tribunal and court staff are carrying out administrative functions, the Ombudsman should be able to look into these matters.** Examples of the types of administrative failures (taken from PHSO cases) that this could cover include: mistakes over the listing of a case for hearing which result in expense or distress to a person, the loss of court papers, sending two letters to a person on the same day about a case containing conflicting information, and issuing the wrong court order causing delays in a person evicting a tenant for non-payment of rent.

7.7 Criminal justice and police functions

| | |
|--------------------------|--|
| Bermuda Ombudsman | Any exercise of the power by the Governor to pardon persons convicted of criminal offences or commute their penalties |
| Cayman Islands Ombudsman | <p>Action taken in matters certified by the Governor to affect defence, external affairs or internal security.</p> <p>Action taken by or with the authority of the Director of Public Prosecutions, the Commissioner of Police, the Chief Immigration Officer or the Collector of Customs for the purposes of investigating crime or of protecting the security of the Islands, including action so taken with respect to passports.</p> <p>Action taken in connection with the Governor's power of pardon under section 39 of the Constitution.</p> |

¹⁰¹ Bailiff's Chambers

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

| | |
|---|---|
| | Action taken by the Director of Public Prosecutions in connection with the exercise or possible exercise of his power under the Constitution to institute, undertake, take over, continue or discontinue criminal proceedings before any court of law in the Islands. |
| | Legal advice given by or on behalf of the Attorney General or the Director of Public Prosecutions to the Government or to any public body. |
| Gibraltar Ombudsman for Public Services | No exclusions |
| Tynwald Commissioner for Administration | Police investigations or public security matters generally |
| PHSO | Action taken by or for the purposes of protecting the security of the state or investigating crime, including action taken with respect to passports |

There is a varied pattern across the small sample in relation to functions relating to criminal justice and policing. If policy makers in Jersey decide to exclude aspects of policing and criminal justice decision-making, it will be important to articulate clearly why this is necessary. In Chapter 6, we consider the role of the Jersey Police Complaints Authority: the Ombudsman should not investigate matters that fall within the JPCA's jurisdiction.

7.8 International affairs

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|---|--|
| Bermuda Ombudsman | No exclusions |
| Cayman Islands Ombudsman | Action taken in matters certified by the Governor to affect relations or dealings between the Government of the Islands and any other Government or any international organisation of States or Governments. |
| | Action taken by the appropriate authority in connection with the exercise or possible exercise of the authority's power under any Mutual Legal Assistance arrangement, including extradition. |
| Gibraltar Ombudsman for Public Services | No exclusions |
| Tynwald Commissioner for Administration | No exclusions |
| PHSO | Action taken in matters certified by a Secretary of State or other Minister of the Crown to affect relations or dealings between the Government of the United Kingdom and any other Government or any international organisation of States or Governments. |

In relation to international affairs, there is another variable picture in the design of the Ombudsman schemes in the small sample. Much decision-making in this area will not, in any event, be capable of creating impacts on particular individuals such that they would suffer injustice or hardship. If policy makers in Jersey do decide to exclude aspects of policing and criminal justice decision-making, it will be important to articulate clearly why this is necessary.

7.9 Education matters: schools

This is considered in Chapter 6.

8 DEFINING ALLEGED FAULTS

8.1 Purpose of this chapter

The Public Services Ombudsman (Jersey) Law should include a definition of the types of fault that fall within the Ombudsman's jurisdiction.

Design choices need to be made in relation to general administration. We identify two models. One based on broad language of 'maladministration' and 'service failure'. The other seeks to itemise the different types of fault. On balance, we prefer the first model.

If (as recommended), the remit of Jersey's Ombudsman reaches to health care, social care, and the work of Andium Homes in relation to housing, the Ombudsman's remit may need to be defined differently for those areas of decision making.

8.2 International benchmarks and design principles

The International Ombudsman Institute provides the following good practice guidance on defining the types of faults an Ombudsman can look into:¹⁰²

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.

8.3 Other design principles

The language used in the Public Services (Ombudsman) Jersey Law and by the Ombudsman should help people understand what types of fault that Ombudsman can look into.

The definition of fault should be sufficiently broad to ensure that failings that ought to be liable to investigation are not inadvertently excluded.

As we discuss below, these principles are somewhat in tension.

8.4 How different Ombudsman schemes define fault

To generate points of reference, we looked at how fault is defined in public services Ombudsman schemes in smaller jurisdictions (further information about the underpinning legislation is contained in Chapter 12). The current definition used by the States of Jersey Complaints Panel is included at the end of this list.

¹⁰² International Ombudsman Institute, *Developing and Reforming Ombudsman Institutions* (2017) page 7.

| Smaller Ombudsman scheme | How the framing legislation defines the type of fault the Ombudsman (or equivalent body) may look into |
|--|---|
| Bermuda Ombudsman | <p>Can investigate and make recommendations on ‘any administrative action of an authority for the purpose of deciding whether there is evidence of maladministration on the part of the authority’.</p> <p>‘Maladministration’ is defined as: “inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes –</p> <ul style="list-style-type: none"> (a) unreasonable delay in dealing with the subject matter of an investigation; (b) abuse of any power (including any discretionary power); or (c) administrative action that was – <ul style="list-style-type: none"> (i) contrary to law; (ii) unfair, oppressive or improperly discriminatory or based on procedures that are unfair, oppressive or improperly discriminatory; (iii) based wholly or partly on a mistake of law or fact or irrelevant grounds; (iv) related to the application of arbitrary or unreasonable procedures; or (v) negligent. |
| Cayman Islands Ombudsman | <p>Complaint (Maladministration) Law 2018 Revision states that ‘maladministration’ means: inefficient, bad or improper administration and includes –</p> <ul style="list-style-type: none"> (a) unreasonable conduct including delay; (b) abuse of any power (including any discretionary power) or authority including any action which - <ul style="list-style-type: none"> (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or (ii) was based wholly or partly on a mistake of law or fact; and (c) unreasonable, unjust, oppressive or improperly discriminatory procedures |
| Gibraltar Ombudsman for Public Services | <p>Legislation refers to ‘maladministration’ but does not define it.</p> |
| Isle of Man: Tynwald Commissioner for Administration | <p>The Legislation does not use the term ‘maladministration’ when defining jurisdiction. Section 9 refers to ‘any action taken by or on behalf of a listed authority in the exercise of administrative functions of the authority’ and ‘any alleged service failure’, which is defined as ‘any failure in a service provided by a listed authority [or] any failure of the listed authority to provide a service which it was a function of that authority to provide’.</p> <p>The legislation uses the term maladministration later, when referring to complaints:</p> <p>‘The Commissioner may investigate a matter falling within section 9(1) by virtue of a complaint only if — (a) a member of the public claims to have sustained injustice or hardship in consequence of — (i) maladministration</p> |

| | |
|-----------------------------------|---|
| | in connection with an action falling within paragraph (a) of that subsection; or (ii) a service failure...’. |
| Tonga: Office of the Ombudsman | <p>Legislation describes what Ombudsman can find in relation to whether a decision or act by the administration:</p> <p>(a) appears to have been contrary to law; (b) was unreasonable, unjust, oppressive, or improperly discriminatory; (c) was based wholly or partly on a mistake of law or fact; or (d) was wrong.</p> <p>Also, that the Ombudsman can find ‘that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.’</p> |
| Vanuatu: Office of the Ombudsman | <p>The Ombudsman may, after due enquiry and on reasonable evidence, conclude that conduct was: a) oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or b) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or c) contrary to natural justice; or d) conduct for which reasons should be given but were not. (2) The Ombudsman may, after due enquiry and on reasonable evidence, conclude that the leader who is the subject of an enquiry: a) has failed to carry out or has breached the duties and responsibilities of office imposed on him or her under Article 66(1) or (2) of the Constitution; or b) has breached the Leadership Code.</p> |
| States of Jersey Complaints Panel | <p>Administrative Decisions (Review) (Jersey) Law 1982 Article 9(2):</p> <p>(2) Where a Board after making enquiry as aforesaid is of opinion that the decision, act or omission which was the subject matter of the complaint –</p> <p>(a) was contrary to law; (b) was unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory; (c) was based wholly or partly on a mistake of law or fact; (d) could not have been made by a reasonable body of persons after proper consideration of all the facts; or (e) was contrary to the generally accepted principles of natural justice, the Board, in reporting its findings thereon to the Minister, Department or person concerned, shall request that Minister, Department or person to reconsider the matter.</p> |

We also considered the approach adopted in the United Kingdom public services Ombudsman schemes. Definitions have developed over time. Legislation was amended to add references to ‘service failure’ alongside the original terminology of ‘maladministration’. Modifications have been made in the contexts of health and social care, where a wider range of decision-making occurs beyond ‘administrative decisions’.

| UK Ombudsman scheme | How the framing legislation defines the type of fault the Ombudsman may look into |
|--|--|
| <p>Parliamentary and Health Services Ombudsman</p> <p>(formally the Parliamentary Commissioner for Administration)</p> | <p>In relation to central government:</p> <p>Parliamentary Commissioner Act 1967 section 5.— Matters subject to investigation.</p> <p>(1) Subject to the provisions of this section, the Commissioner may investigate any action taken by or on behalf of a government department or other authority to which this Act applies, being action taken in the exercise of administrative functions of that department or authority, in any case where— (a) a written complaint is duly made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and (b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with a request to conduct an investigation thereon.</p> |
| <p>(formally the Health Service Commissioner)</p> | <p>In relation to the NHS:</p> <p>Health Service Commissioners Act 1993 section 3.— General remit of Commissioner</p> <p>(1) On a complaint duly made to [the Commissioner] 2 by or on behalf of a person that he has sustained injustice or hardship in consequence of— (a) a failure in a service provided by a health service body, (b) a failure of such a body to provide a service which it was a function of the body to provide, or (c) maladministration connected with any other action taken by or on behalf of such a body, the Commissioner may, subject to the provisions of this Act, investigate the alleged failure or other action.</p> |
| <p>Local Government and Social Care Ombudsman</p> | <p>Local Government Act 1974 Part III LOCAL GOVERNMENT ADMINISTRATION Section 24</p> <p>(1) For the purposes of section 24A(1)(b), in relation to an authority to which this Part of this Act applies, the following matters are subject to investigation by a Local Commissioner under this Part of this Act— (a) alleged or apparent maladministration in connection with the exercise of the authority's administrative functions; (b) an alleged or apparent failure in a service which it was the authority's function to provide; (c) an alleged or apparent failure to provide such a service. (d) an alleged or apparent failure in a service provided by the authority in pursuance of arrangements under section 7A of the National Health Service Act 2006; (e) an alleged or apparent failure to provide a service in pursuance of such arrangements.</p> <p>Part IIIA INVESTIGATION OF COMPLAINTS ABOUT PRIVATELY ARRANGED OR FUNDED ADULT SOCIAL CARE</p> <p>34B Power to investigate</p> |

(1) Under this Part, a Local Commissioner may investigate a matter— (a) which relates to action taken by an adult social care provider in connection with the provision of adult social care, and (b) in relation to which Condition 1 or 2 is met.

34C Who can complain

(1) A complaint about a matter under this Part may only be made— (a) by **a member of the public who claims to have sustained injustice in consequence of the matter** (“P”), (b) by a person authorised in writing by P to act on P’s behalf, or (c) in accordance with subsection (2).

Northern Ireland Public Service Ombudsman

Public Services Ombudsman Act (Northern Ireland) 2016:

Section 14.— (1) The Ombudsman may investigate **alleged maladministration through action taken in the exercise of administrative functions** by a listed authority. (2) This section does not apply to— (a) health and social care bodies, (b) general health care providers, (c) independent providers, (d) the universities referred to in section 18.

Section 15.—(1) This section applies where a listed authority is **a health and social care body**. (2) The Ombudsman may investigate— (a) alleged maladministration through action taken in the exercise of administrative functions by the health and social care body, (b) the merits of a decision of that body to the extent that it was taken in consequence of the exercise of professional judgement exercisable in connection with the provision of health or social care.

Section 16.—(1) This section applies where a listed authority is **a general health care provider**. (2) The Ombudsman may investigate— (a) alleged maladministration through action taken in the exercise of administrative functions by the general health care provider in connection with general health care services, (b) the merits of a decision of that body to the extent that it was taken in consequence of the exercise of professional judgement in connection with general health care services. (3) In this Act, a general health care provider is— (a) an individual undertaking to provide primary medical services or general dental services under Part 6 of the Health and Personal Social Services (Northern Ireland) Order 1972, (b) a person undertaking to provide general ophthalmic services or pharmaceutical services under Part 6 of that Order, or (c) an individual performing primary medical services or personal dental services in accordance with arrangements made under Article 15B of that Order (except as employees of, or otherwise on behalf of, a health and social care body or an independent provider). (4) In this Act, general health care services are the services mentioned in subsection (3).

Section 17.—(1) This section applies where the listed authority is **an independent provider of health and social care**. (2) The Ombudsman may investigate—(a) alleged maladministration through action taken in the exercise of administrative functions by the independent provider in connection with an arrangement with a health and social care body or a general health care provider to provide a service, (b) the merits of a decision of that body to the extent that it was taken in consequence of the

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| | <p>exercise of professional judgement exercisable in connection with the provision of health or social care under that arrangement. (3) In this Act, an independent provider of health and social care is a person— (a) providing services (of any kind) under an arrangement with a health and social care body or a general health care provider, and (b) who is not a health and social care body or a general health care provider.</p> |
| <p>Scottish Public Services Ombudsman</p> | <p>Scottish Public Services Ombudsman Act 2002</p> <p>Section 5 Matters which may be investigated (1) The matters which the Ombudsman is entitled to investigate are— (a) in relation to a listed authority other than one to whom paragraph (b), (d) or (e) applies, any action taken by or behalf of the authority (other than action consisting of a service failure) in the exercise of administrative functions of the authority, (b) in relation to a health service body or an independent provider, any action taken by or on behalf of the body or provider (other than action consisting of a service failure), (c) in relation to a listed authority other than one to whom paragraph (d) or (e) applies, any service failure, (d) in relation to a family health service provider, any action taken by or on behalf of the provider in connection with any family health services provided by that provider, (e) in relation to a registered social landlord, any action taken by or on behalf of the landlord.</p> <p>(2) In subsection (1), “service failure”, in relation to a listed authority, means—(a) any failure in a service provided by the authority, (b) any failure of the authority to provide a service which it was a function of the authority to provide.</p> <p>(3) The Ombudsman may investigate a matter falling within subsection (1) pursuant to a complaint only if a member of the public claims to have sustained injustice or hardship in consequence of— (a) where the matter is such action as is mentioned in paragraph (a), (b) or (e) of that subsection, maladministration in connection with the action in question, (b) where the matter is such failure or other action as is mentioned in paragraph (c) or (d), the failure or other action in question.</p> |
| <p>Public Services Ombudsman for Wales</p> | <p>Public Services Ombudsman (Wales) Act 2005</p> <p>Section 7 Matters which may be investigated (1) The matters which the Ombudsman is entitled to investigate are— (a) alleged maladministration by a listed authority in connection with relevant action; (b) an alleged failure in a relevant service provided by a listed authority; (c) an alleged failure by a listed authority to provide a relevant service.</p> |

Generalising from this array of different definitions, the choice for policy makers in Jersey is between two different approaches that have been adopted in other territories.

8.4.1 *Option 1: maladministration and service failure*

This option derives from approach used to define fault in the following schemes: Gibraltar Ombudsman for Public Services; Parliamentary and Health Services Ombudsman (UK); Local Government and Social Care Ombudsman (England); Northern Ireland Public Service Ombudsman;

Scottish Public Services Ombudsman; and Public Services Ombudsman for Wales. The Isle of Man can also be regarded as falling into this category.

In these Ombudsman systems, fault is defined in terms of ‘maladministration’ (which is not particularised further) and service failure. Service failure may be broken down into ‘failure *in* the provision of a service’ and ‘failure *to provide* a service’.

The LGSCO explains:¹⁰³

The term ‘maladministration’ is deliberately not defined in law and similarly there is no explicit threshold for what constitutes maladministration. Our jurisdiction allows us to investigate alleged or apparent maladministration or service failure. Our investigations often touch on both, and we interpret maladministration to include service failure. As long as we present our findings clearly, we should not need to go in to a detailed explanation of the differences. Case law (*R (ER) v Local Government Ombudsman* [2014] EWCA Civ 1407) has confirmed that we do not have to make separate findings for maladministration and service failure. In our decision statements, we refer to fault rather than maladministration or service failure as this is a simpler term for the public to understand.

One advantage of using maladministration and service failure as the method of defining fault is that it would aid knowledge transfer between the more established Ombudsman schemes in the United Kingdom and Gibraltar. The Ombudsman would be using the same language.

Another advantage is that the terms maladministration and service failure are sufficiently broad to cover a full range of errors that may emerge.

Moreover, the terminology of ‘maladministration’ already in use in the Island. In our report *Improving Administrative Redress in Jersey* (October 2017) we said:

During the research interviews, several interviewees described the Panel’s role in relation to “maladministration”. Indeed, in its reports for 2013 and 2014, the Panel “acknowledged that the majority of complaints received were considered not to relate to matters of maladministration and therefore had not justified a hearing being convened”. The States Assembly Hansard also provides several examples of States Members referring to the Complaints Panel and maladministration. Our finding is that there is widespread confusion in Jersey over the meaning of maladministration and its application to the Panel’s role.

The concept of “maladministration” seems to have come to Jersey via contact with the public sector Ombudsmen in the United Kingdom.¹⁰⁴ The principal remit of Ombudsmen is to investigate complaints from a member of the public who “claims to have sustained injustice in consequence of maladministration in connection with action taken by or on behalf of” of a public body. In the UK legislation, maladministration is not expressly defined. It is, however, understood to cover “bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on”.¹⁰⁵ Maladministration also includes: “rudeness (though that is a matter of degree); unwillingness to treat the complainant as a person with rights; refusal to answer reasonable questions; neglecting to inform a complainant on request of his or her rights or entitlements; knowingly giving advice which is misleading or inadequate; ignoring valid advice or overruling considerations which would produce an uncomfortable result for the overruler; offering no redress or manifestly disproportionate redress; showing bias, whether

¹⁰³ LGSCO, *Guidance on Jurisdiction* (September 2018) <https://www.lgo.org.uk/information-centre/staff-guidance/guidance-on-jurisdiction>

¹⁰⁴ See www.statesassembly.gov.je/AssemblyReports/2002/17021-24410.pdf#search=maladministration.

¹⁰⁵ These factors are called “the Crossman catalogue” as they are words used by Anthony Crossman MP, the minister in charge of the bill creating the first Ombudsman in the UK.

because of colour, sex, or any other grounds; omission to notify those who thereby lose a right of appeal; refusal to inform adequately of the right to appeal; faulty procedures; failure by management to monitor compliance with adequate procedures; cavalier disregard of guidance which is intended to be followed in the interest of equitable treatment of those who use a service; partiality; and failure to mitigate the effects of rigid adherence to the letter of the law where that produces manifestly inequitable treatment”.¹⁰⁶

The Administrative Decisions (Review) (Jersey) Law 1982 does not use the word “maladministration” to define the Complaint Panel’s remit and the grounds of review in Article 9(2) do not constitute a statement of the concept of maladministration. In our consultation report, we said that if the Complaints Panel is to be retained its focus on maladministration should be clarified and made explicit.

Except for the Complaints Panel, responses to consultation broadly supported this proposal. The Complaints Panel told us: “It is interesting to note that UK legislation does not expressly define “maladministration”, yet the Paper recommends that (were it to be retained) the SCP’s grounds of review of complaint should be expressly defined in terms of maladministration. We do not see that this clarifies the grounds available to the SCP under the Law as at present. On the contrary, we consider the grounds set out in Article 9(2) of the Law to be clear and unambiguous, yet broad enough to encompass any behaviour which might fall under the description of “maladministration””.

Ombudsman schemes around the world, including across the United Kingdom, have produced valuable guidance – for public bodies and for members of the public – on the meaning of maladministration. Our view remains that there would be considerable advantage in redefining the grounds of review in Article 9(2) of the 1982 Law. Using the concept of maladministration would emphasise that the Complaint Panel is not a body whose main function is to adjudicate on questions of law and could help explain to people in Jersey that the Complaints Panel provides an “Ombudsman-style” dispute resolution service.

Our view remains that the current definition of the investigatory role in the Administrative Decisions (Review)(Jersey) Law 1982 is not ideal. It should not be carried over into the new Ombudsman scheme.

Set against this, some campaign groups in the United Kingdom have argued that the lack of definition of ‘maladministration’ is a problem. Della Reynolds, of the group phsothefacts, says¹⁰⁷

The term ‘maladministration’ cannot be defined, yet this nebulous concept is used as the determining principle for upholding a complaint. Maladministration is impossible to verify when all statutory and non-statutory policies are considered to be guidance only and not mandatory. This is a flawed model which allows public bodies to continue causing harm, and the opportunity to replace it has not been taken.

8.4.2 Option 2 – listing different types of error into which a public body may fall

This option draws on the current approach to defining fault used by the States of Jersey Complaints Panel and four Ombudsman schemes elsewhere: Bermuda Ombudsman; Cayman Islands Ombudsman; Tonga Office of the Ombudsman; and Vanuatu Office of the Ombudsman.

¹⁰⁶ Quoted in the UK Parliamentary Ombudsman’s 1993 *Annual Report* and endorsed by Treasury Ministers in November 1994 in evidence to the House of Commons Public Administration Select Committee.

¹⁰⁷ D Reynolds, ‘A service user perspective of the draft legislation for the new Public Service Ombudsman’ (26 January 2017) <https://ukaji.org/2017/01/26/a-service-user-perspective-of-the-draft-legislation-for-the-new-public-service-ombudsman/>

One advantage is that this method makes more explicit the different types of fault that may occur. These are set out on the face of the legislation rather than being left to be elaborated informally by the Ombudsman. This might be thought to provide a better guide for all involved in the running and using the Ombudsman scheme.

There is, however, not complete agreement about what should be listed. Different systems list different aspects of fault. For example, only two of the Ombudsman identify failure to give reasons for an administrative decision as a failure. Only one refers to unreasonable delay. Most use the broad term 'unfair' and all refer to 'oppressive' decisions: most other faults could be encompassed under these headings. It might therefore be open to question whether this method provides significantly more guidance than the maladministration/service failure approach (option 1).

| Aspect of fault referred to in legislation | Ombudsman scheme |
|---|--|
| unreasonable delay | Bermuda Ombudsman |
| abuse of power (including any discretionary power) | Bermuda Ombudsman |
| administrative action unfair action which is unjust | Bermuda Ombudsman Cayman Islands Ombudsman Tonga: Office of the Ombudsman States of Jersey Complaints Panel |
| administrative action oppressive | Bermuda Ombudsman Cayman Islands Ombudsman Tonga: Office of the Ombudsman Vanuatu: Office of the Ombudsman States of Jersey Complaints Panel |
| administrative action improperly discriminatory | Bermuda Ombudsman Cayman Islands Ombudsman Tonga: Office of the Ombudsman Vanuatu: Office of the Ombudsman States of Jersey Complaints Panel |
| administrative action based on procedures that are unfair contrary to natural justice was contrary to the generally accepted principles of natural justice | Bermuda Ombudsman Vanuatu: Office of the Ombudsman States of Jersey Complaints Panel |
| administrative action based wholly or partly on a mistake of fact | Bermuda Ombudsman Cayman Islands Ombudsman States of Jersey Complaints Panel |
| administrative action contrary to law administrative action based wholly or partly on a mistake of law appears to have been contrary to law not in accordance with law not in accordance with a provision of any enactment | Bermuda Ombudsman States of Jersey Complaints Panel Cayman Islands Ombudsman Tonga: Office of the Ombudsman Vanuatu: Office of the Ombudsman |
| administrative action based on irrelevant grounds discretionary power exercised for an improper purpose or on irrelevant grounds or the taking into account of irrelevant considerations | Bermuda Ombudsman Tonga: Office of the Ombudsman Vanuatu: Office of the Ombudsman |

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| administrative action related to application of arbitrary or unreasonable procedures | Bermuda Ombudsman Cayman Islands Ombudsman |
| administrative action that was negligent | Bermuda Ombudsman |
| inefficient, bad or improper administration | Cayman Islands Ombudsman |
| action that is unreasonable could not have been made by a reasonably body of persons after proper consideration of all the facts | Cayman Islands Ombudsman States of Jersey Complaints Panel |
| was wrong | Tonga: Office of the Ombudsman |
| reasons should have been given for the decision conduct for which reasons should be given but were not | Tonga: Office of the Ombudsman Vanuatu: Office of the Ombudsman |
| conduct not in accordance with practice not in accordance with any practice | Vanuatu: Office of the Ombudsman States of Jersey Complaints Panel |

8.4.3 *Jersey Law Commission's recommendation*

On balance, our preferred approach would be for the Public Services Ombudsman (Jersey) Law to adopt the option 1 approach outlined above – defining fault in terms of maladministration and service failure.

If option 2 is chosen, the Public Services Ombudsman (Jersey) Law should strive to be as comprehensive as possible in itemising the different types of fault.

8.5 **Health and social care**

Issues about defining the types of alleged fault relevant to health decisions and social care decisions are considered in Chapter 6.

9 PROCESSES AND OUTCOMES FOR AGGRIEVED PEOPLE FROM THE OMBUDSMAN

9.1 Purpose of this Chapter

The processes and outcomes that people taking a complaint to the Ombudsman will experience are key features of the design of the new scheme.¹⁰⁸ Design of these features must have regard to the two central functions of a public services Ombudsman scheme – resolution of individual grievances and promoting systematic improvements in the quality of governmental decision-making.

This Chapter provides an overview of the how the Ombudsman system could operate for individual grievances.¹⁰⁹ This includes **descriptions of operational matters**; these are largely uncontroversial and will involve adapting and developing practices from other Ombudsman organisations as the new scheme prepares to start work in Jersey.

There are however some **questions of design that need to be answered at an early stage as the Public Services Ombudsman (Jersey) Law will need to make provision for them**. We identify and discuss three principal questions in this Chapter (points 3, 5 and 8 in the diagram below).

- Should the Public Services Ombudsman (Jersey) Law make express provision for informal resolution including mediation to be used as an Ombudsman technique for seeking resolution of complaints? (We recommend that it should).
- Should the Public Services Ombudsman (Jersey) Law permit the Ombudsman to use adjudication at public hearings as an Ombudsman technique? This would continue the practice of the current States of Jersey Complaints Panel. (Subject to some conditions, we recommend that it should – even though this would be highly unusual if not unique among public services Ombudsman schemes).
- What, if anything, should the Public Services Ombudsman (Jersey) Law say about a situation in which a Minister or other public body does not accept the findings or refuses to implement the recommendations in an Ombudsman report? (We recommend that findings should be binding and that there should be a legal process to enforce some types of recommendations).

¹⁰⁸ See further M Doyle, V Bondy and C Hirst, *The use of informal resolution approaches by ombudsmen in the UK and Ireland: A mapping study* (2014). <https://ombudsmanresearch.files.wordpress.com/2014/10/the-use-of-informal-resolution-approaches-by-ombudsmen-in-the-uk-and-ireland-a-mapping-study-1.pdf>

¹⁰⁹ On own-initiative investigations, see Chapter 4.

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| <p>To set the context for the issues examined in the Chapter, it is useful to think how an aggrieved person might navigate through the Ombudsman process in Jersey. This journey can be represented like this:</p> | | |
| <p>(1a) Attempt to resolve the complaint through public body's internal systems</p> <p>The aggrieved person should normally be expected to use any available internal complaints system offered by the public body before contacting the Ombudsman</p> | <p>(1b) Use any right of appeal or legal proceedings that are reasonably available</p> <p>An aggrieved person should use a right of appeal to a tribunal or court, or make an application for judicial review in the Royal Court if this is more appropriate than going to the Ombudsman</p> | |
| <p>(2) Seeking help</p> <p>The aggrieved person may seek advice before approaching the Ombudsman, e.g. from Jersey Citizen's Advice, an elected States Member, a lawyer</p> | | |
| <p>(3) Intake stage</p> <p>This is the first point of contact the person has with the Ombudsman scheme. This could be by phone, email/website, or in person (see Chapter 5). If it is clear that the complaint is not one that can be looked into by the Ombudsman, the person can be directed elsewhere.</p> | | |
| <p>(4) Assessment stage</p> <p>The Ombudsman or caseworker considers the aggrieved person's case. A decision could be made not to take the complaint forward, e.g. because it is premature or out of time. It may be possible to achieve early resolution of the complaint through discussion with the public body complained about. If not, a decision should be made about the most appropriate technique to use to look into the case.</p> | | |
| <p>(5a) Informal and private resolution, including mediation</p> <p>The parties are brought together, with the aim of securing agreement by consent to resolve the grievance. Outcome would be a binding agreement.</p> | <p>(5b) Investigation</p> <p>The Ombudsman/caseworker carries out an investigation (by phone/email/in person) to establish the facts and determine what if anything went wrong. Outcome would be a report with findings and recommendations</p> | <p>(5c) Adjudication</p> <p>This would be unique to Jersey. The Ombudsman would listen to the parties' arguments and evidence at a public hearing. Outcome would be a report with findings and recommendations</p> |
| <p>(6) Response from public body if complaint upheld</p> | | |
| <p>Compliance. The public body accepts Ombudsman's findings, provides individual redress as recommended, and carries out any systemic improvements recommended in the Ombudsman report</p> | <p>Non-compliance. The public body does not accept the Ombudsman's findings, refuses to provide individual redress as recommended, or does not carry out systematic improvements recommended in the Ombudsman report.</p> | |
| | <p>(7) Further steps to encourage compliance through political channels</p> | |
| | <p>(8) Legal proceedings to enforce compliance with recommendations</p> | |

9.2 International benchmarks of good practice

The **Ombudsman Association** (OA, formerly the British and Irish Ombudsman Association) states:

‘Typically, ombudsman decisions are based on what the ombudsman considers to be fair in all the circumstances - taking into account the law, any regulator’s rules and guidance, any relevant code of practice and what the ombudsman considers to have been good practice at the relevant time.’¹¹⁰

In relation to implementation of Ombudsman’s decision, the OA makes the following statement in relation to criteria for recognition of ombudsman offices:¹¹¹

(e) Implementation of Decisions

Either

(i) Those investigated should be bound by the decisions or recommendations of the Ombudsman; or

(ii) There should be a reasonable expectation that the Ombudsman’s decisions or recommendations will be complied with. In all those cases where they are not complied with, the Ombudsman should have the power to publicise, or require the publication of such non-compliance at the expense of those investigated.

The **International Ombudsman Institute** (IOI) sets out the following points about ‘recommendations’ its best practice guide *Developing and Reforming Ombudsman Institutes: an IOI guide for those undertaking this tasks* (June 2017):

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. Many Ombudsman Offices also offer redress for distress or delay, and giving the Ombudsman the power to recommend redress in such circumstances is desirable.

In relation to ‘Enforcing recommendations’, the IOI states:

A variety of approaches can be used, each of which has merit. One common arrangement is for the Ombudsman to make recommendations which are not binding on the body in jurisdiction. For this approach to be effective, the Ombudsman should have the power to have reports considered by the elected body to which he or she relates. This is especially so where a body in jurisdiction refuses to implement a recommendation. In some instances, a qualified majority (two thirds for example) in the elected assembly is required if recommendations are to be rejected. In any event, it is essential that there should be a duty on the body not accepting the recommendation to set out in detail its reasons for refusing to do so.

The power to publicise the outcome of investigations is also essential as public opinion, informed by the media, can help to ensure that bodies in jurisdiction heed the Ombudsman’s reports.

¹¹⁰ <http://www.ombudsmanassociation.org/about-basis-of-ombudsman-decisions.php>

¹¹¹ Ombudsman Association, Schedule 1 to the Rules: Criteria for the Recognition of Ombudsman Offices. <http://www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf>

A second model is for the Ombudsman to have recourse to the courts. In this approach the Ombudsman can bring actions against public bodies on behalf of complainants.

Binding recommendations are less usual in the public services arena but are often necessary when dealing with consumer issues, or where public services have been privatised. In such circumstances, it is normally only possible to challenge the recommendation via the courts.

Several Ombudsmen have published explanations on their approach to remedies. For example, in England, the Local Government and Social Care Ombudsman in *Guidance on good practice: Remedies* (May 2018) states:

Over the years we have learned from what complainants have told us. They want us to remedy a complaint as soon as possible. They think it is important that local authorities and other bodies in our jurisdiction acknowledge when things go wrong and take responsibility for putting things right. Complainants often tell us they want to make sure the same problem does not occur again in the future to cause injustice to other members of the public.

We take all this into account in recommending redress. Each case which comes to us is different and we take the individual needs and circumstances of each complainant into account when making recommendations to remedy injustice caused by fault. But all those who use our service need to have confidence that our recommendations are consistent and fair.

The LGSCO adds:

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.

9.3 Other design principles

Several design principles are encapsulated in the international benchmarks of good practice set out above. To these can be added the principle of **effectiveness**. The remedies available to an Ombudsman should be capable of (a) righting individual wrongs and (b) bringing about systematic improvement in decision-making to ensure there will be no repetition of the maladministration or service failure (fault).

In the rest of this Chapter, we work through the stages that a complaint taken to the Ombudsman may progress.

9.4 Attempt to resolve the complaint through public body's internal systems (stage 1a)

A common feature of Ombudsman schemes is that they require an aggrieved person normally to have used the complained about body's internal complaints process. The public body must be given an opportunity to check they have not done something wrong (maladministration or failure in service) and to rectify a wrong before an Ombudsman is involved.

A *quid pro quo* for requiring people to use internal complaints processes, is that public bodies actually have good quality internal complaints processes. In Chapter 4 we recommended that one of the functions of the Ombudsman should be oversight of these internal processes.

In our report *Improving Administrative Redress in Jersey* (October 2017), the Jersey Law Commission identified a need to improve the quality and consistency across government in internal complaint handling. We discuss in Chapter 2 above how the Ombudsman's functions could include oversight over internal complaint handling systems.

In some scenarios, however, insisting that an aggrieved person use an internal redress process may not be appropriate. The Ombudsman should therefore have discretion to dispense with this requirement (which would be exercised in exceptional circumstances).

The Public Services Ombudsman (Jersey) Law should contain an obligation on the aggrieved person to exhaust any relevant internal complaints process, subject to the Ombudsman having discretion to relieve the aggrieved person of that obligation.

9.5 Using any appropriate tribunal or court proceedings instead of the Ombudsman (stage 1b)

The matter about which the aggrieved person is concerned may be a better fit for proceedings in a tribunal or a court, rather than going to the Ombudsman. In Jersey, these options are:

- Exercising a right of appeal to one of the administrative appeals tribunals. These are currently: the Commissioners of Appeal for Taxes; Social Security Tribunal; Social Security Medical Appeal Tribunal; Income Support Medical Appeal Tribunal; Mental Health Review Tribunal; Health and Safety Appeal Tribunal; Data Protection Tribunal; Rate Appeal Board; Charity Tribunal.¹¹²
- Using the planning appeals system.
- Using a right of appeal to the Royal Court from the decision of the public body, following the procedures in Part 15 of the Royal Court Rules. There are over 70 such rights of appeal.
- Making an application for judicial review to the Royal Court, under Part 16 of the Royal Court Rules. This enables a person to question the legality of a decision (or inaction) of a public body.

If there are grounds of appeal to a tribunal or to the Royal Court, the aggrieved person should normally be expected to go down this route. There are advantages for the individual: tribunals and the Royal Court are able to make binding determinations. But there may also be disadvantages, especially in going to the Royal Court on appeal or making an application for judicial review: access to affordable legal advice and representation will be a challenge for many people. For the administrative justice system as a whole, it is important that people's grievances are addressed through the most suitable process.

Many public services Ombudsman schemes stipulate that the Ombudsman cannot investigate a matter where the aggrieved person has, or had, a right of appeal or to take legal proceedings. For example, the Public Services Ombudsman Act (Northern Ireland) 2016 provides:

Exclusion: other remedies available

21.—(1) The Ombudsman must not investigate—

(a) any action in respect of which the person aggrieved has or had a right of appeal, complaint, reference or review to or before a tribunal constituted under any statutory provision or by virtue of Her Majesty's prerogative,

(b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law. [...]

(3) The Ombudsman may investigate—

(a) notwithstanding that the person aggrieved has or had such a right or remedy as is mentioned in subsection (1), if the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect the person aggrieved to resort to or have resorted to it, or

¹¹² In our report *Improving Administrative Redress in Jersey* (October 2017), we recommended that these tribunals be amalgamated into a single Jersey Administrative Appeals Tribunal (JAAT).

(b) notwithstanding that the person aggrieved had exercised such a right as is mentioned in subsection (1)(a), if the person aggrieved complains that the injustice sustained remains unremedied thereby and the Ombudsman is satisfied that there are reasonable grounds for that complaint.

One complication, is that there is considerable overlap between the grounds on which an application for judicial review may be made to the Royal Court and the types of fault that an Ombudsman may investigate (see Chapter 8). The Ombudsman schemes in the United Kingdom have taken a pragmatic approach to this, recognising that for most people the cost of seeking judicial review is prohibitive: not only will the aggrieved person have to pay their own lawyers but if they lose they will normally be liable to a costs order requiring them to make a substantial contribution to covering the public body's legal costs.

In England, in the Court of Appeal case *R v Commission for Local Administration ex parte Liverpool City Council* [2001] 1 All ER 462 (CA) Lord Justice Henry explained 'What may not have been recognised back in 1974 [when the Local Government Ombudsman was set up] was the emergence of judicial review to the point where most if not all matters which could form the basis for complaint of maladministration are matters for which the elastic qualities of judicial review might provide a remedy'. He set out guidance on when it might be more appropriate for the Ombudsman to consider the matter.

- The allegation can be best investigated by the resources and powers of the Ombudsman.
- The Ombudsman is in a position to get to the bottom of the prima facie case of maladministration and the complainants would be unlikely to reach that goal 'having regards to the weaknesses of the coercive fact finding potential of judicial review ... it would be very difficult, if not impossible, for the [aggrieved person] to obtain the necessary evidence in judicial review proceedings'.
- The aggrieved person is unlikely to have the means to pursue a remedy through the courts.
- The Ombudsman's investigation and report can provide a just remedy when judicial review might fail to do so.

In our view, the Public Services Ombudsman (Jersey) Law should contain a clause along similar lines to the United Kingdom Ombudsman schemes to the effect that the Ombudsman should not investigate where an aggrieved person has or had a right to appeal or make an application for judicial review, subject to the proviso that the Ombudsman may investigate if it is reasonable to do so. Section 21 of Public Services Ombudsman Act (Northern Ireland) 2016) would provide a suitable model.

9.6 Merits of administrative decisions taken without maladministration

Ombudsman schemes covering public sector decision-making are commonly excluded from questioning the merits of decisions made without maladministration. The constitutional rationale for this is clear: it is the public body that has been conferred with the decision-making power or duty, not the Ombudsman, and accordingly the Ombudsman should not substitute its preferences or judgements for those of the initial decision-maker.

This approach may be expressly stated in the legislation creating the Ombudsman. For example, the Scottish Public Services Ombudsman Act 2002 section 7(1) provides that 'The Ombudsman is not entitled to question the merits of a decision taken without maladministration by or on behalf of a listed authority in the exercise of a discretion vested in that authority'.

This is an important safeguard against an Ombudsman scheme overreaching its mission. **We therefore recommend that the Public Services Ombudsman (Jersey) Law states expressly that the Ombudsman is not entitled to question the merits of a decision taken without maladministration.**

9.7 Seeking help before contacting the Ombudsman (stage 2)

In designing the Ombudsman process, consideration should be given to whether people have received advice before contacting the Ombudsman. It can be expected that some people will and some will not.

People who have received advice about the Ombudsman may have received it from various sources.

- We understand that the Government of Jersey is establishing a one-stop inquiry centre, where people can interact, including making any complaints about any department of the Government of Jersey. The Ombudsman will cover a range of public bodies beyond Government of Jersey departments, including Parishes and arm's length bodies. Public bodies dealing with complaints should inform customers about the Ombudsman scheme. Consideration should be given as to how to ensure this happens. **One option would be for the Public Services Ombudsman (Jersey) Law to require public bodies to inform customers about the existence of the Ombudsman scheme.**
- Jersey Citizens Advice Bureau provides advice on a wide range of consumer and personal matters, including complaints in respect of public bodies. As an operational matter, it will be important for CAB advisers and the Ombudsman office to understand their respective roles. CAB advisers should continue to 'sign post' people to the most appropriate redress service – this may be the Ombudsman, but might also be to ensure the person understands the need to use internal complaints processes or the matter may be one that needs to be addressed by an appeal to a tribunal, appeal to the Royal Court, or an application for judicial review in the Royal Court.
- A person may have taken a problem to a Deputy, Connétable or Senator and the States Member may refer the person to the Ombudsman. The Ombudsman will need to work with elected States Members to develop shared understandings of when and how referrals should take place. For example, should the States Member normally attempt to help the constituent by contacting the relevant department or other public body to establish what may have gone wrong – or should early referrals be made to the Ombudsman?
- A person may have spoken to a lawyer. Members of the legal profession will need to understand the scope of the Ombudsman scheme and the outcomes it can achieve. Advice to clients may need to consider whether legal action (appeal or judicial review in the Royal Court, or civil proceedings), tribunal proceedings, or a referral to the Ombudsman scheme is the most appropriate course of action.

9.8 Intake stage (stage 3)

In Chapter 5 we recommended that the Public Services Ombudsman (Jersey) Law should not impose restrictions on how people take a complaint to the Ombudsman. People should be able to do so in writing, via email and website, by telephone or in person to maximize accessibility.

In Chapter 11, we examine the resource needs of the Ombudsman, including staff and premises: these practical considerations will shape the level of service that can be offered at the intake stage. We highlight the desirability of the Ombudsman scheme having 'a human face' – which at intake

stage means good telephone manner and a welcoming reception area for people who want to call in person. For people who are not confident in writing down their complaint, an interview should be offered to help them set out what has happened and why they want to the Ombudsman to look into it.

The work carried out by the Ombudsman and staff at intake stage does not need to be closely regulated by the Public Services Ombudsman (Jersey) Law. Operational processes will need to be established.

Those designing in detail the operation of the intake stage will be able to draw on internal staff guidance manuals that are available via many of the UK Ombudsman websites, including that the Local Government and Social Care Ombudsman.¹¹³ This explains that the 'intake team' address 'three key questions about every enquiry': (1) is it a matter that might be for the LGSCO (rather than another body)? (2) Is it *obviously* premature? (3) Is there enough basic information to make it viable to pass on to the Assessment Team?

In Jersey, the 'team' will be on a considerably smaller scale than the LGSCO. In Chapter 11, we outline a staffing model that consists of the Ombudsman, two caseworkers, an executive assistant, and a part-time communications officer. Consideration will need to be given as to how the initial stage can best be staffed, for example by the two caseworkers on a telephone and front desk rota.

9.9 Assessment of Complaint by Ombudsman (stage 4)

If a complaint is sufficiently viable for it to be progress to the assessment stage, the outcomes could be:¹¹⁴

- Early decision not to investigate. This may be for reasons such as: the complaint falls outside the remit of the Ombudsman ('out of jurisdiction'), it is clear that there is no maladministration or injustice, the Ombudsman could not provide a worthwhile outcome, the aggrieved person has already sought a remedy through another channel, for example by appealing to a tribunal.
- It is premature for the Ombudsman to investigate – internal complaints processes have not been completed and there is potential for the complaint to be resolved there.
- The complaint may be resolved at the assessment stage through a brief initial phone conversation with the aggrieved person or the public body complained against (the LGSCO manual says that this 'will be a small number').
- The case merits further consideration. The Ombudsman should decide on the most appropriate technique for this. This could include (1) a mediation process, (2) a formal investigation, and possibly (3) adjudication. We look at these in turn.

The Ombudsman should have at its disposal a range of processes that reflect its dual role of addressing individual complaints and promoting lesson-learning. For some complainants, an informal and relatively quick process will be preferred, and where the complaint does not raise systemic issues or ones that may affect a wider group of individuals, this can be an appropriate Ombudsman process, drawing on mediation approaches. Some complaints may require, and some complainants may prefer, an investigation.

¹¹³ See LGO, *Intake Team Manual* (Version 10.1, 2016) <https://www.lgo.org.uk/information-centre/staff-guidance>

¹¹⁴ This is adapted from LGO, *Assessment Manual* (Version 6.4, July 2018) <https://www.lgo.org.uk/information-centre/staff-guidance>.

9.10 Informal resolution including mediation (stage 5a)

Most public service Ombudsmen seek to enable the aggrieved person and the public body complained about to resolve the matter informally through a negotiated or mediated process. Where this happens, formal investigation does not need to take place.

In Jersey's current system, under Article 3(3) of the Administrative Decisions (Review)(Jersey) Law 1982, the Chairman or Deputy Chairman of the States of Jersey Complaints Panel have power to seek informal resolution.¹¹⁵ If informal resolution is achieved, there is no need for a hearing to take place. During the debate on P.32/2018, a Member who did not support the proposal to set up an Ombudsman scheme in place of the States of Jersey Complaints Panel said:¹¹⁶

But of course an ombudsman's office, with all their advisers and caseworkers, will be a lot more formal and therefore less welcoming to people who have got a grudge against a department or ministry. There will be less ability, of course, in that scenario for the informal resolution, which is a hallmark of the complaints board over the last few years, and they do an amazing job at that.

If designed correctly, the Ombudsman's office in Jersey will not be 'more formal' and 'less welcoming' than the current system.

9.10.1 What is informal resolution?

A survey of Ombudsmen carried out in 2014 identified a range of terms used to describe approaches to complaints handling.¹¹⁷ Some of the common terms used by Ombudsman schemes mean different things, and conversely, similar terms are used to describe quite different processes. For example, 'mediation' is used to mean a face-to-face meeting conducted by a qualified mediator but also to describe a settlement brokered by way of shuttle negotiations (often by telephone) by a caseworker on the basis of their assessment of what is a fair or expedient outcome. The survey also found that mediation was not necessarily synonymous with early or even informal resolution. In at least one scheme, mediation is a formal process that takes place only after an investigation has been carried out and the complaint upheld. Similarly, one scheme refers to 'conciliation' as the informal part of the process, whereas another describes it as a formal process.

In 2010, in the UK the Office of Fair Trading, in a summary guide to dispute resolution systems for consumer redress in the United Kingdom, stated that:¹¹⁸

'A useful distinction can be drawn between procedures in which a neutral third party proposes or makes a decision (ombudsmen, adjudicators, arbitrators) and those where the neutral party seeks to bring the parties together and assist them in finding an agreement by common consent (conciliation, mediation). Which of the above procedures is most appropriate will depend on the nature of the dispute to be resolved.'

¹¹⁵ See further, Jersey Law Commission, *Improving Administrative Redress in Jersey* (October 2017) para 5.71.

¹¹⁶ States of Jersey Official Report (Hansard), 22 March 2018, 17.1.3 (Connétable L. Norman of St. Clement).

¹¹⁷ M Doyle, V Bondy and C Hirst, *The use of informal resolution approaches by ombudsmen in the UK and Ireland: A mapping study* (2014). <https://ombudsmanresearch.files.wordpress.com/2014/10/the-use-of-informal-resolution-approaches-by-ombudsmen-in-the-uk-and-ireland-a-mapping-study-1.pdf>

¹¹⁸ Office of Fair Trading, *Mapping UK consumer redress: A summary guide to dispute resolution systems*, OFT1267 (May) (2010)

9.10.2 Legal frameworks and practices in other Ombudsman schemes

To understand the variety of design choices for what, if anything, the Public Services Ombudsman (Jersey) Law might say, we looked at legal frameworks and practices in relation to informal resolution in a sample of public services Ombudsman schemes:

| | |
|---|---|
| Bermuda Ombudsman | The Ombudsman Act 2004 provides that 'The Ombudsman may decide to deal with a complaint by mediation under this section if he is of the opinion, having regard to all the circumstances of the case, that mediation is suitable in such circumstances.' There is power to appoint an external mediator but to date, the Ombudsman has acted as mediator in all cases when this path was offered for resolving a complaint. Mediation has been used infrequently. (Ombudsman Act 2004 section10) |
| Cayman Islands Ombudsman | The office is too new to have published info on this but in interview the CIO explained it is used frequently and is seen as a way to reduce bureaucracy. |
| Gibraltar Ombudsman for Public Services | 'Informal action' is mentioned: 'resolved through informal action' is one category of outcome. But the website notes that these are still thoroughly investigated.an exchange of communication between our office and the entity concerned during the investigation is always a predominant feature in these investigations.' |
| Tynwald Commissioner for Administration (Isle of Man) | Informal resolution is not referred to in the legislation and has not been used. |
| Local Government and Social Care Ombudsman (England) | Local Government Act 1974 (as amended in 2007) provides that 'A Local Commissioner may appoint and pay a mediator or other appropriate person to assist him in the conduct of an investigation under this Act' and 'Any person or persons appointed [as a mediator] shall be deemed to be an officer or officers of the Commission for Local Administration in carrying out his or their functions under that appointment'. |
| Public Services Ombudsman for Wales | The Public Services Ombudsman (Wales) Act 2005 section 3 states: Alternative resolution of complaints |
| (Northern Ireland Public Services Ombudsman has similar power) | (1) The Ombudsman may take any action he thinks appropriate with a view to resolving a complaint which he has power to investigate under section 2. (2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation into the complaint. (3) Any action under this section must be taken in private. |

9.10.3 Recommendations on informal resolution

The Jersey Law Commission **recommends**

- The Law establishing the Ombudsman should contain express powers regarding resolution of complaints using informal techniques, including mediation. The model used for the Public Services Ombudsman for Wales and the Northern Ireland Public Service Ombudsman, which creates a flexible power for alternative resolution, would be appropriate.
- Mediation should take place only if the aggrieved person and the public body complained against agree to participate in the mediation process.
- The mediation process should be able to be conducted by the Ombudsman, a member of staff of the Ombudsman office, or a third party (for example, through the existing Community Mediation scheme) if appropriate.
- The Ombudsman's annual report should contain information about negotiated and mediated outcomes but not the identity of aggrieved persons. This will provide transparency for this function of the Ombudsman, which otherwise takes place in private.

9.11 Investigation (stage 5b)

If informal resolution is not used (or is used but fails to achieve a resolution), the Ombudsman may carry out an investigation leading to publication of a written decision report. The process of an Ombudsman investigation can be understood as a five-step process.¹¹⁹ The precise format will depend on the scale and complexity of the complaint. Investigations do not involve public oral hearings.

Consideration needs to be given as to what features of the investigation process should be set out in the Public Services Ombudsman (Jersey) Law, whether some detail should be set out in Regulations, and to what extent the Ombudsman should have flexibility to design the investigatory process. **We see advantages to the Law providing a general and broad power to conduct investigations into individual complaints, leaving the Ombudsman to develop the detail of the procedure in accordance principles of efficiency, effectiveness and fairness.**

Gathering evidence during the investigation is ideally done in a spirit of cooperation. But the investigatory work of the Ombudsman should be underpinned by legal powers to require provision of information. **The Ombudsman should have the same powers as the Royal Court to require any Minister or officer or employee of the public body under investigation to supply information, produce documents, or attend a meeting to answer questions relevant to the investigation. If a person obstructs an Ombudsman investigation, this should constitute contempt of court.**¹²⁰

9.11.1 Step 1: defining the complaint and setting expectations

The Ombudsman or caseworker will contact the aggrieved person (this can be done by telephone, in person or by email) to discuss the scope of the investigation and expectations about what will be achieved and on what timescale. The Ombudsman or caseworker will also contact the public body, explain the scope of the investigation, explain procedures, and discuss how and when the organisation will be updated on progress. It may be possible to achieve an informal resolution at this stage without the Ombudsman or caseworker making findings or recommendations if the aggrieved person and body complained against agree a mutually satisfactory outcome.

¹¹⁹ The description of the five steps is adapted from the Parliamentary and Health Service Ombudsman, *Investigation Manual 6.0* (January 2015).

¹²⁰ For a model, see Local Government Act 1974 section 29.

9.11.2 Step 2: gathering the evidence and planning the investigation

The aim in this phase of the investigation is to obtain the information needed by the Ombudsman to make the correct decision. The public body will be asked for additional information not already supplied by the aggrieved person, there may be specific questions to the initial decision-maker and to the aggrieved person (which may be requested by telephone, in person at an interview or by email). Sometimes it may be necessary to ask a third party to supply evidence.

9.11.3 Step 3: analysing the evidence

With the dossier complete, the Ombudsman or caseworker will consider all the information gathered carefully in order to reach an evidence-based impartial decision as to whether there has been maladministration or failure in service. Key questions will be: 'what should have happened?' 'What did happen?' 'Was there a gap between what happened and what should have happened?' 'If there was a gap between what should have happened and what did happen, was this so far below the relevant standard that it amounted to maladministration or service failure?' 'What was the impact of the maladministration/service failure – did it cause injustice or hardship?' 'What can the organisation do to remedy any injustice or hardship?' At this stage, consideration will be given to the appropriate remedy, which should be SMART (specific, measurable, achievable and realistic, with a timescale).

9.11.4 Step 4: communicating the draft decision

Both the aggrieved person and the body complained against should have the opportunity to comment on the proposed findings and recommendations to be made by the Ombudsman or caseworker. This is procedurally fair and also enables both sides to raise any concerns. Sharing of the draft could be done in various ways – for example, at a meeting with each side separately or sending a written draft and asking for comments by phone. If the body complained against is not willing to accept findings or recommendations, this will emerge at this stage. If there are legal or technical reasons for non-compliance with the proposed remedy, these can be considered further by the Ombudsman or caseworker.

9.11.5 Step 5: communicating the final decision

Communicating the final decision should be done simultaneously to all parties. The decision is in the form of a report. Reports do not refer to aggrieved persons by name (Mrs X, Mr Y) and can be published online.

9.12 Adjudication (stage 5c)

Currently, when the States of Jersey Complaints Panel seeks to achieve a formal resolution of a complaint, it does so through the process of adjudication. Adjudication involves an impartial adjudicator (a 3-member board of members of the Complaints Panel) listening to evidence and argument presented publicly at an adversarial oral hearing by each side – the aggrieved person and the public body complained against.¹²¹ After the hearing, a detailed report is published.

The Administrative Decisions (Review)(Jersey) Law 1982 under which the Complaints Panel operates does not actually require public hearings. Article 7 states that 'A Board shall, with the least possible delay, enquire into any complaint referred to it and for this purpose shall regulate its own procedure'. But this has been interpreted by the Complaints Panel as requiring public hearings as the norm.

¹²¹ See further Jersey Law Commission, *Improving Administrative Redress in Jersey* (October 2017) paragraphs 5.84 – 5.92.

We have found no public services Ombudsman scheme that uses adjudication at public hearings as a technique for assessing whether there is maladministration or service failure. Indeed, Ombudsman schemes have generally been set up in order to move away from reliance on ‘court like’ processes, which may not be well suited to gathering evidence and making judgements in the sorts of case typically handled by Ombudsman schemes. Jersey appears to be unique in using court- or tribunal-like procedures to deal with administrative complaints.

The disadvantages of adjudication by public hearings may include:

- the process may be unfair on the aggrieved person if the public body is represented at the hearing by an experienced official or legal representative – there may be an ‘inequality of arms’
- hearings can be very stressful to aggrieved people, who may be deterred from pursuing legitimate complaints
- hearings are adversarial, which may worsen rather than sooth antagonism between the parties; this is a particular difficulty where there is an on-going relationship between the aggrieved person and the public body
- having a hearing as a single point in the process at which the adjudicator gathers arguments and evidence puts pressure on the adjudicator to ‘get it right on the day’ (whereas investigation can be a more iterative process)
- public hearings may invade the aggrieved person’s privacy if details of their life are reported on in the news media
- the process of adjudication, including each side’s preparation, may be more costly than the process of investigation.

There may also be advantages of adjudication including:

- providing an aggrieved person with an opportunity to have a public platform to vent frustration at the administrative decision complained about
- public hearings may be effective in ensuring transparency and accountability – shining the light of publicity on alleged failures
- if (as discussed below) the Jersey Ombudsman is empowered to make binding recommendations, public hearings may be required if the complaint relates to a ‘civil right or obligation’ within the meaning of Article 6 of the European Convention of Human Rights (which is part of the Island’s law under the Human Rights (Jersey) Law 2000).

Although it would be an unusual feature, the Jersey Law Commission recognises that for some cases looked into the by Ombudsman, permitting a public hearing may be appropriate in the particular circumstances of Jersey.

This should not, as with the current States of Jersey Complaints Scheme, be the default method but a process to be used if in the opinion of the Ombudsman having a hearing would be an efficient, effective and fair way of gathering arguments and information. A hearing should take place only with the consent of the aggrieved person. Arrangements should be put in place to ensure ‘equality of arms’, so that that arguments and evidence of both sides of the grievance can be presented well.

Consideration could be given to a model in which the Ombudsman sits with two lay assessors. Eligibility to be a lay assessor could be linked to service as a member of a tribunal in

Jersey (or the Jersey Administrative Appeal Tribunal proposed by the Jersey Law Commission).¹²² The assessors should have experience of sitting in tribunal-like settings. One of the difficulties faced by the current States of Jersey Complaints Panel is that its case load is too small to provide regular sitting experience to all 12 members of the Panel.

In the current States of Jersey Complaints Panel procedures, hearings are on occasion held in private, for example if the matter complained about contains personally sensitive information. In the Ombudsman scheme, it would normally be preferable to use investigation processes for such cases.

9.13 Outcomes: the range of remedies following investigation or adjudication

If the outcome of an investigation or adjudication is that maladministration or service failure has occurred, and the aggrieved person has suffered injustice or hardship, the question then arises as to what remedy the Ombudsman scheme should provide.

A guiding principle in determining what remedy is appropriate is that it should aim to put the aggrieved person back in the position they would have been in if nothing had gone wrong.¹²³

It is, however, important to recall that Ombudsman schemes do not have legal powers to make decisions on behalf of the public body complained about. If an administrative decision needs to be retaken, this will be for the public body to do.

The Ombudsman must ensure that the public body has the legal powers to carry out the remedial action recommended – the Ombudsman cannot propose a course of action that would take the public body outside the four corners of the public body's legal powers and duties.

Remedies should be tailored to the particular circumstances of the case and the impact the errors had on the aggrieved person and what steps the public body has taken to address the issues before the Ombudsman investigation.

A recommendation that the public body make a written apology is a frequent outcome. The LGSCO guidance states:¹²⁴

Bodies in jurisdiction should apologise where fault has caused injustice. The body in jurisdiction may apologise in person or in writing, but in either case the apology must be made directly to the person affected using clear and plain language. It should not minimise or express any doubt about what happened: to be meaningful, it must both accept responsibility for the fault, and acknowledge the impact this had on the complainant. An apology should also include an assurance that the same fault will not happen again, and explain what steps have been taken to ensure this.

Responsibility for making the apology rests corporately with the body in jurisdiction. So we will not normally seek an apology from a specific officer.

Where relevant, an apology should contain an explanation for what occurred.

Recommendations in a decision report may seek to achieve systematic improvement, to ensure that other people in the future do not suffer the injustice experienced by the aggrieved person (see

¹²² Jersey Law Commission, *Improving Administrative Redress in Jersey* (October 2017) Chapter 3.

¹²³ See e.g. Local Government and Social Care Ombudsman in *Guidance on good practice: Remedies* (May 2018). Another useful source is the document *Public Services Ombudsman: Principles for Remedy*, published by public services Ombudsman in the United Kingdom.

¹²⁴ Local Government and Social Care Ombudsman in *Guidance on good practice: Remedies* (May 2018).

Chapter 4). This should normally require a timeframe to be set out and a requirement that the public body report back to the Ombudsman and to the person aggrieved with the outcome of the review.

Ombudsman schemes typically have powers to recommend that the person aggrieved receives financial compensation from the public body complained against. Some Ombudsman schemes have developed principles for such awards, which the Jersey Ombudsman should consider following.¹²⁵ The UK Parliamentary and Health Service Ombudsman has devised a scale with six levels to help ensure consistency in the level of compensation awarded. Awards can be for quantifiable financial loss, loss of non-monetary benefits, and in recognition of the 'avoidable distress, harm, risk or other unfair impact' that the public body's conduct caused. In the United Kingdom, recommendations for financial recompense are often in the £50–£150 range; it is rare for a recommendation of more than £1,000.

Ombudsman schemes do not generally have power to recommend disciplinary action against staff in the public bodies complained about.

We recommend that the Jersey Ombudsman have sufficient legal powers to offer the full range of remedies typically possessed by other public services Ombudsman schemes.

9.13.1 *Examples of outcomes*

To help envisage the types of recommendations that could be made by the Jersey Ombudsman examples of recent outcomes from the Local Government and Social Care Ombudsman are set out below. These are extracted from the LGSCO's website, where all reports are published.

- Mrs X complained the Council failed to ensure her son Z received the support from a sensory Occupational Therapist outlined in his Statement of Special Educational Needs and Education, Health and Care Plan since 2011. The LGSCO upheld the complaint. The agreed action was within one month the Council would (1) pay Mrs X £500 for time, trouble and distress caused by its faults as it has already agreed, (2) pay Mrs X £1,500 (rather than the £500 it has already offered) to be used to assist Z's educational development. This could be used for additional therapy, purchasing educational aids or for something else to help his sensory awareness; within three months of the final decision the Council agreed to provide the Ombudsman with an action plan, setting out what it has done to review all current cases to consider whether any other cases have been affected in a similar way. This plan should set out brief details of each case and a summary of the action the council will take.
- Mr B complains that the Council has regularly failed to collect his domestic recycling. As a result, he has frequently had to take his recycling to the local recycling centre. The Ombudsman has found fault by the Council, because it took too long to put in place alternative collection arrangements when it knew that crews were having problems gaining access to Mr B's street. The Ombudsman considers that the Council has now taken appropriate steps to resolve the problems with the service. He also considers that a payment of £150 to Mr B and an apology are a suitable remedy for the complaint.
- Mr X complained the Council lost his medical report which was needed for his taxi licence application. The Council has accepted it lost the report. The Council has agreed to reimburse Mr X for the cost of providing a GP letter and a second medical report. It will also pay Mr X £150 for the uncertainty, inconvenience and avoidable distress caused.
- Mr X complained the Council gave him confusing and misleading information about responsibility for maintaining trees affecting his property. There was no fault in the Council's

¹²⁵ Parliamentary and Health Service Ombudsman, *Our guidance on financial remedy*.

decision it was not responsible for the trees. However it gave Mr X confusing information and failed to respond to his requests for updates during 2014 and 2015. This caused uncertainty and frustration. It has agreed our recommendation to apologise and pay Mr X £150 to remedy this.

9.14 What happens if the public body does not accept the Ombudsman's findings or recommendations

In an ideal world, the Ombudsman's investigation (or possibly, in Jersey, adjudication) will result in a report containing findings and recommendations that are accepted by the public body and implemented.

Indeed, in most Ombudsman schemes there is a high degree of compliance. For example:

- The Gibraltar Ombudsman for Public Services informed us that its recommendations were invariably respected and followed by government departments.
- In its annual *Review of Local Government Complaints 2017-18*, the Local Government and Social Care Ombudsman in England carried out 4,020 detailed investigations, upholding 57 per cent and making 3,622 recommendations: 'Last year there were a few occasions where councils resisted following the correct process for public interest reports. This required us in three cases to follow the unusual practice of publishing a further report calling on the council to properly discharge its duties'. The three councils ultimately agreed to implement the recommendations. (The picture has changes considerable since 1988, when the JUSTICE-All Soul's Review expressed concern about non-compliance).
- In its 2016-17 annual report, the Scottish Public Services Ombudsman states it carried out 805 investigations making 1,379 recommendations for redress and improvement. 97 per cent of recommendations were complied with within three months of the deadline.

This is in stark contrast to the current system in Jersey, where in recent years Ministers have frequently declined to accept the findings of the States of Jersey Complaints Panel.

In our report *Improving Administrative Justice in Jersey* (October 2017), we analysed the 11 complaints that lead to hearings and responses to reports by Ministers between January 2013 and October 2017. Eight cases were upheld by the Panel but a Minister rejected the main findings and recommendations in five of them (46 per cent of cases) and rejected findings but nonetheless provided a favourable reconsideration in one case (9 per cent). Ministers accepted findings and recommendations in only two of the cases. We commented that 'We view this high proportion of cases in which Ministers reject Complaint Panel findings and recommendations (and in some cases, are highly critical of the Complaints Panel's approach) as creating an unstable relationship, which undermines the efficiency of the Complaints Panel'.¹²⁶

Since then, there has been further instances.

- In August 2018, the Infrastructure Minister rejected the Complaint Panel's findings and recommendations that two people be compensated for costs incurred when they tried to sell their homes at Grève d'Azette. The chairman of the Panel was reported as saying that an aspect of the Minister's response was 'clearly nonsense' and that the Panel was 'very surprised' about the view taken by the Minister on whether the time taken to negotiate with the complainants was appropriate.¹²⁷

¹²⁶ Jersey Law Commission, *Improving Administrative Redress in Jersey* (October 2017) para 5.27 (page 84).

¹²⁷ Ian Heath, 'Minister rejects foreshore costs compensation claim', *Jersey Evening Post* 8 August 2018 page 7.

- In October 2018, the Minister for the Environment rejected some findings of the Complaints Panel's report relating to the processing of planning applications for Broughton Lodge Farm in St Mary. For example, the Panel found 'The state of the floors and windows in Mr. Barette's home would have undoubtedly been condemned had they been viewed by Planning Officers' but the Minister responded that there was no evidence to support this finding.¹²⁸

In the opinion of the Jersey Law Commission, the pattern of frequent rejection of States of Jersey Complaint Panel decision reports would, if carried over to the new Ombudsman scheme, call into question the value of creating an Ombudsman.

In designing the new Ombudsman for Jersey, an important aim should therefore be to achieve a much higher level of acceptance by Ministers and other public bodies with Ombudsman recommendations and to reduce the risk that the current pattern of non-compliance will continue.

9.15 'Special' or 'second' reports

In the current States of Jersey Complaints Panel system, Article 9 of the Administrative Decisions (Review)(Jersey) Law 1982 states that 'In any case where a Board requested reconsideration of any matter, the Board may, if it considers that its findings have been insufficiently considered or implemented, present a report to that effect to the Privileges and Procedures Committee' and 'The Privileges and Procedures Committee shall present to the States a copy of any information or report that it receives under this Article'.

A common feature of public services Ombudsman schemes is to provide powers to make a further report in a case if the public body does not comply. This may also include powers (1) to lay the report before the legislature and (2) to publicise the report and require the public body to reimburse the cost of doing so.

The Public Services Ombudsman (Jersey) Law should include power for the Ombudsman to make a second report in a case where the public body has not implemented recommendations.

There should be a procedure for bringing the report formally to the attention of the States Assembly.

The Ombudsman should also have power to require the public body to reimburse the reasonable costs of the Ombudsman in publicising the report.

In the view of the Jersey Law Commission these powers, though important, are not sufficient to protect the interests of individuals in respect of whom the Ombudsman has found there to be maladministration or service failure leading to injustice and where the public body rejects findings or refuses to implement recommendations.

9.16 Outcomes: should Ombudsman findings and recommendations be binding and enforceable?

A general characteristic of many public services Ombudsman schemes is that their findings are not binding and their recommendations are not enforceable. If a public body disagrees with an

¹²⁸ States of Jersey Complaints Board: Findings – Complaint By Mr. I. Barette Against The Minister For The Environment, Regarding The Processing Of The Planning Applications Relating To The Property Known As Broughton Lodge Farm, St. Mary (R.111/2018) – Response Of The Minister For The Environment, R.111 Res/2018.

Ombudsman recommendation, they may do so but may face political criticism for their stance (see previous section).

This is in contrast to tribunals and courts – two other important parts of the administrative justice system – where legally binding orders are issued, with which the public body must apply. If a public body were to refuse to comply with a tribunal or court judgment, this would be a breach of the constitutional principle of the rule of law and ultimately the Minister, official or other representative of the public body could face punishment in contempt of court proceedings.

9.16.1 *Arguments in favour of non-binding, non-enforceable outcomes*

Experts in the United Kingdom generally favour the typical arrangement for Ombudsman schemes to lack enforcement powers: far from being a weakness in the design of the schemes, this is valued as a key feature.

Dr Nick O'Brien (who has worked in various capacities in UK Ombudsman schemes) refers to an Ombudsman's outcome as¹²⁹

an authoritative but unenforceable contribution to a continuing debate about the merits of the case and of the policy and other factors that shaped it. The ombudsman's word carries weight, but it is frequently far from the last word. It might be said that the ombudsman's 'style of control' is to that extent 'co-operative' rather than 'coercive', more a mandate of 'influence' than of 'sanction'.

Writing in 2002, Professor Mary Seneviratne of Nottingham Trent University points out that having binding powers might make authorities¹³⁰

defensive, and import formal safeguards into the system. This could make the system more lengthy and costly, and less informal and flexible. There are also human rights issues to be addressed if there were to be judicial enforcement. None of the ombudsmen in the public sector wish to have the power to make binding awards.

Dr Richard Kirkham of the University of Sheffield in a report for the UK Parliamentary and Health Service Ombudsman (PHSO) published by the House of Commons in 2007 stressed the importance of three factors.¹³¹

- There is a high degree of compliance by public bodies with recommendations of the PHSO.
- 'A second consideration is the principal reason why the [PHSO] lacks enforcement powers. Far from being an unusual flaw in ombudsman design, this is a common solution in ombudsman schemes and goes to the heart of the work that the institution is expected to perform. Ombudsmen are given almost total access to information and people within public bodies, and possess a very broad remit with which to investigate public sector activity. Given the potential depth of such investigations, the consequences of an ombudsman's report can have a huge impact on the design of future policy. Recognition of the potentially sensitive nature of the ombudsman's work is one of the reasons why ombudsman schemes tend to leave the power of implementation in the hands of the public authority concerned. Political accountability between the decision-maker and the electorate for the consequences of an ombudsman's report is thereby maintained. Arguably, another important benefit of this arrangement is that because public authorities know that they retain control of their decision-making, they are more likely to be encouraged to participate constructively in the investigation. It is this fear that powers of legal

¹²⁹ N O'Brien, 'Ombudsmen and social rights adjudication' [2009] Public Law 468-69.

¹³⁰ M Seneviratne, *Ombudsmen: Public Services and Administrative Justice* (2002 Butterworths) page 55.

¹³¹ PHSO, *The Parliamentary Ombudsman: Withstanding the Test of Time*, Fourth Report, 2006-07, HC 421.

enforcement would radically alter the hitherto cooperative nature of the ombudsman's work that best explains why most ombudsmen are reluctant to go down this route.'

- If an Ombudsman did have power to make enforceable orders affecting 'civil rights and obligations' as defined by ECHR Article 6, then: 'Such a development would almost certainly force the Office to reconsider its working practices. This could mean the increased use of formal hearings and more frequent legal representation. If this were the case, then the whole ethos and rationale of the ombudsman institution would be severely challenged and it is possible that many of the benefits would be lost.'

9.16.2 Arguments in favour of binding or enforceable outcomes

In recent years in England and Wales, as a result of court rulings clarifying the meaning of the legislation under which the public services Ombudsman schemes operate, the sharp distinction between (a) recommendations that public bodies cannot be compelled to implement and (b) totally binding legal orders of the type made by tribunals and courts has been eroded. Expressed briefly, the position is now as follows:

- In England, when the **Local Government and Social Care Ombudsman** sets out 'findings' in a report made following an investigation, these **findings are effectively binding on the local authority unless the local authority successfully applies for judicial review** of the findings.¹³² When the Law Commission of England and Wales considered reforms to the Ombudsman system in 2010, it envisaged that 'findings' should encompass determinations of the facts of the case and the judgement whether there was maladministration/service failure.¹³³ In an Ombudsman report, the findings section may include a brief summary of relevant law and policy, key facts, and analysis. 'Recommendations' are not legally binding.
- The status of **PHSO** reports is different. In relation to 'findings', the Minister or other public body is required to have a 'cogent reason' for not accepting them.¹³⁴ The rationale for treating PHSO findings differently from LGSCO findings is said to be that Ministers are in a different constitutional position from local authorities because they are answerable to Parliament for their decisions – and if they decline to accept PHSO findings, they can expect to face criticism and political pressure to comply. 'Recommendations' are not legally binding.

In 2011, the Law Commission of England and Wales published a report on reform of public services Ombudsman schemes that sought to make sense of the developing case law on the 'binding-ness' of findings and recommendations. The Commission supported a differential treatment of recommendations and findings but on the same basis for all public services Ombudsman schemes.

5.130 Recommendations allow the ombudsmen to make suggestions as to the manner in which a particular instance of injustice could be remedied and also to suggest improvements that could be undertaken to improve the administration of the public body subject to investigation. Such recommendations may have wide ranging implications, which could be outside the knowledge of the ombudsmen – given their primary focus on the complaints made to them. It is correct, therefore, for recommendations to remain non-binding and questions as to their implementation to remain in the political domain.

5.132 Findings, we suggest, are of a very different nature to recommendations. Findings are findings of fact and maladministration on complaints made to the ombudsmen and are the result of their investigatory procedure. The ombudsmen's schemes, including the closed nature of their

¹³² *R v Local Commissioner for Administration ex parte Eastleigh Borough Council* [1988] QB 855.

¹³³ Law Commission of England and Wales, *Public Service Ombudsmen* (2011).

¹³⁴ *R (on the application of Bradley) v Secretary of State for Work and Pensions* [2008] EWCA Civ 36; [2009] QB 114.

investigations, were designed specifically to facilitate processes leading to such findings. We think, therefore, that it would weaken unnecessarily the ombudsmen's processes if their findings could be dismissed with a mere statement of "cogent reasons", and that it would undermine an individual's decision to opt for an ombudsman rather than an alternative mechanism for administrative justice.

The Law Commission of England and Wales concluded that 'We recommend that recommendations of the public services ombudsmen continue to be part of the political process' and 'We recommend that findings of the public services ombudsmen be binding unless successfully challenged by way of judicial review'.

Over the years, there have been some calls for Ombudsman schemes to have enforcement mechanisms permitting an aggrieved person to go to court to secure a remedy if the public body dismissed an Ombudsman's findings and recommendations.

In 1988, an unofficial expert group (the **JUSTICE-All Soul's Committee**) identified 'a major problem' with local authorities not complying with reports of the Local Government and Social Care Ombudsman (as it is now known).¹³⁵ They concluded that 'We think that the time has now come to add teeth to the ombudsman scheme by making it possible for successful complainants to apply to [a court] for appropriate relief'.¹³⁶ They said of the arguments against an enforcement mechanism that 'we think that fears on the grounds of delay and formalism are exaggerated'.

The group's detailed proposal was that there should be three stages, which in outline are: (a) a first report by the ombudsman setting out findings and recommendations; (b) followed, if there is non-compliance, by a further report; followed by (c) 'a certificate from the [ombudsman] issued to the complainant to the effect that the local authority has had a reasonable time within which to comply with his further report and that no action to his satisfaction had been taken by the [public body], and further certifying that the case was, in his opinion, an appropriate one for application to the court for relief'. In the court-based enforcement proceedings, the findings of fact could not be re-opened by the public body. There would be a strong presumption in favour of the aggrieved person having an order to cover his or her legal costs in taking the enforcement action. This recommendation did not find political favour in England and Wales and was not implemented.

In another part of the United Kingdom, however, a court-based enforcement procedure has been created. The **Northern Ireland Public Services Ombudsman (NIPSO)** makes provision for legal proceedings where recommendations in an Ombudsman's report into the case are not followed by the public body. An aggrieved person whose case has been investigated resulting in a finding by the Ombudsman that the person has sustained injustice, may apply to the county court for relief. The court may award damages. Public Services Ombudsman Act (Northern Ireland) 2016 section 53 provides:

Damages must be of an amount which the court thinks just in all the circumstances to compensate the person for any loss or injury which the person may have suffered on account of—

- (a) expenses reasonably incurred by the person in connection with the injustice, and
- (b) the person's loss of opportunity of acquiring the benefit which the person might reasonably be expected to have had but for the injustice.

(3) In calculating the amount of damages to be awarded by virtue of subsection (2)(b) the court must apply the same rule concerning the duty of a person to mitigate loss as applies in relation to damages recoverable at common law.

¹³⁵ There is no longer a problem with non-compliance with LGSCO reports.

¹³⁶ Report of the Committee of the JUSTICE-All Soul's Review of Administrative Justice in the United Kingdom, *Administrative Justice: Some Necessary Reforms* (OUP 1988) paragraph 5.90.

(4) Where it appears to the court that justice could only be done to the person by directing the listed authority to take, or refrain from taking, any particular action, the court may, if satisfied that in all the circumstances it is reasonable to do so, make an order containing such a direction.

[...]

(6) ..., the listed authority or the person aggrieved may, if dissatisfied with an order of the court under this section, appeal from that order ...

(7) The powers conferred on the court by this section may be exercised notwithstanding anything to the contrary in any statutory provision which imposes limitations on its jurisdiction by reference to an amount claimed or to the value of property.

The legislation also provides that '(a) a report of the Ombudsman relating to an investigation is to be accepted as evidence of the facts stated within it, unless the contrary is proven, and (b) the authenticity of the report may be proved by production of a certificate of its authenticity signed by the Ombudsman'.

9.17 What should be the Jersey approach to enforceability/non-enforceability?

We have identified three main design choices for the Jersey Ombudsman in relation to whether Ombudsman reports should be binding.

9.17.1 *Option 1: Maintain a regime in which Ministers and other public bodies have discretion to decide not to accept and implement Ombudsman reports on individual cases.*

In the Jersey Law Commission's view, the least satisfactory design option would be to have wholly unenforceable findings and recommendations (as in the current States of Jersey Complaints Panel system).

First, this approach would attach too little weight to the interests of aggrieved people who have been found to have suffered injustice by the new Ombudsman.

Second, it would overlook the pattern of Ministers not accepting findings and declining to implement recommendations that exists in the current States of Jersey Complaints Panel scheme. If under the new Ombudsman scheme almost half of reports were not complied with, this would call into question the value of creating an Ombudsman.

9.17.2 *Option 2: Drawing a distinction between 'findings' and 'recommendations'*

The Jersey Law Commission does not view the distinction between findings (binding) and recommendations (non-enforceable) that has developed in England and Wales as the best option for Jersey (though it would be better than Option 1).

It would still fail to put give sufficient weight to the interests of aggrieved people who have been found to have suffered harm or injustice by the new Ombudsman. The distinction between findings and recommendations is overly complicated.

If this middle ground is adopted in Jersey, we recommend that it is done on the basis recommended by the Law Commission of England and Wales in its 2011 report, rather than trying to give effect in Jersey law to current English case law. Accordingly, the general recommendation would be: 'We recommend that findings of the public services ombudsmen be binding unless successfully challenged by way of judicial review'.

9.17.3 *Option 3: binding findings and enforceable recommendations*

The Jersey Law Commission's preferred option is that **Ombudsman findings should be binding and if a Minister or other public body fails to follow a recommendation aimed at providing**

redress for injustice in the individual case, the aggrieved person should be able to go to court to enforce that recommendation.

We recognise the importance of the point made by Dr Kirkham, quoted above, that ‘the consequences of an ombudsman’s report can have a huge impact on the design of future policy’ within a public body. Dr Kirkham was writing in the context of the work of the PHSO, which has within its remit UK central government and the National Health Service. In Jersey, the Ombudsman would be working on a smaller scale; most cases leading to a report favourable to the aggrieved person would not be capable of having ‘huge impact’ on policy. Most cases will deal with quite mundane situations where something particular has gone wrong in a specific situation and the public body has been reluctant to recognise this and slow to put things right.

In the Jersey context, we believe it would be possible for the Ombudsman to draw a distinction between (1) remedies to rectify injustice in the individual case, including apologies and awards of modest levels of financial compensation and (2) recommendations that are designed to improve the system so that the problem does not reoccur. Remedies in the category (1) would be enforceable, those (2) would not.

This would put the individual at the heart of the redress system. It also reduces the risk that Ministers and other public bodies will continue the pattern of frequent rejection of findings and recommendations that besets the States of Jersey Complaints Panel.

In our view, the appropriate court for enforcement of Ombudsman remedies would be the Petty Debts Court. The procedure should be straightforward and sufficiently user-friendly for most people to be able to seek a remedy without legal assistance or representation. The Minister or other public body should not be permitted to open up questions about the validity of the Ombudsman’s findings and recommendations at that hearing.

There will be safeguards for Ministers and public bodies. **If a Minister or other public body considers that the Ombudsman has made a serious error in a finding or recommendation, they will should be able to make an appeal from the Petty Debts Court to the Royal Court.** The Ombudsman should be joined as an interested party and should, in effect, defend the lawfulness of the report. It is to be hoped that such appeals would be rare because of the rigour with which the Ombudsman has conducted the investigation or adjudication and the quality of the report.

10 GOVERNANCE, APPOINTMENT AND ACCOUNTABILITY OF THE OMBUDSMAN

10.1 Purpose of this chapter

This Chapter examines a range of issues around the governance structures, appointment and accountability for the operation of the Ombudsman scheme. These features lay the foundations upon which the Ombudsman must be able to establish and maintain the trust and confidence of a wide array of stakeholders – the general public, people who use the Ombudsman scheme, Ministers and other leaders of the organisations covered by the Ombudsman’s jurisdiction, the other watchdog and grievance resolution bodies in the Island, elected Members of the States Assembly, and the international Ombudsman associations.

The success of the new Ombudsman scheme will depend in part on the personal and professional qualities of the individual appointed as ‘the Ombudsman’ but will also rest on the supporting structure for his or her work.

10.2 International benchmarks of good practice

The benchmarks focus strongly on the need to ensure that Ombudsman schemes are independent. The Ombudsman scheme needs to be, and be perceived to be, independent from the Government of Jersey and the other organisations within the Ombudsman’s remit. People in Jersey should feel confident that the Ombudsman can be fearless in righting wrongs and will approach matters with complete impartiality.

In reading the international guidance, it should be recognised that these have been devised to cover a wide range of constitutional and political contexts. They will require some degree of adaptation as they are applied to local conditions in Jersey.

The **Ombudsman Association** (OA, formerly the British and Irish Ombudsman Association) sets out the following criteria for recognition of a dispute resolution scheme as capable of being an Ombudsman:¹³⁷

Independence

- (a) The Ombudsman must be visibly and demonstrably independent from those whom the Ombudsman has the power to investigate.
- (b) The persons who appoint the Ombudsman should be independent of those subject to investigation by the Ombudsman. This does not exclude minority representation of those subject to investigation on the appointing body, provided that the body is entitled to appoint by majority decision.
- (c) The term of office should be of sufficient duration not to undermine independence. The appointment should be for a minimum of five years. It may be subject to renewal but the renewal process should not undermine or compromise the officeholder’s independence.
- (d) The remuneration of the Ombudsman should not be subject to suspension or reduction by those subject to investigation, but this does not exclude their minority representation on the body authorised to determine it.
- (e) The appointment must not be subject to premature termination other than for incapacity or misconduct or other good cause. The grounds on which dismissal can be made should always be stated, although the nature of the grounds may vary from scheme to scheme. Those subject to investigation by the Ombudsman should not be entitled to exercise the power to terminate the Ombudsman’s appointment, but this does not exclude their minority representation on the body which is authorised to terminate.

¹³⁷ Ombudsman Association, Schedule 1 to the Rules: Criteria for the Recognition of Ombudsman Offices.
<http://www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf>

(f) 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. The Ombudsman's determination should be final and should not be able to be overturned other than by the courts or an appeal route provided for by law.

(g) Unless otherwise determined by statute the Ombudsman should be accountable to report to a body independent of those subject to investigation, but this does not exclude their minority representation on that body. That body should also be responsible for safeguarding the independence of the Ombudsman.

The **International Ombudsman Institute** (IOI) sets out the following recommendations in its best practice guide *Developing and Reforming Ombudsman Institutes: an IOI guide for those undertaking this tasks* (June 2017):

Appointment

The appointment of an Ombudsman should preferably be undertaken under the auspices of the democratic assembly to which they report. The appointment may be made by this body, or by the Head of State, following a vote of the elected assembly or parliament. To help avoid political bias, it is highly desirable that the election should require a large qualified majority, e.g. two thirds of all those entitled to vote.

Best practice suggests that the recruitment should be open. The role should be widely advertised and in some instances, executive search agencies have been used to source candidates. It is important, however, that candidates identified in this way are not otherwise advantaged in the selection process.

There should be a clear role description, and a person specification setting out the required competences. Candidates should be invited to submit applications or CVs which address these competences, and decisions as to who to shortlist or interview, and ultimately, who to recommend for selection, should be made by objectively assessing candidates against the required competences.

The process should be led by a Committee of the elected body, but best practice suggests that others should be involved including human resource experts and experts in the work of the Ombudsman. In this context, an Ombudsman from another jurisdiction or a former Ombudsman can make a useful contribution. The IOI panel of experts drawn principally from distinguished former Ombudsman officeholders is a useful source of expertise. Those engaged in the selection process should have received appropriate training. Equal opportunities principles should be explicitly observed. Where there is an independent Public Appointments agency or Commissioner, these can play a useful role in managing the appointment process.

In some jurisdictions, there is a tradition of appointing a lawyer as Ombudsman, but there are many examples of successful officeholders coming from other backgrounds including public service, journalism, academia or politics. Broadly speaking it is personal qualities, authority and experience which determine whether an Ombudsman will be effective, rather than any particular professional background.

Removal

An Ombudsman's appointment must not be subject to premature termination other than for incapacity or misconduct or other good cause. The grounds on which dismissal can be made should always be stated in the legislation. The appointing body, usually the relevant elected assembly, should be the only body with the power to dismiss. It is appropriate to consider a qualified majority, at least equal to that required for appointment. It is essential that no individual or body in the Ombudsman's jurisdiction should have the power to remove the Ombudsman.

Term of office

Most Ombudsman positions have fixed mandates. This is widely regarded as the most appropriate arrangement. An over-short term can impact on the capacity of the Ombudsman to properly develop the office during his or her mandate. Consequently, seven or eight year terms are increasingly common. Terms of fewer than five years should be avoided.

In some instances, the term of Office is linked to the life of the elected assembly, and this can also be an appropriate means of proceeding, albeit it is important to ensure that the selection process is conducted in such a way as to avoid the apparent or actual politicisation of the appointment.

Remuneration

The Remuneration of an Ombudsman should reflect the stature of the post, and should be at a level which will attract candidates with suitable experience and authority. Linkage to an appropriate pay scale is a convenient means of ensuring that it is updated when required. The salary of a senior judge is sometimes used, and this is usually appropriate given the quasi-judicial nature of the work of an Ombudsman.

The salary should not be subject to reduction or alteration by anybody in jurisdiction and the salary scale should be fixed for the term of office.

10.3 Other design principles

Achieving independence is not the only goal for the design of governance structures.

The Ombudsman scheme should also be accountable. The Ombudsman will exercise considerable public power and will have a substantial budget ultimately paid for by taxpayers. Like all public organisations, it therefore should be accountable for its work: this requires clarity of purpose, openness, and considering the views of the public including people who use the Ombudsman service. Mechanisms should exist to ensure that it is providing value for money.

Governance structures should also ensure that the Ombudsman is well run according to the **principles of good corporate governance applicable to small public sector organisations**. These principles include:

- ensuring that the Ombudsman operates within the limits of its legal authority
- the Ombudsman must comply with other laws regulating the conduct of public bodies, including those relating to the appropriate use of public funds, freedom of information, data protection, employment law, anti-discrimination law and human rights
- the Ombudsman must use its allocated budget economically, efficiently and effectively and provide value for money (and this must be audited)
- identifying and managing risks appropriately
- appointments to the Ombudsman organisation are made in accordance with recognised standards.

The governance structures should enable the Ombudsman organisation to develop. On day the Public Services Ombudsman (Jersey) Law coming into force, the organisation will not be fully formed and set in concrete. It should be a public body that has the capacity to develop in light of changing needs over time and to be responsive to feedback.

10.4 Corporation sole or body corporate?

A useful starting point in mapping out options for Jersey is to consider whether the Ombudsman scheme should be based on a 'corporation sole' or a 'body corporate' (based on a non-executive board). The decision made about the form of legal personality will have knock-on effects on other design choices.

10.4.1 Corporation sole model

If a corporation sole model is chosen, Public Services Ombudsman (Jersey) Law will create a public office known as the Public Service Ombudsman (or whatever name is chosen),¹³⁸ to which an individual will be appointed.

The typical appointment process used in Jersey for appointing an individual to public office would be for an open competition (advertisement followed by shortlisting and interviewing) overseen by the Jersey Appointments Commission, with the appointment being agreed upon by the States Assembly.

We understand that the Children's Commissioner will hold office in the form of a corporation sole (the post is currently in 'shadow form' pending the enacting of the Law establishing the office).

Advantages of a corporation sole model include the following.

- It is a tried-and-tested approach. A very large proportion of public services Ombudsman schemes currently operate on the basis that there is an individual public officeholder without a non-executive board.
- Having a public officeholder appointed by the States Assembly may be seen as enhancing the link between the individual who holds office as Ombudsman and States Members. The Ombudsman would have a direct relationship with a committee or panel of the States Assembly (for example Procedures and Privileges Committee) rather than via a non-executive board.
- Creating a public office may be less costly than the alternative (there is no need to pay fees or expenses to a board).¹³⁹

Disadvantages of a corporation sole model may include the following.

- It would be a missed opportunity to provide support to the Ombudsman through a non-executive board.
- A corporation sole would be a less suitable model if the Ombudsman has a remit in the Bailiwick of Guernsey as well as Jersey.

There has been criticism of the corporation sole model, including by individuals holding the office of Ombudsman; indeed, some have set up non-statutory boards. In the United Kingdom, Rob Behrens who holds office as the Parliamentary and Health Service Ombudsman (PHSO) wrote in the 2017-18 annual report:¹⁴⁰

In law, the Parliamentary and Health Service Ombudsman is a corporation sole and has a personal jurisdiction. This is not consistent with modern requirements of good governance. The previous Ombudsman therefore established a unitary Board to improve governance, which I chair. My executive responsibilities as corporation sole are thus exercised personally as an individual, but also aided by means of defined and corporate arrangements that allow for proper scrutiny.

¹³⁸ See Chapter 3.

¹³⁹ See Chapter 11. We estimate that it would cost around £35,000 a year to run a non-executive board, if members are remunerated.

¹⁴⁰ See <https://www.ombudsman.org.uk/about-us/who-we-are/board/governance-statement>

10.4.2 Non-executive Board model

The alternative to a corporation sole is for the Ombudsman to be an organisation, with a non-executive board. **Members of the board would not themselves handle cases nor would they interfere with decisions taken by the Ombudsman in discharging functions related to casework.** The board would consist of three or more non-executive, part-time members appointed by a Minister. The board would have the duty to appoint the officeholder (the Ombudsman).

Examples from Jersey of public institutions with non-executive boards are the Channel Island Financial Ombudsman (CIFO),¹⁴¹ the Data Protection Authority,¹⁴² and the Comptroller and Auditor General has a Board of Governance.¹⁴³

In the case of CIFO, the board is responsible for: appointing the Principal Ombudsman and safeguarding the ombudsman's independence; negotiates with Ministers to ensure that CIFO has adequate resources to handle its work; has oversight of the efficiency and effectiveness of CIFO; and provides advice on CIFO's strategic development.¹⁴⁴ The board must not interfere with individual decisions taken by the Principal Ombudsman.

To date, formal non-executive body models have not been used for public services Ombudsman schemes in the United Kingdom. Proposals have, however, been made for the reform of the PHSO and LGSCO which would involve the creation of a single UK Public Service Ombudsman with a statutory board to oversee the performance and work of the new Ombudsman.

The advantages of a corporate board models for Ombudsman schemes have been recognised by experts. Kirkham and Martin argue for a principle of

Independent corporate governance: An ombudsman scheme must be independent of the body complained about. This is best delivered by a governance structure which ensures proper accountability, usually a unitary independent board responsible for appointing a chief ombudsman.¹⁴⁵

Advantages of a corporate board model for the Jersey public services Ombudsman could include the following.

- Providing support to the Ombudsman. During the research interviews, we were told that being an Ombudsman 'can be a lonely job' and at times the ability to seek high-level and expert advice and support in confidence from within an organisation can be vital. In a small jurisdiction such as Jersey, the isolation of the role is likely to be exacerbated by the more limited opportunities for professional support than can typically be found in larger systems.
- Bringing in a range of expertise in setting up and developing the Ombudsman scheme. The board members should be drawn from a range of backgrounds. It could include people from within and outside the Island to enhance thinking about the development and operation of the Ombudsman scheme.

¹⁴¹ In legal terms, CIFO is a joint operation of two statutory bodies; the Office of the Financial Services Ombudsman (Jersey) and the Office of the Financial Services Ombudsman (Guernsey), jointly operating under the name Channel Islands Financial Ombudsman.

¹⁴² Data Protection Authority (Jersey) Law 2018.

¹⁴³ Comptroller and Auditor General (Board of Governance) (Jersey) Order 2015.

¹⁴⁴ See Financial Services Ombudsman (Jersey) Law 2014.

¹⁴⁵ R Kirkham and J Martin, 'Designing an English Public Services Ombudsman' (2014) 36(3) *Journal of Social Welfare and Family Law* 330-348.

- A non-executive board can provide internal control on strategic decision-making. Significant decisions about the development of Ombudsman services could be reserved for collective decision at board level. (Of course, the board must never be involved in casework).
- The existence of a board, in whom the Government of Jersey has confidence because they were appointed on the recommendation of the Minister, can help defuse political tensions should these arise between the Ombudsman and Ministers.
- If plans were to be developed for the Ombudsman to have jurisdiction in the Bailiwick of Guernsey as well as Jersey, a corporate board model would be well-placed to ensure the organisation has leadership from both Bailiwicks, learning lessons from the experiences of the Channel Island Financial Ombudsman scheme.

Disadvantages of a body corporate model might include the following.

- The Ombudsman may have a less close relationship with a committee of the States Assembly if his or her primary relationship is with the board. The current States of Jersey Complaints Panel has a close working relationship with the Procedures and Privileges Committee. This reflects arrangements in some other national Ombudsman schemes, for example in the UK the Parliamentary and Health Service Ombudsman has a long-standing relationship with the House of Commons Public Administration and Constitutional Affairs Committee.
- Running a non-executive board has a cost. In Chapter 11, we quantify this as between £30,000 - £40,000 a year assuming a four-person board remunerated on a similar basis to comparable non-executive boards in Jersey. Alternatively, the non-executive role could be unpaid (for example, members of the Board of Governance for the Comptroller and Auditor General are unpaid).

The Jersey Law Commission recognises there are pros and cons of each governance model. **We recommend a non-executive board model be adopted.** This has worked well for CIFO, is well-suited to the context of a smaller jurisdiction and is ideal for a pan-Island institution as the governments of both Bailiwicks can appoint members to the board.

10.5 Appointing the non-executive board

Consideration should be given to disqualification and eligibility criteria for appointment to the non-executive board, to ensure actual and perceived independence from the bodies that fall within the Ombudsman's remit. These should be similar to the Governance Board of the Comptroller and Auditor General.¹⁴⁶

An individual cannot be appointed ... if –

- (a) he or she is or, during the period of 5 years preceding the date of the proposition recommending his or her appointment, has been, a States' employee;
- (b) he or she is a member of the States; or
- (c) he or she is an officer of, employed by, or engaged under a contract for services by, any States funded body (including any non-Ministerial States funded body) or independently audited States body.

Members of the board could be formally appointed by the Chief Minister – but no Minister should sit on the selection panel. The recruitment process should be undertaken in accordance with Article 24 (Guidelines for recruitment of States' appointees) of the Employment of States of Jersey Employees (Jersey) Law 2005, following the guidance issued by the Jersey Appointments Commission. The

¹⁴⁶ See The Comptroller and Auditor General (Board of Governance) (Jersey) Order 2015.

States of Jersey (Appointment Procedures)(Jersey) Law 2018 should apply to the appointment of the board: the States Assembly would be given at least two weeks' notice of the Chief Minister's intention to make the appointment.

10.6 Appointment of the Ombudsman

If, as recommended, the Jersey Ombudsman has a non-executive board, the responsibility for appointing the Ombudsman will lie with the board. This will ensure a high degree of independence from Ministers.

The States of Jersey (Appointment Procedures)(Jersey) Law 2018 should apply to the appointment of the Ombudsman: the States Assembly would be given at least two weeks' notice of the board's intention to make the appointment.

Consideration should be given to what, if any, disqualification and eligibility criteria should be set out in the Law establishing the Ombudsman scheme. To explore this question, we looked at legislation setting up a sample of smaller Ombudsman schemes (see Chapter 12).

| Ombudsman and legislation | The Ombudsman (or equivalent) MUST be | The Ombudsman (or equivalent) MUST NOT be |
|---|---|--|
| Bermuda Ombudsman The Ombudsman Act 2004) | None specified | the Ombudsman shall not hold any office of profit other than that of Ombudsman or otherwise engage in any other occupation for reward outside the duties of the office of Ombudsman. |
| Cayman Islands Ombudsman The Ombudsman Law 2017 | None specified | No person shall be qualified to be appointed as Ombudsman if the person is or has been within the preceding three years - (a) an elected member of the Legislative Assembly; or (b) the holder of any office in any political party. |
| Gibraltar Ombudsman for Public Services Public Services Ombudsman Act 1998 | None specified | A member of the House of Assembly shall not be qualified to be appointed to the office of Ombudsman. |
| Tynwald Commissioner for Administration Tynwald Commissioner for | A candidate for appointment as the Commissioner must be a person whom the Selection Committee believes – (a) has an appropriate knowledge and experience of the law; and (b) will command the | A person is not eligible to be a candidate for appointment as the Commissioner if that person is — (a) a member of Tynwald; (b) a member or officer of a local authority; |

| | | |
|--|--|---|
| Administration Act 2011 | confidence of the public and Tynwald. | <p>(c) a member or officer of a body that is required to have its accounts audited in accordance with the Audit Act 2006;</p> <p>(d) an officer of Tynwald or a Branch of Tynwald (other than the Tynwald Auditor General);</p> <p>(e) a member of the staff of Tynwald or a Branch of Tynwald;</p> <p>(f) an officer or servant of a Department or a Statutory Board;</p> <p>(g) a member of the Isle of Man Constabulary.</p> <p>The Commissioner must not —</p> <p>(a) enter into any other contract of employment;</p> <p>(b) hold any other office (other than that of Tynwald Auditor General); or</p> <p>(c) carry on any profession, trade or vocation,</p> <p>except with the approval of the Selection Committee.</p> |
| Ombudsman Sint Maarten Sint Maarten (AB 2010, GT no. 20) National ombudsman | For appointment as the ombudsman, a candidate must hold Dutch nationality and be a resident of Sint Maarten. | <p>The ombudsman may not simultaneously be:</p> <p>a. member of the Council of Advice;</p> <p>b. member of the General Audit Chamber;</p> <p>c. minister;</p> <p>d. minister plenipotentiary;</p> <p>e. civil servant in active service;</p> <p>f. member of the judiciary;</p> <p>g. attorney-general or solicitor-general at the Common Court of Justice;</p> <p>h Member of Parliament;</p> <p>i. attorney or civil-law notary.</p> |
| Ombudsman Antigua and Barbuda Ombudsman Act 1994 | None specified | A person shall not be qualified to be appointed as an Ombudsman if he has served as a member of Parliament for two consecutive terms or more immediately preceding the appointment. |
| Barbados Ombudsman Ombudsman Act - L.R.O. 1995 Ombudsman | None specified | The Ombudsman shall not be a member of the Senate or of the House of Assembly and shall not hold any other office of emolument or engage in any other occupation for reward. |

CAP. Chapter
8A

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|---------------------------|----------------|---|
| Cook Islands Ombudsman | None specified | Ombudsman to hold no other office - The Ombudsman shall not be capable of being a member of Parliament or of an Island Council, and shall not, without the approval of the Prime Minister, hold any office of trust or profit, other than his office as the Ombudsman, or engage in any occupation for reward outside the duties of his office. |
| Ombudsman Act 1984 | | |

Looking at these arrangements, it is quite common to require an Ombudsman *once appointed* to cease to be the following if before appointment they held these roles: a member of the legislature (a States Member); a civil servant (working for the States of Jersey); a member of staff of the legislature (working in the States Greffe). It would also be prudent to set out expressly that the Ombudsman cannot hold office as a member of the judiciary.

Using the design choices made in these Ombudsman schemes as a guide to options, key questions for policy makers could also include the following.

- Should there be a requirement for the Jersey Ombudsman to hold a particular, for example, British nationality? We do not recommend this as necessary; on the contrary, it would create a risk of reducing the pool of high-quality candidates.
- Should there be an express requirement for the Ombudsman to reside in Jersey? We do not recommend this as necessary; we assume that the appointment will be made on a full-time basis which will have the same effect in practice.
- Should the legislation establishing the Ombudsman set out high-level criteria to be considered by the selection panel (as in the Isle of Man)? We do not view this as essential; the detailed person specification and job description will be of more importance in guiding the appointments process.
- Should a person be ineligible for appointment as Ombudsman if they have been the holder of office in a political party in the previous [three] years? This does not seem to us to be relevant in the Jersey context which does not have multi-party politics.
- Should a person be ineligible if they have been a States Member in the previous [three] years? We do not recommend this as desirable and may create a risk of reducing the pool of high-quality candidates.

The job description should focus on the key aspects of an Ombudsman's role: being '... committed to achieving redress for the individual, but also, where they identify systemic failings, to seek changes in the work of the bodies in their jurisdiction, both individually and collectively'.¹⁴⁷

Essential criteria should include: knowledge of Ombudsman work; a strong commitment to continuously improvement and driving quality standard; senior strategic leadership experience;

¹⁴⁷ Ombudsman Association <http://www.ombudsmanassociation.org/about-the-role-of-an-ombudsman.php>

ability to manage the day-to-day operation of a small team; experience of developing professional relationships and influencing a wide range of stakeholders; excellent communication skills.

10.7 Duration of the Ombudsman's term of office

The Ombudsman should have a sufficiently long term of office to satisfy the independence requirements agreed by the Ombudsman Association – at least 5 years.¹⁴⁸

Some Ombudsman schemes have term limits. For example, in the Cayman Islands, 'The Ombudsman shall be appointed for a period of seven years and shall not be eligible for re-appointment'.¹⁴⁹ The Sint Maarten Ombudsman 'may be reappointed for a second term on one occasion only'.¹⁵⁰ Term limits have also been for another watchdog body in Jersey: the Comptroller and Auditor General's term of office is 'for a fixed term of 7 years, which cannot be extended'.

In setting minimum and any maximum term of office, the Jersey Law Commission's view is that so long as minimum design for securing independence is in place (a term of at least five years, as recommended by the Ombudsman Association) pragmatic considerations can appropriately shape the policy makers' final design choices. The term of office needs to be attractive to suitably qualified applicants, some of whom may need to relocate to the Island and may have concerns about disruptions to family life.

10.8 Removal from office

The Ombudsman should have protection from removal from office for politically motivated reasons.

If, as recommended, the Ombudsman organisation has a non-executive board, it would be for the board to decide to terminate the Ombudsman's service. The Law establishing the Ombudsman scheme should spell out the circumstances in which it would be legitimate for the board to terminate the Ombudsman's appointment.

The Comptroller and Auditor General (Jersey) Law 2014 could provide a suitable model. Article 7 defines the reasons on which the C&AG's appointment may be revoked:

... that the person holding the office of Comptroller and Auditor General –

- (a) has not carried out the duties of the office in a competent manner;
- (b) is incapacitated either mentally or physically from carrying out the duties of the office;
- (c) has neglected to carry out all or any of the duties of the office;
- (d) has failed to comply with Article 5 [restrictions on professional activities];
- (e) has failed to comply with any term or condition of his or her appointment;
- (f) has indulged in dishonourable conduct;
- (g) has, without the approval of both the Chief Minister and the Chairman of the Public Accounts Committee [this would be the non-executive board], taken leave of absence not provided for by his or her terms and conditions of appointment; or
- (h) has been convicted of an offence and, by virtue of the conviction, has shown himself or herself not to be a fit and proper person to continue to hold office.

If, contrary to our recommendation, the Ombudsman is established as a corporation sole, the process for removal from office should be similar to that used for the C & AG. There would be a

¹⁴⁸ Ombudsman Association, Schedule 1 to the Rules: Criteria for the Recognition of Ombudsman Offices. <http://www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf>

¹⁴⁹ The Ombudsman Law 2017 section 3(2).

¹⁵⁰ Translation of the Official Publication of Sint Maarten (AB 2010, GT no. 20) National ordinance ombudsman

proposition from the Chief Minister, setting out one or more of the reasons listed above, which would be debated in camera by the States Assembly.

10.9 Accountability

Accountability can be defined in general terms as ‘a principle which requires public authorities to explain their actions and be subject to scrutiny. It may also entail sanctions, such as resignation from office or censure’.¹⁵¹

Accountability is relevant to the design of Ombudsman schemes in two ways.

First, an Ombudsman scheme is one way of ensuring that government and other public bodies are held to account. Ombudsman investigations shine light on government decision-making and, if maladministration or service failure is found, can lead to public criticism.

Second, an Ombudsman is also itself a public body, funded from taxation and carrying out important functions in the public interest. It is therefore important for it to be subject to *appropriate* forms of accountability. It is accountability in this context with which this section is concerned.

10.9.1 Legal accountability

Like all public bodies, the Ombudsman must exercise its functions lawfully. Legal duties must be carried out and powers exercised fairly and reasonably.

If a person (an individual or another public body) believes that the Ombudsman has acted unlawfully, it should be possible for them to make an application for judicial review to the Royal Court. There is no need for this to be spelled out in the legislation creating the Ombudsman scheme because this is the default position for all public bodies.

Another possible mechanism of legal accountability (common in other contexts) would be to create a right of appeal against the findings or recommendations of the Ombudsman for the person who took a complaint to the Ombudsman or the public body subject to investigation. We are not aware of any public services Ombudsman scheme incorporating a right of appeal. An appeal is not essential because the same legal points can be raised on a claim for judicial review.

10.9.2 Explanatory accountability

As with all public bodies, the work of the Ombudsman should so far as possible be carried out in an open and transparent way.

To provide transparency for the general running of the Ombudsman scheme, the Ombudsman should have a legal duty to make an annual report. This should be considered by a committee or panel of the States Assembly (so consideration will need to be given by Privileges and Procedures as to how best to achieve this).¹⁵²

The Law establishing the Ombudsman should contain a duty requiring reports of formal investigations to be published on the Ombudsman’s website (with the aggrieved person’s name anonymised).

¹⁵¹ A Le Sueur, ‘Accountability’, in P Cane and J Conaghan (eds) *The New Oxford Companion to Law* (OUP 2008) pages 7–8.

¹⁵² See Chapter 2.

10.10 Membership of Ombudsman organisations

It will be advantageous for the new public services Ombudsman in Jersey to become a member or have a relationship with the other Ombudsman. This section outlines the range of networks. We make no specific recommendations as to which organisations the Ombudsman should engage with and there is no need for any specific powers or duties to facilitate this.

10.10.1 *International Ombudsman Institute*

The International Ombudsman Institute (IOI), established in 1978, is the only global organisation for the cooperation of more than 188 independent Ombudsman institutions from more than 90 countries worldwide.¹⁵³ The IOI is organised in six regional chapters (Africa, Asia, Australasia & Pacific, Europe, the Caribbean & Latin America and North America). In its effort to focus on good governance and capacity building, the IOI supports its members in a threefold way: training, research and regional subsidies for projects.

The IOI's By-laws (2012) affirm the IOI's core purpose and elaborate a set of principles which reflect the Principles relating to the Status of National institutions for the promotion and protection of human rights, i.e. the Paris Principles, and United Nations Resolutions on the Role of the Ombudsman.¹⁵⁴

These principles are set out in Article 2 of the By-laws and require of an ombudsman institution that:

- a) it should be provided for by a Country, State, Regional or Local Constitution and/or an Act of a Legislature, or by international treaty,
- b) its role should be to seek to protect any person or body of persons against maladministration, violation of rights, unfairness, abuse, corruption, or any injustice caused by a public authority, or official acting or appearing to act in a public capacity, or officials of a body providing devolved, partially or fully privatized public services or services outsourced from a government entity, and which could also function as an alternative dispute resolution mechanism,
- c) it should operate in a climate of confidentiality and impartiality to the extent its governing legislation mandates, but should otherwise encourage free and frank exchanges designed to promote open government,
- d) it should not receive any direction from any public authority which would compromise its independence and should perform its functions independently of any public authority over which jurisdiction is held,
- e) it should have the necessary powers and means to investigate complaints by any person or body of persons who considers that an act done or omitted, or any decision, advice or recommendation made by any public authority within its jurisdiction has resulted in the kind of action specified in paragraph 2 (b),
- f) it should have the power to make recommendations in order to remedy or prevent any of the conduct described in paragraph 2 (b) and, where appropriate, to propose administrative or legislative reforms for better governance,

¹⁵³ See its website <http://www.theioi.org/the-i-o-i>.

¹⁵⁴ See <http://www.theioi.org/the-i-o-i/#anchor-index-1940>.

- g) it should be held accountable by reporting publicly to a Legislature, or other elected body, and by the publication of an annual or other periodic report,
- h) its incumbent or incumbents should be elected or appointed by a Legislature or other elected body, or with its approval for a defined period of time in accordance with the relevant legislation or Constitution,
- i) its incumbent or incumbents should only be dismissed by a Legislature or other elected body or with its approval for cause as provided by the relevant legislation or Constitution, and
- j) it should have adequate funding to fulfill its functions.

There are four categories of membership: Member, Voting, Honorary Life, and Library members. Any public institution can become a Voting member provided it:

- a) substantially demonstrates that it has achieved the purpose and principles enshrined in Article 2, in conformity with the Country, State, Regional or Local constitution or legislation.
- b) receives and investigates complaints from individuals against the administrative practices of public authorities or public undertakings, and
- c) is functionally independent of any public authority over which jurisdiction is held.

Application procedure: <http://www.theioi.org/ioi-members#anchor-index-2014>

Membership fees: Not known

Other: Holds high-profile annual conference and publishes conference proceedings on website as well as member news and updates.

10.10.2 Ombudsman Association

The Association came into being in April 1993 as the United Kingdom Ombudsman Association and became the British and Irish Ombudsman Association when membership was extended to include ombudsman offices from the Republic of Ireland in 1994.¹⁵⁵ In the 1990s and 2000s further ombudsman offices were established not only in the UK and Ireland but also in the British Overseas Territories, starting with the Office of the Complaints Commissioner in the Turks and Caicos Islands in 1994. In 2000 the geographic scope of the Association was expanded to cover the British Crown Dependencies and Overseas Territories. Since then the ombudsman concept has spread to the Isle of Man and the Channel Islands, starting with the Isle of Man Financial Services Ombudsman Scheme in 2002.

The objects of the Association are to:

- Support and promote an effective system of complaint handling and redress in the United Kingdom, Ireland, Britain's Crown Dependencies and Britain's Overseas Territories.
- Encourage, develop and protect the role of an ombudsman in both the public and private sectors as the 'best practice' model for resolving complaints, according recognition through membership.
- Provide an authoritative voice and promote best practice and policy for those involved in complaint handling and redress to ensure an effective service for the public.

¹⁵⁵ <http://www.ombudsmanassociation.org/the-ombudsman-association.php>.

- Support open and transparent accountability and endorse principles of good complaint handling.

The OA has three categories of membership: Ombudsman member, Complaint-handler member, and Associate member (corporate or individual). Ombudsman members must meet the published criteria for recognition (Schedule 1) attached to the Association's Rules (essentially: independence of the Ombudsman from those whom the Ombudsman has the power to investigate; effectiveness; fairness; openness and transparency and public accountability). The word 'ombudsman' does not have to appear in the title of the scheme.

As of March 2017, the OA had 33 Ombudsman members and 21 complaint-handler members. Criteria for Ombudsman membership are set out in detail in Schedule 1 to the Rules here: <http://www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf>

The five key criteria are:

- Independence
- Fairness
- Effectiveness
- Openness and transparency
- Accountability

Application procedure: Application form to be submitted to Validation Committee recommendation to Executive Committee

Membership fees: Range of fees according to size and membership category. Ombudsman membership ranges from £800 to £15,000 annually. Fees are set out in download from website: <http://www.ombudsmanassociation.org/association-membership.php>

Other: High-profile annual conference attracting international attendees. Publishes online newsletter, good practice guidance, etc on website.

10.10.3 European Ombudsman Network

The European Network of Ombudsmen (ENO) was created in 1996 to promote exchange of information about EU law and policy and to share best practice between the national and regional ombudsmen and similar bodies of the Member States of the European Union, the candidate countries for EU membership, and the other European Economic Area countries, as well as the European Ombudsman and the Committee on Petitions of the European Parliament.¹⁵⁶

The ENO consists of over 90 offices in 32 European countries. The Network includes the national and regional ombudsmen and similar bodies of the Member States of the European Union, the candidate countries for EU membership, and certain other European countries, as well as the European Ombudsman and the Committee on Petitions of the European Parliament. The national ombudsmen and similar bodies in the Network have each appointed a liaison officer to act as a point of contact for other members of the Network.

There appear to be no membership criteria other than being an ombud institution. The common aim of all Network members is to defend citizens' rights and to ensure that the public enjoys the services of citizen-friendly, transparent, ethical, and accountable public administrations across Europe.

Application procedure: Not known

¹⁵⁶ <https://www.ombudsman.europa.eu/en/atyourservice/enointroduction.faces>

Membership fees: Not known

Other: 2018 Network in Focus annual report: <https://www.ombudsman.europa.eu/en/activities/enopublication.faces/en/95031/html.bookmark>

10.10.4 Public Services Ombudsman Network

This appears to be an informal network with no website or membership criteria. Public Services Ombudsman (PSO) Group meetings usually involve all the Ombudsmen listed below:

- UK Parliamentary and Health Service Ombudsman for England
- Northern Ireland Ombudsman
- Public Services Ombudsman for Wales
- Scottish Public Services Ombudsman
- Ombudsman and Information Commissioner for Ireland
- Gibraltar Public Services Ombudsman
- Bermuda Ombudsman
- Cayman Islands Complaints Commissioner
- Parliamentary Ombudsman for Malta
- Local Government Ombudsmen
- Housing Ombudsman UK

These PSO meetings bring an abundant exchange of information between the different parties concerned. Updates on the Ombudsman Association and European International Business regarding Ombudsmen and their work are also a highlight of the meetings. Action points and matters arising from relevant Ombudsman work and office updates are also other points of interest in these meetings which are organised in different offices from any of the attendee's venues.

11 WHAT RESOURCES THE OMBUDSMAN WILL NEED

11.1 Purpose of this chapter

This Chapter is about the resourcing needs of the proposed public services Ombudsman scheme in Jersey. It is not usually the role of an independent law reform agency, such as the Jersey Law Commission, to consider in detail the resource consequences, including financial costs, of law reform proposals. This is, however, an important step in envisaging the new Ombudsman.

In March 2018, the States Assembly endorsed the work programme set out in P.32/2018, in which the Chief Minister was mandated to ‘... set out the financial and staffing implications, a full costed operating model for a Jersey Ombudsman, and to ensure that the necessary resource requirements are placed before the States Assembly for approval’.

As a contribution to this strand of work, this Chapter provides analysis and commentary on resources. We are grateful to officials for providing some of the data used in this Chapter.

11.2 Previous discussion of resources

Previous work on a Jersey Ombudsman has side-stepped or dealt only sketchily with questions of resources and costs.

In 2000, the Clothier report did not provide any assessment of resource needs in relation to its recommendation that a public services Ombudsman be created.¹⁵⁷

When in 2004, the States Assembly Privileges and Procedures Committee considered the creation of an Ombudsman scheme as part of an inquiry into administrative appeals, it expressed concern about costs, estimating that operating costs would be £300,000 a year, which it said ‘could be difficult to justify in present financial circumstances’.¹⁵⁸ (Applying UK inflation data to this sum, this would be in excess of £450,000 in 2017 prices.) The basis for that estimate was not explained but was one of the factors that led PPC to recommend reform of the States of Jersey Complaints Panel rather than the creation of an Ombudsman scheme.

In 2018, in the ‘Financial and manpower implications’ section, P.32/2018 noted that ‘It is difficult to estimate precisely the costs, but they are estimated to be within the region of £200,000 to £250,000’. The basis for this estimate is not explained.

11.3 The Jersey Law Commission’s estimate of costs

Our own estimate, based on the design and financial assumptions set out below, suggests that annual running costs would be in excess of the sum suggested in P.32/2018 but less than PPC’s 2004 estimate (adjusted for inflation). This estimate does not include set-up costs, such as designing a user-friendly website.

¹⁵⁷ States of Jersey, *Report of the Review Panel on the Machinery of Government* (December 2000) Part 9.

¹⁵⁸ Privileges and Procedures Committee, *Administrative Appeals System: Proposals for Improvement – Consultation Report*. Presented to the States Assembly 4 May 2004.

| | |
|---|-----------------|
| Staff costs (salary, social security, pensions) | £322,400 |
| Maintaining a website and communications | £ 5,000 |
| Office space and facilities | £ 15,000 |
| Estimate annual total operating costs | £342,400 |

A costed model naturally invites comparisons. The costs would be more than the current States of Jersey Complaints Panel scheme. But in making this comparison it is relevant to consider the costs that would be incurred in improving the Complaints Panel scheme, if it were to be retained. In Chapter 5 of our October 2017 report *Improving Administrative Justice in Jersey*, the Jersey Law Commission recommended: (1) a programme of training for members of the Complaints Panel; (2) investment in developing a website, other publicity material and a programme of activities to publicise the work of the Complaints Panel; and (3) expanding the range of public bodies that fall within the Complaints Panel's remit, which could reasonably be expected to result in an increase in its caseload. The benchmark should therefore not be with the current Complaints Panel scheme but with an improved version of it.

In assessing value for money, the possible full range of functions that could be carried out through the Ombudsman scheme should be considered. These are set out in Chapter 4:

- oversight of internal complaints systems
- informal resolution of hard-to-solve complaints
- formal resolution of individual complaints by investigation (and possibly adjudication)
- carrying out own-initiative investigations
- promoting lesson-learning to ensure systematic improvements
- and possibly, a coordinating role across the whole administrative justice system.

11.4 Design decisions affecting cost

This report has set out options for the design of the new Ombudsman scheme, which will require policy makers to make choices. The mix of choices made will impact on the costs of running the new organisation. Four points of choice affect costs significantly.

First, as discussed in Chapter 1, an Ombudsman scheme serving people in Jersey and the Bailiwick of Guernsey would have increased costs compared to a Jersey-only scheme (for example, we suggested that it would be important for the organisation to have premises in Jersey and Guernsey to ensure that it was accessible) but it would also create opportunities for economies of scale compared to running separate Ombudsman organisations in each Bailiwick.

Second, P.32/2018 referred to the public services Ombudsman working with the Channel Islands Financial Ombudsman. We considered in Chapter 2 whether it would be possible or desirable to have a single Ombudsman and staff of caseworkers with responsibility for both private sector financial services complaints and for public sector grievances. Our provisional view is that such a hybrid Ombudsman scheme would not be desirable. There would, however, be opportunities for shared working that might reduce costs, including a common non-executive corporate board, combined facilities and premises, and pooled administrative support.

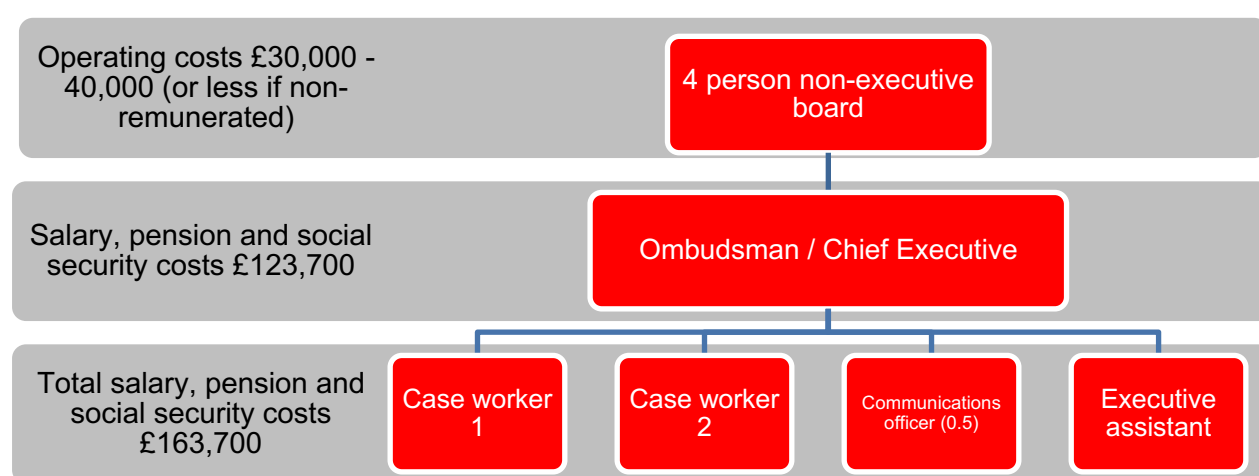
Third, in Chapter 2 we considered the relationships between the new Ombudsman and the existing watchdog bodies (for example, the Children's Commissioner, Information Commissioner, Jersey Appointments Commission, Comptroller and Auditor General) and grievance resolution institutions (including tribunals and courts). There may be scope for reducing overall costs by co-locating some of these bodies and sharing administrative support. It would not, however, be appropriate for the

Ombudsman to share premises or support with departments of the Government of Jersey as actual and perceived independence must be maintained.

Fourth, in Chapter 4 we examined the pros and cons of the Ombudsman having own-initiative powers to look into areas of concern even if there is no individual complainant. Own-initiative powers could affect the work load of the Ombudsman and if major investigations were carried out could create a need for additional caseworkers (below, we suggest that two caseworkers would be the normal complement).

11.5 Human resources

For purposes of producing an estimate of running costs, we have envisaged the staffing structure described in this section. Further detailed work would be required to test and develop this model. Based on the calculations discussed below the total staffing costs – of board members, the Ombudsman/Chief Executive and staff – would be in the region of £322,400.



11.5.1 Non-executive corporate board

P.32/2018 referred to ‘a minimum of 3 suitably qualified individuals to act as a Shadow Board to oversee and drive the tasks set out in this proposition and, as soon as is practicable, for this Board to assume the role of a Shadow Public Services Ombudsman’. As discussed in Chapter 10, clarification is needed here to distinguish between (a) the role of a non-executive board and (b) the person occupying the post of Ombudsman who will have operational responsibility for investigating complaints and (as Chief Executive) managing the staff of the Ombudsman organisation.

If the recommendation in Chapter 10 (building on P.32/2018) is accepted, the Ombudsman organisation will have a part-time non-executive corporate board. The board’s functions will include appointing the Ombudsman, advising on the strategic development of Ombudsman services, and defending the independence of the Ombudsman.

In the next phase of the design project, **the Government of Jersey may want to consider whether a body of sufficiently qualified people could be recruited on the basis of unremunerated honorary service.** As a point of reference, members of the Board of Governance for the Comptroller and Auditor General are unpaid (though we note that on occasion it has been difficult to recruit new members).

The board should be able to draw on expertise about Ombudsman services, dispute resolution and administrative justice, as well as people with knowledge of public administration in the Island. A board comprised of volunteers would be one way of ‘keeping the best elements’ of the current

States of Jersey Complaints System' discussed in Chapter 1. It will be a matter of judgement whether unremunerated non-executive roles will attract people with the breadth and depth of experience and commitment required to drive the new Ombudsman scheme forward; it would also be desirable for the board to include people from outside the Island who would not necessarily share the Jersey commitment to honorary service.

Having regard to fees paid to other non-executive boards in Jersey, and assuming there is a four-person board (a chair and three ordinary members), it would be realistic to estimate annual operating costs for the board in the range £30,000 - £40,000. A mid-point of £35,000 is taken for the purposes of estimating the overall costs of the organisation. During the design and start-up phase, the board may be required to make a greater contribution of time so it would be reasonable to foresee costs at or in excess of the top of this range for the first 1-3 years.

11.5.2 A full-time salaried post of Ombudsman

To carry out the full span of functions described in Chapter 4, a full-time salaried post of Ombudsman would be required. The Ombudsman will require a wide range of knowledge and experience and personal attributes, including the ability to make judgements in complex fact situations, treat people with empathy, to promote the work of new organisation externally, and to work collaboratively to influence decision-makers.

At the Channel Island Financial Ombudsman, the Principal Ombudsman is also the Chief Executive with day-to-day responsibility for operation of the office. This would appear to be a proportionate model for a small organisation.

Points of reference for comparable posts in Jersey, in terms of seniority, could be the Children's Commissioner and Information Commissioner. These public appointments had an approved **salary range of £100,000 - £110,000.**¹⁵⁹ Taking a mid-point of £105,000 the total annual costs including social security and pension would be approximately £123,700.

11.5.3 The Island of Man model: a low-cost option

An alternative to a full-time salaried Ombudsman has been adopted in the Isle of Man for the Tynwald Commissioner for Administration created in 2011, which started operation in 2017. The explanatory notes to the Tynwald Commissioner for Administration Bill stated that

Although it is not possible to fully gauge the volume and nature of the complaints which will go to the Commissioner it is not considered that there will be sufficient volume of complaints to merit the appointment of a Commissioner on a full time basis. Furthermore the Commissioner will not be provided with any independent administration staff.

A Commissioner and Assistant Commissioner therefore work on an hourly fee basis on consultancy contracts. In total, it is estimated that they will work 26 hours a month. During the design phase, consideration was given to a daily fee based on a judicial post (the High Bailiff, the senior magistrate) but an hourly fee was preferred. Total annual fees paid are expected to be in the region of £20,000.

An hourly- or daily- paid consultancy for Jersey's Ombudsman, and no permanent support staff, would certainly be less costly than an Ombudsman organisation with a non-executive board, a salaried Ombudsman, staff, and premises. But **we do not recommend a consultancy model along the lines for the Isle of Man's Commissioner for Administration** for two main reasons.

¹⁵⁹ States of Jersey, States Employment Board: Annual Report 2017, R.65/2018.

First, the range of functions that could be carried out (as described in Chapter 4) would be severely restricted so the ombudsman scheme's capacity to have a transformative impact would be limited. The Isle of Man model focuses on only one of the five possible functions (formal resolution of individual complaints).

Second, the appointment on an hourly-paid or day rate consultancy measures significantly less well in terms of structural independence compared to a permanent salaried post. As discussed in Chapter 10, international standards require independence as a key feature of an Ombudsman scheme. In our assessment, a consultancy-based Ombudsman in Jersey would not meet criteria for full membership of the Ombudsman Association. One criterion is that 'the term of office should be of sufficient duration not to undermine independence' (which the OA indicates should be for a minimum of 5 years). Islanders must have confidence that a Jersey Ombudsman has a protected independent status that will permit the Ombudsman to make decisions that the government of the day does not like.

11.5.4 Staff

The Ombudsman office will require a staff to support work on the range of functions. To ensure efficiency and effectiveness, the staffing plan should have flexibility to be adjusted as the actual volume of complaints and other work becomes established.

What would be a reasonable size and structure for staff for a new Ombudsman organisation in Jersey? To generate points of reference, we looked across the smaller public services Ombudsman schemes (see Chapter 12 for more details). Of those for which it was possible to obtain information about staff structures, the range was a headcount of 6-9 people, including the principal Ombudsman.

| Ombudsman organisation | Approximate size and scale | Staffing model (approximate) |
|---|--|---|
| Ombudsman Antigua and Barbuda* | Population 86k Case load unknown (78 in 2007) | (From 2007 annual report) 8 people: Ombudsman and 2 case worker staff 5 support staff |
| Barbados Ombudsman* | Population 286k Case load unknown | 7 people: Ombudsman and 1 case worker staff member 5 support staff |
| Bermuda Ombudsman | Population 65k Approximately 137 complaints a year | 7 people: Ombudsman and four case worker staff 2 support staff (all full-time) |
| Cayman Islands Ombudsman | Population 60k New scheme in 2017 so no data on complaints a year | 8 people: Combines role of information commissioner, but on the complaints side: Ombudsman and 6 case worker staff 2 support staff, who also cover information role |
| Gibraltar Ombudsman for Public Services | Population 33.5k More than 700 complaints a year | 8 people: Ombudsman and Deputy Ombudsman and 4 case worker staff 2 support staff |
| Ombudsman Sint Maarten | Population 40k 78 complaints | 6 people: Ombudsman and 2 case worker staff |

| | | |
|-------------------------------------|-------------------------------------|---|
| | | 3 support staff |
| Office of the Ombudsman (Tonga)* | Population 103k Caseload unknown | 9 people: Ombudsman and 5 case worker staff 2 support staff |

** Information could not be verified with organisation and is based on public sources, some of which are dated or incomplete.*

For the new Ombudsman scheme in Jersey, three broad types of role should be considered for the staffing structure.

Caseworkers (or investigators). The Ombudsman cannot deal personally with all aspects of every complaint – it would not be efficient of a senior post holder to do this and the Ombudsman will also have other functions beyond individual complaints. One or more caseworkers should therefore be planned for. The Ombudsman organisations serving smaller jurisdictions appear to have a minimum of two members of staff with responsibility for case work. In Jersey, it would be reasonable to assume that caseworkers would be paid on the equivalent of grade 8 or grade 9 of the civil servant salary scales. Grade 9/0 salary is £39,342 in 2017. **Salary, pension and social security costs for two caseworkers would be about £94,500.** A rise in individual complaints, or a decision by the Ombudsman to carry out an own-initiative investigation, could require additional caseworkers to be appointed.

A **communications officer** would enable the Ombudsman organisation to raise its profile and help people to understand its functions. A perennial problem with the States of Jersey Complaints Panel has been its low profile and it would be important for the new Ombudsman scheme to have a higher profile.¹⁶⁰ The **salary, pension and social security costs of a 0.5 FTE grade 10 post would be in the region of £29,200.**

An **executive assistant** would provide administrative support. Salary, pension and social security costs for a grade 7 post would be **approximately £40,000.**

The **total costs of staff in this model would be about £163,700.**

11.6 Premises

Location and design of premises for the Ombudsman are not legal questions for the Jersey Law Commission. There are, however, issues considered in this report that will be relevant considerations in selecting premises.

Chapter 2 considered the ‘fit’ of the new Ombudsman into the current landscape of constitutional watchdog and grievance redress bodies. Co-location of the Ombudsman with, for example, the Comptroller and Auditor General (Jersey Audit Office) and the Children’s Commissioner might be a driver to joint working and help with public understanding of the roles of these organisations. Design choices around the relationship between the Ombudsman and the Channel Islands Financial Ombudsman (CIFO) will also be highly pertinent.

Chapter 1 considered the features of the Ombudsman scheme that people using it might value and Chapter 3 considered people’s accessibility to the Ombudsman. While recognising the opportunities for online services, it will be important for the Ombudsman to have a ‘human face’. Consideration

¹⁶⁰ See Jersey Law Commission, *Improving Administrative Justice in Jersey* (October 2017) paragraph 5.40.

should be given to the Ombudsman's 'shop front', having a reception area that is welcoming to people, and a convenient and reasonably prominent location.

Chapter 10 considered questions of governance. It is essential that the Ombudsman is and is perceived to be independent from the bodies that it investigates. It would therefore be inappropriate for the Ombudsman office to share office space, even a building, with a Government of Jersey department or other public bodies within the Ombudsman's remit.

This report has acknowledged that it is difficult to predict the number of individual complaints the Ombudsman will receive. Planned-for work, such as training and outreach activities, can be better anticipated. The premises should be sufficiently flexible to allow for future changes in workflow.

11.7 Other costs

There would be additional set up costs, including a user-friendly website (estimated at £10,000), case management software and other miscellaneous items.

11.8 A shadow Ombudsman?

It is convenient here to consider whether the Ombudsman organisation should start in 'shadow mode' before the legal framework under which it will operate is in force.

P.32/2018 referred to a 'shadow board' being set-up ahead of the formal establishment of the new Ombudsman. In particular, it called on the 'Chief Minister to establish, and appoint with the concurrence of the Jersey Appointments Commission, a minimum of 3 suitably qualified individuals to act as a Shadow Board to oversee and drive the tasks set out in this proposition and, as soon as is practicable, for this Board to assume the role of a Shadow Public Services Ombudsman'.

A distinction should be drawn between (a) the non-executive corporate board that will appoint the Ombudsman, (b) the Ombudsman who will be appointed by the board, and (c) the staff of the Ombudsman's office, which will include caseworkers to carry out investigations that are not carried out personally by the Ombudsman.

In making decisions about shadow working, opportunities for learning lessons from the appointment of the Children's Commissioner should be taken. But the two situations (Ombudsman and Children's Commissioner) are not entirely comparable. Broad and deep scoping work has already taken place for the Ombudsman (including through this report by the Jersey Law Commission), a process that was not available for the Children's Commissioner role.

To a large extent, the question of the desirability or not of shadow working is a practical matter that falls outside the remit of the Jersey Law Commission to advise on. We would, however, comment that during the rest of the design phase planning for the Ombudsman scheme should draw on all available expertise and not be confined to people who might in due course become members of the non-executive corporate board.

12 INFORMATION ON PUBLIC SECTOR OMBUDSMAN SCHEMES IN SMALLER JURISDICTIONS

This Chapter, prepared by Margaret Doyle and Varda Bondy, gathers information about 13 Ombudsman schemes serving smaller populations. Criteria for inclusion in the study was a population of less than 286,000 (Barbados) and an Ombudsman or comparable complaints body recognised by one or more of the international or regional Ombudsman associations.

Information was obtained from the public domain, including official websites, legislation and published academic research. Five of the Ombudsman schemes were able to be studied in more detail through follow-up contact by email or video conferencing in which staff of those Ombudsman schemes verified the information gathered and provided more detail.

| Name of scheme | When established | Approx population |
|---|-------------------------|-------------------|
| Information checked with relevant Ombudsman organisation: | | |
| 1 Bermuda Ombudsman | 2001 | 64k |
| 2 Cayman Islands Ombudsman | 2017 (new scheme) | 60k |
| 3 Gibraltar Ombudsman for Public Services | 1998 | 35k |
| 4 Isle of Man: Tynwald Commissioner for Administration | 2011 (operational 2017) | 83k |
| 5 Ombudsman Sint Maarten | 2010 | 40k |
| Information from public domain only, not verified by Ombudsman organisation | | |
| 6 Ombudsman Antigua and Barbuda | 2016 (re-established) | 86k |
| 7 Barbados Ombudsman | 1987 (operational) | 286k |
| 8 Cook Islands: Te Mato Akamoeau, Office of the Ombudsman | 1984 | 17k |
| 9 Ombudsman of Curaçao | not known | 160k |
| 10 Faroe Islands: Løgtingsins Umboðsmaður (Parliamentary Ombudsman), | 2000 | 49k |
| 11 Greenland: Ombudsman for Inatsisartut | not known | 56k |
| 12 Tonga: Office of the Ombudsman | 2014 (re-established) | 103k |
| 13 Vanuatu: Office of the Ombudsman | 1998 | 276k |
| Not studied | | |
| 14 Complaints Commissioner for the Turks & Caicos Islands | 1994 | 31k |

Population figures from Wikipedia unless indicated otherwise
https://en.wikipedia.org/wiki/List_of_countries_and_dependencies_by_population

12.1 Bermuda Ombudsman

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| 1. | Name of ombuds/scheme Bermuda Ombudsman |
| 2. | Contact name and details Victoria Pearman, National Ombudsman for Bermuda / LaKai Dill, Investigations Officer / info@ombudsman.bm |
| 3. | Website URL http://www.ombudsman.bm and http://www.facebook.com/bermudaombudsman |
| 4. | Membership of ombudsman organisations (eg OA, IOI, CAROA)? IOI, OA, CAROA (Note: Bermuda Ombudsman is Chair of CAROA, elected in 2017), Forum of Canadian Ombudsman, United States Ombudsman Association |
| 5. | Population it serves and geographical scope Registry General reported resident population for 2016 as 65,391 (annual report p3 - https://www.gov.bm/departments/registry-general) |
| 6. | Underpinning legislation (URL if available) Ombudsman Act 2004 http://www.ombudsman.bm/images/pdfs/Ombudsman%20Act%202004.pdf [But note that the office of Ombudsman was established in 2001 by <u>section 93A of Schedule 2 to the Bermuda Constitution Order 1968.</u>] |
| 7. | What bodies are in jurisdiction? Listed in the Act as: <i>‘(a) government departments;</i> <i>(b) public authorities;</i> <i>(c) Government boards; and</i> <i>(d) any other corporation or body –</i> <i>(i) which is established by Act of the Legislature or in any other manner by a Minister; or</i> <i>(ii) whose revenues derive directly from money provided by the Legislature or a fee or charge of any other description authorised by the Legislature.’</i> |

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| | <p>Home Affairs and National Security are ministries with largest number of complaints (66 and 51), followed by Health and Seniors (24) (Annual Report 2016). A second table of 'authorities' lists Immigration as largest category by far (50) followed by Corrections (29).</p> <p>[Note an interesting point about bodies in jurisdiction:</p> <p><i>'questions of our jurisdiction are not always straightforward. For example, the Corporations of Hamilton and St. George's, the Parish Councils and the Information Commissioner are all authorities within our jurisdiction. Also, some charities and non-profit organisations, which consider themselves to be independent and non-Governmental, are still considered authorities subject to the Ombudsman's jurisdiction, because they receive substantial grants from the Government. Examples include the Bermuda Housing Trust, the Summerhaven Trust, and the African Diaspora Heritage Trail Bermuda Foundation.'</i> 2014 Annual Report]</p> |
| 8. | <p>How is its legal jurisdiction/scope/remit defined (e.g "maladministration") – quote from legislation.</p> <p>Handy overview of legislation provisions in Annual Report 2016 pp.48-49</p> <p>Can investigate and make recommendations on <i>'any administrative action of an authority for the purpose of deciding whether there is evidence of maladministration on the part of the authority'</i> (s.5(1)(a) – 'maladministration' is defined in the Act as</p> <p><i>'inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes –</i></p> <ul style="list-style-type: none"> <i>(a) unreasonable delay in dealing with the subject matter of an investigation;</i> <i>(b) abuse of any power (including any discretionary power); or</i> <i>(c) administrative action that was –</i> <ul style="list-style-type: none"> <i>(i) contrary to law;</i> <i>(ii) unfair, oppressive or improperly discriminatory or based on procedures that are unfair, oppressive or improperly discriminatory;</i> <i>(iii) based wholly or partly on a mistake of law or fact or irrelevant grounds;</i> <i>(iv) related to the application of arbitrary or unreasonable procedures; or</i> <i>(v) negligent;</i> <p>'Maladministration' is defined in Annual Report 2016 as including but not limited to:</p> <p><i>'actions which are inefficient, bad, improper, unreasonable delay, abuse of power (including discretionary), contrary to or mistake of law, mistake of facts, irrelevant grounds, unfair, oppressive, improperly discriminatory, arbitrary procedures, and negligent.'</i></p> |
| 9. | <p>What decisions are expressly excluded from Ombudsman jurisdiction?</p> <p>Not able to investigate where there is right of appeal to court or tribunal unless the appeal has been determined or time has run out for making appeal – but has discretion to</p> |

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| | <p>investigate if Ombudsman considers it not reasonable to expect complainant to use that appeal (s.6). Also, the Schedule (s6(3)) lists 'actions not subject to investigation':</p> <p>1 Administrative action which, by virtue of any provision of the Constitution, may not be inquired into by any court.</p> <p>2 Any administrative action taken by the Cabinet or by a Minister or a Junior Minister.</p> <p>3 Any exercise of the power by the Governor to pardon persons convicted of criminal offences or commute their penalties.</p> <p>4 Administrative action taken for the purposes of investigating crime or protecting the security of Bermuda. [Note: <i>'limited scope to investigate the Bermuda Police Service or the Bermuda Regiment because the subject of their administrative actions, namely protecting the security of Bermuda and investigating crime, are excluded under the Schedule to the Ombudsman Act' 2014 Annual Report</i>]</p> <p>5 The commencement or conduct of any proceedings, whether civil or criminal, before a court of law or tribunal in Bermuda, including any decision whether or not to prosecute any person for an offence.</p> <p>6 Any administrative action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority.</p> <p>In 2016, 66 cases received were not in jurisdiction.</p> <p>Note that the Premier, 'by order subject to the affirmative resolution procedure', may amend the Schedule.</p> |
| 10. | <p>Who can complain?</p> <p><i>'Anyone can make a complaint to the Ombudsman about Government's services. You do not have to be a Bermudian or a resident of Bermuda.'</i> (Annual Report 2016 p.12)</p> <p>Complainants must be personally affected by the administrative action complained of, or have the express consent of the aggrieved to pursue the complaint on their behalf (s.7(1)(a) 2004 Act).</p> |
| 11. | <p>What are its governance arrangements?</p> <p>2004 Act states:</p> <p><i>'In the exercise of her functions, the Ombudsman shall not be subject to the direction or control of any other person or authority.'</i></p> <p>No Board or parliamentary committee. Ombudsman meets quarterly with the Governor to discuss issues of mutual interest.</p> <p>Accountability discussed on p.44 of 2016 Annual Report. Describes accountability as 'to the public' and 'to the Legislature', the latter <i>'through an annual independent audit of our use of public funds, similar to other Non-Ministry offices that form part of the integrity branch of Government. This work is carried out by the Office of the Auditor General.'</i> Audited financials are available on website (currently up to year-end 2013, from 2006).</p> |

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| | <p>Also accountability through publication of Annual Report:</p> <p><i>'Ombudsman submits an annual report and any special reports to the Speaker of the House of Assembly with a copy to the Governor and a copy to the President of the Senate.'</i></p> |
| 12. | <p>Who appoints the Ombudsman and by what process?</p> <p>Governor appoints the Ombudsman, after consulting with Premier and Opposition Leader.</p> <p><i>'by Instrument under the Public Seal'</i> - s. 4 of 2004 Act; s.93A(2) Constitution</p> |
| 13. | <p>What powers does it have to investigate?</p> <p>The Act states that <i>'Subject to the provisions of this Act, the Ombudsman may regulate investigations and proceedings under this Act in such manner as he [sic] sees fit'</i>. Investigations are to be in private. Power to enter premises. Generally discretion to make enquiries and seek information and to refer matters to another authority. (s.12).</p> <p>The Act states that <i>'the Ombudsman shall have the same powers as the Court in so far as those powers relate to the attendance and examination of persons (including the administration of oaths or affirmations) and in respect of the production of documents.'</i> See s.13 for full powers re evidence. Restrictions include matters related to the Cabinet and national security as well as 'offences' – (presumably civil or criminal offence that would be subject to courts' jurisdiction and investigable by the police or other agencies) – which the Ombudsman can't require but the Premier can compel.</p> <p>There is a reference to hearings in s.17:</p> <p><i>'Adverse comment</i></p> <p><i>17 (1) The Ombudsman shall not —</i></p> <p><i>(a) in any recommendation given under section 15(3); or (b) in any report made under section 24,</i></p> <p><i>make any statement that is adverse to any authority or person unless that person has been given an opportunity to be heard.</i></p> <p><i>(2) A person to whom subsection (1) applies may be represented at the hearing by a barrister and attorney or any other person.</i></p> <p><i>(3) In this section, "barrister and attorney" means a person admitted and enrolled as a barrister and attorney under section 51 of the Supreme Court Act 1905.'</i></p> <p>The Ombudsman does not hold hearings in the way a public inquiry might. What the Ombudsman calls a hearing is a closed-door meeting; most other face-to-face meetings during an investigation would best be described as interviews. The Ombudsman usually offers 'adverse comment hearings' to parties after sharing a draft investigation report, for the Ombudsman to consider any concern they may have with any 'adverse' statement, before the report is finalised and the findings/recommendations made.</p> |

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| 14. | <p>What powers does it have to achieve resolution, including what remedies can be awarded?</p> <p>The Ombudsman has the power to deal with a complaint by mediation and to appoint a mediator. Mediation is voluntary. (s.10) To date, the Ombudsman has acted as mediator in all cases when this path was offered for resolving a complaint, i.e. no outside mediator appointed; formal mediation has been used infrequently.</p> <p>Remedies listed in the Act are:</p> <p><i>‘(a) a matter should be referred to an appropriate authority for further consideration;</i></p> <p><i>(b) an omission or a delay should be rectified;</i></p> <p><i>(c) a decision or recommendation should be cancelled or altered;</i></p> <p><i>(d) reasons should be given;</i></p> <p><i>(e) a practice, procedure or course of conduct should be altered; or</i></p> <p><i>(f) an enactment should be reviewed.’</i></p> <p>(s.15(4))</p> <p>the Ombudsman cannot address personnel issues/complaints. [Although note that the Annual Report 2016 has some examples of employee complaints that were dealt with in some way, not rejected as out of jurisdiction.] The Ombudsman has jurisdiction over the Department of Workforce Development, which is responsible for employment complaints, so sometimes in addressing complaints against this department it will look marginally at underlying employment complaint. Also, the Ombudsman has addressed complaints of unresponsiveness/unreasonable delay about the Department of Human Resources (with goal to put parties back into communication), but would decline complaints about personnel decisions/process.</p> <p>Note: The Ombudsman cannot award financial compensation but can recommend ‘consolatory ex-gratia payments’ and has done so in a handful of cases (thus infrequently used as a remedy); see Annual Report 2007 p.9 re Human Rights Commission example.</p> <p>Recommendations are non-binding.</p> |
| 15. | <p>What powers does it have in cases of non-compliance?</p> <p>Bodies in jurisdiction have to report on their compliance with recommendations. If they do not, or do not comply, or comply in an unsatisfactory way, the Ombudsman can submit a report. (s.16)</p> <p>A time limit for responding to the Ombudsman is imposed in the Act (s.16):</p> <p><i>‘(a) the authority shall notify the Ombudsman, in writing, within twenty business days of receipt of the recommendation, of the action that has been taken or is proposed to give effect to the recommendation;</i></p> |

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| | <p><i>(b) where the authority has taken no action within twenty business days of receipt of the recommendation or does not propose to take any action, the authority shall give reasons, in writing, for failure to implement the recommendation.'</i></p> <p>'Special reports' are those in the public interest or in cases of non-compliance. See s.24. But see also below, at Q27.</p> |
| 16. | <p>Does it have own-initiative power?</p> <p>Yes – see s.5(2)(b) of the Act.</p> <p>Note: The Ombudsman did not launch any systemic investigations between 2014 and 2016 (i.e. current Ombudsman's first 3 years of term). See Annual Report 2015 p.39 for list of all special reports and p.36 for list of completed systemic investigations (6 total). Latest systemic investigation was launched in 2017 (see mention in Annual Report 2017 p.19) – involving adequacy of a ministry's administration of services for persons at risk of abuse and its investigation into claims of abuse.</p> |
| 17. | <p>Time limits for submitting complaints to the Ombudsman</p> <p>Within one year after the day the complainant first had notice of the administrative action (s.7(1)(c))</p> |
| 18. | <p>Size of organisation</p> <p>Number of operational complaints-handling staff: 4 (inc Ombudsman)</p> <p>Number of support staff: 2</p> <p>Total: 6</p> <p>Note: All are full-time.</p> |
| 19. | <p>What is its caseload (most recent completed year)?</p> <p>Generally stable caseload over past 3 years. General trend appears to be increased use of investigation and informal resolution and thus increased number of 'resolved' complaints but not increase in new complaints from 2015 to 2016.</p> <p>In 2017 (as reported in 2017 Annual Report):</p> <p>Enquiries: 97 enquiries (128 in 2016; 71 in 2015; not categorised in 2014)</p> <p>Complaints received: 126 new complaints (157 in 2016; 161 in 2015; 128 in 2014)</p> <p>Complaints resolved: 'disposed of' 43 (65 in 2016; 21 in 2015; 3 in 2014)</p> <p>Non-enquiry cases in 2017:</p> <p>'Open' 32 (53 in 2016; 32 in 2015)</p> <p>'Declined' 28 ['Complaints made to us that are outside of our jurisdiction'] (15 in 2016; 47 in 2015)</p> |

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| | <p><i>'Disposed of / Addressed' 43 (65 in 2016; 21 in 2015)</i></p> <p><i>'Referred' 23 [Where there is a more appropriate body that could help' or if complainant has not raised their concerns with the authority] (24 in 2016; 61 in 2015)</i></p> <p>In 2017, 3 cases closed after investigation: 1 no maladministration, 1 mixed maladministration, 1 maladministration</p> <p>The terms 'addressed' and 'disposed of' have been used interchangeably. They terms include: closed after inquiries; informally resolved; closed maladministration/no maladministration/mixed maladministration.</p> <p>Pattern of increasing enquiries as % of caseload:</p> <p>2015: 30%</p> <p>2016: 45%</p> <p>2017: 42%</p> <p>See Annual Report 2017 on value of enquiries – they are not 'wasted' resource because they help raise awareness of Ombudsman among authorities and improve the learning for Ombudsman staff, as well as help complainants with signposting.</p> <p>'Informal resolution' was a new category reported on in 2014; before, cases were flagged as 'added value' or 'informally resolved', but this distinction in case dispositions was not reported until AR2014.</p> |
| 20. | <p>Annual budget amount</p> <p>Estimated/approved budgets can be found at: http://bermuda.io/dataset/budget-book-estimates-of-revenue-and-expenditure-for-the-year, or https://www.gov.bm/budget</p> <p>For 2016-17, budget was \$776k; 2017-18 was \$910k; 2018-19 is \$924k.</p> <p>Note that staff salaries are largest portion of costs:</p> <p>2016-17: £631K 2017-18: £653K 2018-19: £672K</p> |
| 21. | <p>Funding arrangements</p> <ul style="list-style-type: none"> • Funding source: Ombudsman's salary comes from Consolidated Fund (s.4(3); staff salaries (other than Ombudsman) and expenditure 'shall be payable out of money appropriated by the Legislature for the purpose' (s.23(1)). In practice, office budget, including all salaries, come from the Consolidated Fund. • Funding mechanism: Complies with the Government's Financial Instructions and accounting structure; Manager-Finance & Administration (full-time staff) liaises regularly with a non-ministry comptroller, who works in the Accountant General Department. Ombudsman is the 'accounting officer'. • Cost for users (eg cost per case charged to bodies in jurisdiction): Free to members of the public and to authorities. |

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| 22. | <p>How do potential complainants contact the scheme? (in writing, referrals, telephone helpline, online, social media)</p> <p>The Act states that complaints may be made orally, electronically or in writing (s.7(1)(b)). Website has an online form for submitting complaints. Most (77% in 2017) contacted by phone or in person (of these, 25% in person; 52% phone). (Annual Report 2017); either walk-in or by appointment but can be seen when they arrive.</p> |
| 23. | <p>Is there triage, signposting, etc if outside jurisdiction? If so, describe.</p> <p>Yes, 'referral' is category used for signposting.</p> <p>Annual Report 2016 states that in 2016: <i>'We assisted 7 of the 22 that were Declined with additional resources, plus 17 of those 135 within jurisdiction – giving a total of 24 that were Referred. We helped them raise their issues with the right entity or directed them back to the authority complained of.'</i></p> |
| 24. | <p>What complaint-handling processes are used (eg mediation, investigation, hearings)?</p> <ul style="list-style-type: none"> • Useful 'glossary' of case-handling terms in Annual Report 2016 p.50. • Discusses using 'flexible' procedures – not everything requires an investigation. Annual Report 2016 p.20 • Informal approaches often involve phoning the department to get action (see case studies in Annual Report 2016). <p><i>'We may have facilitated resolution by making brief, informal enquiries that prompted the authority's action and/or by coaching the complainant on how to approach the authority.'</i> (Annual Report 2016 p.50)</p> <p>Closed 12 cases after investigation in 2016: 7 no maladministration, 3 mixed maladministration, 2 maladministration.</p> <p>Post-investigation adverse hearing can be requested by official when being criticised in Ombudsman report; it is the only time that a person has a right to be fully heard and can bring counsel. No complainant attends.</p> |
| 25. | <p>Use of informal resolution; method/s, rate, when and why applied</p> <p><i>'The authority and the complainant have resolved the complaint amicably. This includes times when we provide informal mediation or have made inquiries. Section 9 (2)(c).'</i></p> <p>Uses 'facilitated resolution' with 4 possible methods (see complaint management manual sent with reply). From the case studies in the annual reports, it appears that informal resolution primarily involves speaking with the agency or department and getting them to agree to an action and/or remedy through direct negotiation.</p> <p>The trend appears to be an increase in use of informal resolution (but see above about trend to more investigations):</p> <p>Resolved 28 cases informally in 2016 (6 in 2015 and 3 in 2014).</p> |

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| 26. | <p>What remedies are awarded in practice?</p> <p>Primarily recommendations for action to be taken by authority – either in individual case or more systemically.</p> |
| 27. | <p>What is the level of compliance with recommendations (eg %) and any issues with compliance?</p> <p>In 2016, 12 cases closed after investigation, resulting in 21 recommendations in 5 cases.</p> <p>100% compliance with recommendations. In 2016 all recommendations were accepted by the authorities for implementation.</p> <p>Power to publish report on authority's non-compliance. Before submitting such a report, the Ombudsman must follow the process set out in section 17(1) of the Ombudsman Act, which affords the authority the opportunity to a hearing.</p> <p>Annual Report 2016 states this power to publish is used sparingly.</p> <p><i>'Publicising maladministration is used when an authority has refused to implement our recommendations and presents inadequate reason for doing so. Members of the public may wish for us to use this power more frequently. It must be used sparingly and in exceptional circumstances, as its misuse would serve to weaken the Ombudsman's relationship with authorities within her remit.'</i> P.20</p> |
| 28. | <p>In practice, what sanctions/procedures used if public body does not comply?</p> <p>See above Q27. Appears to have been 100% compliance in 2016.</p> |
| 29. | <p>What role does it have in improving quality of administrative decision-making?</p> <ul style="list-style-type: none"> • Investigation resulted in changes to electronic communication system and to specifics of particular post, with benefits to public (Annual Report 2016 p.30). • A 2010 recommendation resulted in a Government focus on special education process and policy framework (Annual Report 2016 p.33). • Uses PHSO Principles of Good Administration in presentations and correspondence to authorities regarding their complaint handling. <p>Interesting example of role in reviewing legislation covering the complaint-handling mandate of Treatment of Offenders Board (Annual Report 2016, p40):</p> <p><i>'The Ombudsman agreed to review the legislation outlining TOOB's mandate and TOOB's current processes as well as research similar organisations to determine whether TOOB was fully achieving its statutory mandate. At the conclusion of the review, it was found that TOOB are not fully utilising all of its legislative authority.'</i></p> <p><i>'The Ombudsman's collaboration with the relevant authorities demonstrates that the Ombudsman can help improve Government administration without requiring investigations.'</i></p> |
| 30. | <p>How does it raise public awareness of its role?</p> |

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| | Conducted 9 'education sessions' in 2016 – speaking to groups including Youth Parliament, Rotary Club of Sandys, Age Concern members, as well as the Department of Corrections and a primary school. Publishes annual report, available on website and Facebook page. |
| 31. | <p>Why was it established?</p> <p><i>'Over the years, people from both political parties advocated that Ombudsman Institution for Bermuda. It was after the 1999 Civil Service Report that the then Premier, the Hon. Jennifer Smith, advanced the idea by an amendment to the Bermuda Constitution (in force August 2001).'</i> (CAROA website)</p> <p>First Ombudsman (Arlene Brock) appointed in 2005.</p> <p><i>'This Office was established to provide efficient and flexible dispute resolution for the public.'</i> (Annual Report 2016)</p> <p>[Useful history of scheme on http://caribbeanombudsman.com/bermuda/]</p> |
| 32. | <p>Interesting features/features unique to specific scheme</p> <ul style="list-style-type: none"> • The Act sets out mediation option and procedural requirements (s.10) • Interesting reference to prohibition against victimisation in relation to human rights: People should not be discriminated against ' in any of the ways specified in section 8 of the Human Rights Act 1981' because they complain or give information, and 'Where the Ombudsman has reasonable grounds for believing that any person has contravened subsection (4), he may, with the consent of that person, refer the matter to the Human Rights Commission for consideration'. (s.14(4) and (5)) • Obstruction and contempt (including lying to the Ombudsman) are identified as offences in the Act and subject to a fine. • An interesting reference to Protection of title in the Act (s.22): <i>'No person other than the person for the time being appointed as the Ombudsman may –</i> <i>(a) use the title "Ombudsman"; or</i> <i>(b) hold himself out to be the Ombudsman.'</i> • See p.19 Annual Report 2016 for discussion of why non-binding recommendations are appropriate power for ombuds. • Note: Has been dealing with outstanding caseload so focusing on closing individual complaints rather than systemic investigations. However, one complaint (about Immigration) highlighted systemic issues which led the Ombudsman to launch a systemic investigation into delays for all applicants. Explanation of background that led to delays given on pp28-29 of Annual Report 2016. • Useful discussion on staff training on pp.45-46 of Annual Report 2016. |
| 33. | <p>Issues that need further exploration in follow-up interview</p> <p>Good to explore further:</p> |

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| | <ul style="list-style-type: none"> • Premises: Our office is on the ground level of a building slightly on the outskirts of the 'capital', one block away from the bus terminal. The first Ombudsman believed the building was strategically located (centrally/ ground-level accessible, but outside of the hustle-and-bustle). Premises rented from a private landlord (entrance, 5 individual offices, 1 meeting room, 1 open work area behind reception, 2 storage areas). • Generally has have good working relationships with authorities. Sometimes authorities become defensive/shut down. Ombudsman splits authorities internally amongst investigators to better manage communications and learnings, with hopes of being able to discuss complaint trends more readily with authorities. • Currently has 5/6 'own motion' general inquiries underway, where the Ombudsman stays on top of authorities on problem areas they are actively working to address (i.e. backlogged applications, bus cancellations, policy/procedure development). • Public perception of Ombudsman's office and effectiveness: No data yet because not collected but 2017 Annual Report includes a survey for feedback. • Financial remedies aren't referenced in our Act, but we do consider/have recommended consolatory payments in limited circumstances. See also interview notes. • Case management system (fully operational in 2017/18) New electronic system went live in late November 2017 but due to government IT infrastructure, the system was not fully accessible until last month. The Ombudsman is behind in having it fully operational for all 2018 cases, but still aiming to generate 2018 statistics from the new system by year-end and for 2018 Annual Report. See also interview notes. |
| 34. | <p>If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report)</p> <p>2004 Act http://www.ombudsman.bm/images/pdfs/Ombudsman%20Act%202004.pdf</p> <p>Annual Report 2016 http://www.ombudsman.bm/pdf/OmbudsmanAnnualReport2016.pdf</p> <p>CAROA website http://caribbeanombudsman.com/bermuda/</p> |

12.2 Cayman Islands Ombudsman

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| 1. | <p>Name of ombuds/scheme</p> <p>Cayman Islands Ombudsman</p> <p>[Note: This is a new scheme from Sept 2017 – it replaced the Cayman Islands Complaints Commissioner. New Ombudsman combines Complaints Commissioner and Information Commissioner as well as Public Police Complaints Commissioner]</p> |
| 2. | <p>Contact name and details</p> <p>Sandy Hermiston (Ombudsman) info@ombudsman.ky</p> |
| 3. | <p>Website URL</p> |

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| | http://ombudsman.ky |
| 4. | <p>Membership of ombudsman organisations (eg OA, IOI, CAROA)?</p> <p>Member of CAROA and IOI. Currently applying for membership of OA (former scheme was member).</p> |
| 5. | <p>Population it serves and geographical scope</p> <p>60,413</p> |
| 6. | <p>Underpinning legislation (URL if available)</p> <p>The Ombudsman Law 2017 – this is the overarching legislation and deals with appointment and powers but not specifics on complaints:</p> <p>http://ombudsman.ky/images/pdf/laws_regs/The_Ombudsman_Law_2017.pdf</p> <p>Details are set out in the separate legislation governing the specific areas of work:</p> <p>Complaints (Maladministration Law (2018 Revision))</p> <p>http://www.gov.ky/portal/pls/portal/docs/1/12614411.PDF</p> <p>Police (Complaints by the Public) Law 2017 (for police complaints)</p> <p>http://ombudsman.ky/images/pdf/laws_regs/The_Police_Complaints_by_the_Public_Law_2017.pdf</p> <p>Freedom of Information Law (2015 Revision)</p> <p>http://www.foi.gov.ky/portal/page/portal/foihome/doclibrary/legislation</p> <p>Whistleblower Protection Law 2015</p> <p>http://www.gov.ky/portal/pls/portal/docs/1/12318431.PDF</p> <p>Complaints Commissioner (Amendment) Law 2017 – this abolishes the old Complaints Commissioner office and transfers powers and responsibilities to the Ombudsman:</p> <p>http://www.gov.ky/portal/pls/portal/docs/1/12408394.PDF</p> |
| 7. | <p>What bodies are in jurisdiction?</p> <p>Maladministration complaints: all government ministries, companies, departments, statutory boards and all other government authorities. (Source: website FAQs)</p> <p>Note: Template is completed for primary role as Ombudsman for government maladministration but note that the Ombudsman is also:</p> <ul style="list-style-type: none"> • the oversight body for police complaints - Police (Complaints by the Public) Law 2017 • the Information Commissioner for purposes of Freedom of Information complaints. |

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| | Note: From January 2019 the Ombudsman will have power to handle complaints about the Data Protection Law. |
| 8. | <p>How is its legal jurisdiction/scope/remit defined (e.g “maladministration”) – quote from legislation.</p> <p>Complaint (Maladministration) Law 2018 Revision defines it as:</p> <p>‘ “maladministration” means inefficient, bad or improper administration and includes-</p> <p>(a) unreasonable conduct including delay;</p> <p>(b) abuse of any power (including any discretionary power) or authority including any action which -</p> <p>(i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or</p> <p>(ii) was based wholly or partly on a mistake of law or fact; and</p> <p>(c) unreasonable, unjust, oppressive or improperly discriminatory procedures;’</p> <p>S.10 (3) states:</p> <p>‘The Ombudsman may investigate any course of conduct or anything done or omitted by any person in the exercise of administrative functions respecting any business of the government not being functions concerned with any action or matter set out in Schedule 2.’</p> |
| 9. | <p>What decisions are expressly excluded from Ombudsman jurisdiction?</p> <p>Maladministration Law 2018:</p> <p>‘(2) Except as provided herein, the Ombudsman shall not conduct an investigation in respect of -</p> <p>(a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any law; or</p> <p>(b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law.</p> <p>(3) Notwithstanding subsection (2), the Ombudsman may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it.’</p> <p>A Schedule to the 2018 Law sets out the matters excluded, referring to foreign affairs, defence, security and external affairs, crime and government employment complaints.</p> |

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| <p>10</p> <p>.</p> | <p>Who can complain?</p> <p>Maladministration Law 2018:</p> <p>‘A complaint may be made by any person but not a person who is -</p> <p>(a) a body constituted for purposes of the public service or of government or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking; or</p> <p>(b) any other authority or body whose members are appointed by the Government or by a government entity, or whose revenues consist wholly or mainly of moneys provided by Government.’</p> <p>A complaint also can be made by a representative on behalf of someone, including deceased complainant.</p> <p>The Maladministration Law 2018 states that complainant must be resident in the islands:</p> <p>S.13(4):</p> <p>‘(4) A complaint shall not be entertained unless the person aggrieved is ordinarily resident in the Islands (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in the Islands on a ship or aircraft registered in the Islands, or in relation to rights or obligations which accrued or arose in the Islands or on such ship or aircraft.’</p> |
| <p>11</p> <p>.</p> | <p>What are its governance arrangements?</p> <p>The Ombudsman is ‘accountable for expenditure to the Oversight Committee of the Legislative Assembly’, but otherwise legislation suggests the Ombudsman is not subject to direction or control of any other authority.</p> <p>The Ombudsman reports to a Select Committee made up of Members of the Legislative Assembly. The Committee oversees the performance of the Ombudsman’s office in relation to budget and expenditure.</p> |
| <p>12</p> <p>.</p> | <p>Who appoints the Ombudsman and by what process?</p> <p>The Ombudsman is appointed by Governor (‘acting after consultation with the Premier and the Leader of the Opposition’) for a non-renewable term of 7 years (s.3 Ombudsman Law 2017).</p> <p>Note restrictions on who can serve as Ombudsman:</p> <p>‘(3) No person shall be qualified to be appointed as Ombudsman if the person is or has been within the preceding three years -</p> <p>(a) an elected member of the Legislative Assembly; or</p> <p>(b) the holder of any office in any political party.’</p> |

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| | <p>Remuneration is set out in Ombudsman Law 2017, S.5: '(1) There shall be paid to the Ombudsman such annual salary, emoluments and benefits as are established under the Public Service Management Law (2013 Revision).'</p> <p>Deputy ombuds (one for Freedom of Information and one for Complaints) are appointed by the Ombudsman.</p> |
| 13 | <p>What powers does it have to investigate?</p> <p>The Ombudsman has the same powers as Grand Court regarding witnesses and documents.</p> <p>S.14(2) of Maladministration Law 2018 gives wide discretion to Ombudsman in determining investigation procedure and power to obtain information as he/she sees fit:</p> <p>'(2) Every such investigation shall be conducted in private, but except as herein provided the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case; and in particular the Ombudsman may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented, by his attorney-at-law or otherwise, in the investigation.'</p> <p>S.15 sets out powers in relation to evidence, including:</p> <p>'15. (1) For the purposes of an investigation, the Ombudsman may require any Minister, officer or member of the government entity concerned, or any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.</p> <p>(2) Subject as herein, for the purposes of any such investigation the Ombudsman shall have the same powers as the Grand Court in respect of the attendance and examination of witnesses (including the administration of oaths or affirmations and the examination of witnesses abroad) and in respect of the production of documents.'</p> <p>Note however that the Governor is exempt and cannot 'be compelled for the purposes of an investigation under this Law to give any evidence before the Ombudsman' (S.15(6))</p> |
| 14 | <p>What powers does it have to achieve resolution, including what remedies can be awarded?</p> <p>Maladministration Law 2018 sets out powers following investigation, in S.18(2):</p> <p>'(a) that the action which was the subject matter of the complaint be reviewed;</p> <p>(b) that an enactment, rule or regulation which causes or may cause injustice, be altered; or</p> <p>(c) that compensation be made to the person aggrieved.'</p> |
| 15 | <p>What powers does it have in cases of non-compliance?</p> <p>Maladministration Law 2018 sets this out, at S.18:</p> |

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| | <p>'(3) Where the Ombudsman has made a recommendation under subsection (1) and, within the time specified or a reasonable time thereafter, he is of the opinion that no adequate action has been taken to remedy the injustice, he shall lay before the Legislative Assembly a special report on the case.</p> <p>(4) The Ombudsman, prior to laying a special report under subsection (3), shall provide the Governor with a copy of such report.'</p> |
| 16 | <p>Does it have own-initiative power?</p> <p>Yes. S.18(7), Maladministration Law 2018 refers to own-initiative powers:</p> <p>'(7) Where the Ombudsman makes an investigation on his own initiative or pursuant to a resolution of the Legislative Assembly he shall make a report thereupon to the Legislative Assembly.'</p> |
| 17 | <p>Time limits for submitting complaints to the Ombudsman</p> <p>Complaints must be made within 12 months from date of complainant having notice of the matter, with some discretion for the Ombudsman to accept complaints outside that timeframe. (Maladministration Law 2018 S.13(3))</p> |
| 18 | <p>Size of organisation</p> <p>Number of operational complaints-handling staff: 7 on maladministration side (including Ombudsman); 3 on Information Commissioner side</p> <p>Number of support staff: 2 shared with Information Commissioner</p> <p>(Ombudsman and 2 support staff shared with Information Commissioner)</p> <p>Total (for Information Commissioner and maladministration): 12, increasing to 14 and eventually to 17</p> <p>Note: some info here on backgrounds of staff members: http://www.leyenews.com/wordpress/cayman-islands-ombudsman-announces-appointments/</p> |
| 19 | <p>What is its caseload (most recent completed year)?</p> <p>Office is too new to have published an Annual Report.</p> <p>Enquiries: not known yet</p> <p>Complaints received: not known yet</p> <p>Complaints accepted: not known yet</p> <p>Complaints resolved: not known yet</p> |
| 20 | <p>Annual budget amount</p> <p>\$2.1 million for 2018 and same for 2019. Budget was set before Ombudsman came into office.</p> |

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| | Note: Most recent Annual Report from previous scheme (Complaints Commissioner) is 2013-14 from p.902. 2013-14 annual budget, listed as 'Revenue from Cabinet', was \$739,678, with 6 FTE staff – jurisdiction of Ombudsman is much larger now. |
| 21 . | Funding arrangements <ul style="list-style-type: none"> • Funding source: see below • Funding mechanism: see below • Cost for users (eg cost per case charged to bodies in jurisdiction): None. <p>S.24 of Maladministration Law 2018 states that expenses incurred by Ombudsman 'in connection with his functions shall be defrayed out of moneys voted for the purpose by the Legislative Assembly'.</p> |
| 22 . | How do potential complainants contact the scheme? (in writing, referrals, telephone helpline, online, social media) <p>Maladministration Law 2018 S.11 (1) states that complaints must be in writing, with some discretion afforded to the Ombudsman:</p> <p>'11. (1) The Ombudsman shall not make an investigation without first receiving a written complaint unless he is of the opinion or the Legislative Assembly resolves that there are reasons of special importance which makes investigation by the Ombudsman desirable in the public interest.'</p> <p>And at S.13(5): 'A written complaint by any person shall set out in detail the circumstances which allegedly gave rise to the complaint.'</p> <p>Complainants can also call or visit in person.</p> |
| 23 . | Is there triage, signposting, etc if outside jurisdiction? If so, describe. <p>Yes. Note: A very useful document on the website lists all the individual internal complaint-handling officers within government departments, with email address and phone number:</p> <p>http://ombudsman.ky/images/pdf/Internal_Complaints_Process_Contact_List.pdf</p> |
| 24 . | What complaint-handling processes are used (eg mediation, investigation, hearings)? <p>Ombudsman Law 2017 states: '9. (1) The Ombudsman may use mediation, conciliation or any other alternative dispute resolution process with a view to resolving a matter under any scheduled Law.' In practice, informal resolution is used frequently.</p> |
| 25 . | Use of informal resolution; method/s, rate, when and why applied <p>The office is too new to have published information on this, but in interview the Ombudsman explained it is used frequently and is seen as a way to reduce bureaucracy.</p> |
| 26 . | What remedies are awarded in practice? |

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| | The office is too new to have published information on this. Several decisions have been published, however. Financial redress is recommended. |
| 27 | <p>What is the level of compliance with recommendations (eg %) and any issues with compliance?</p> <p>The office is too new to have published information on this. In interview the Ombudsman says she has had no issue with non-compliance.</p> |
| 28 | <p>In practice, what sanctions/procedures used if public body does not comply?</p> <p>The office is too new to have published information on this. The previous scheme, Complaints Commissioner, had targets for monitoring recommendations. See Annual budget statements at p.913:</p> <p>http://www.treasury.gov.ky/portal/pls/portal/docs/1/11336122.PDF</p> |
| 29 | <p>What role does it have in improving quality of administrative decision-making?</p> <p>Works with departments to address any systemic issue arising in complaint. Also meets regularly with Deputy Governor (who is head of civil service) to raise issues of concern.</p> |
| 30 | <p>How does it raise public awareness of its role?</p> <p>Had an advertising agency work on developing image and personality of the office, logo, website, etc. Cost was £25K. And has some ads in bus shelters.</p> <p>But see information on targets and activity of previous scheme, Complaints Commissioner, in annual budget statements at p.915:</p> <p>http://www.treasury.gov.ky/portal/pls/portal/docs/1/11336122.PDF</p> |
| 31 | <p>Why was it established?</p> <p>One impetus was an Ernst & Young report on efficiencies in Government – made a recommendation that the police complaints system (which was legislated for in 2010 but never set up) should be folded into a new ombuds office so money could be saved by sharing staff etc. Might simply have been a merger of separate bodies to create what they call a ‘supra-Ombudsman’. An article notes that this merger has not been without controversies, but does not say what those were:</p> <p>https://caymannewsservice.com/2017/08/canadian-secures-job-as-supra-ombudsman/</p> |
| 32 | <p>Interesting features/features unique to specific scheme</p> <ul style="list-style-type: none"> • Would be of interest also for recent recruitment to new post of Ombudsman. See announcement of recruitment on the IOI website: http://www.theioi.org/ioi-news/current-news/applications-for-the-position-of-the-cayman-islands-ombudsman and here for salary and benefits into: http://www.ombudsmanforum.ca/en/?p=5924 • The Ombudsman Law 2017 contains protection of Ombudsman title: ‘14. No private entity or Government department shall use the term “Ombudsman” or “Office of the Ombudsman” to describe itself in any capacity.’ |

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| | <ul style="list-style-type: none"> • There is a large section in the Maladministration Law 2018 relating to mediation procedure (S.12): The Ombudsman may deal with a complaint by mediation if he/she is 'of the opinion, having regard to all the circumstances of the case, that the subject matter of the complaint involves only minor maladministration.' (S.12(1)) • Has a Facebook page: https://www.facebook.com/OmbudsmanCayman/ |
| 33 | Issues that need further exploration in follow-up interview As set out above. |
| 34 | If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report) <ul style="list-style-type: none"> • Legislation as set out above. • Website (very limited information because Office only started in Sept 2017). No Annual Report as of yet or case studies. Decisions are published (http://ombudsman.ky/decisions). • Archive sites of Complaints Commissioner publications: http://www.gov.ky/portal/page/portal/otchome/publications and http://www.gov.ky/portal/page/portal/otchome/publications/annual-report |

12.3 Gibraltar Ombudsman for Public Services

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| 1. | Name of ombuds/scheme Gibraltar Ombudsman for Public Services |
| 2. | Contact name and details Dilip Dayaram Tirathdas, Public Services Ombudsman info@ombudsman.gi |
| 3. | Website URL http://www.ombudsman.org.gi |
| 4. | Membership of ombudsman organisations (eg OA, IOI, CAROA)? Member of OA and IOI |
| 5. | Population it serves and geographical scope 33,573 (Source: Abstract of Statistics 2015) |
| 6. | Underpinning legislation (URL if available) Public Services Ombudsman Act 1998 |

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| | <p><u>Available from scheme website:</u></p> <p>http://www.ombudsman.org.gi/about-us.htm</p> |
| 7. | <p>What bodies are in jurisdiction?</p> <p>‘The Ombudsman investigates complaints by the public about any acts or omissions by Government entities, agencies and authorities. This includes the Royal Gibraltar Police, the Gibraltar Health Authority, the Housing Works Agency and many other entities contracted by the Government to provide public services.’ (Annual Report 2017)</p> <p>The Government entities, agencies and authorities in the jurisdiction of the Ombudsman are listed in a Schedule to the Public Services Ombudsman Act 1998, as follows:</p> <p><i>Government:</i></p> <p>All Gibraltar Government departments and agencies, including the Royal Gibraltar Police.</p> <p><i>Statutory bodies:</i></p> <p>Gibraltar Health Authority Gibraltar Broadcasting Corporation Gibraltar Development Corporation Employment and Training Board Tourism Board Development and Planning Commission Transport Commission Traffic Commission Care Agency Gibraltar Electricity Authority Gibraltar Sports Authority Gibraltar Culture and Heritage Agency Borders & Coastguard Agency Housing Works Agency</p> <p><i>Public utilities and contractors:</i></p> <p>Any person, company or other entity providing one or more of the following services to the Government of Gibraltar or to the general public under the terms of a contract with or a licence issued by the Crown or a statutory body:</p> <p>supply of telecommunications services supply of water services collection of any moneys payable to the Government the operation of any Registry environmental or public health control services clamping, tow-away or traffic management the cleaning or upkeep of any part of the public highway or planted areas adjacent thereto refuse collection or incineration services car parking services the management of the Alameda Gardens, the John Mackintosh Hall, the Gibraltar Museum, the Gibraltar Airport Terminal or any site, property or facility belonging to the Crown</p> |

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| | <p>property management, property agency, rates collection services and land property services</p> <p>immigration services and entry point control and terminal security</p> <p>philatelic supplies</p> <p>emergency and transfer ambulance services</p> <p><i>Other bodies:</i></p> <p>Calpe House, London, and Calpe House Trust</p> <p>the Gibraltar Government representative office in London</p> <p>the Gibraltar Government representative office in Brussels</p> <p>the New Hope Trust/Bruc's Farm Rehabilitation Centre</p> |
| 8. | <p>How is its legal jurisdiction/scope/remit defined (e.g “maladministration”)</p> <p>Under Section 13 of the 1998 Act, the Ombudsman may investigate any administrative action taken by or on behalf of any Authority where a written complaint is duly made to the Ombudsman by a member of the public who claims to have sustained injustice in consequence of ‘maladministration in connection’ with the action so taken. The Section also clarifies that the words ‘maladministration in connection with’ shall not apply where the action is not of an administrative nature.</p> <p>Section 18(5) of the Act limits the Ombudsman’s jurisdiction in terms of grounds that can be considered:</p> <p><i>‘18(5) It is hereby declared that nothing in this Act authorises or requires the Ombudsman to question the merits of Government policy or a decision</i></p> <p><i>taken without maladministration by any Authority in the exercise of a</i></p> <p><i>discretion vested in that Authority.’</i></p> <p>Maladministration is not defined in the legislation.</p> <p>An explanation of the Ombudsman’s function given on website is in more user-friendly terms:</p> <p><i>‘To investigate and form opinions on complaints of defective public administration.</i></p> <p><i>To promote fairness in the administrative actions of government departments or entities.</i></p> <p><i>To provide a non-adversarial, professional, impartial and independent, investigative service in a timely, fair and sensitive manner.</i></p> <p><i>Investigate complaints without undue formality.’</i></p> <p>User-friendly lists of examples it can look at and ones it cannot is given on its website:</p> <p>http://www.ombudsman.org.gi/complaint/who-can-complain.htm</p> <p>Annual Report 2017 (on p.5) specifies that ‘The Ombudsman will investigate a complaint against a Public Service Provider who has:</p> |

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| | <ul style="list-style-type: none"> • failed to deal with a complaint adequately under its complaints procedure; • not followed its established administrative rules, procedures and practices; • failed to respond to letters or other correspondence promptly and satisfactorily; • treated a complainant unfairly, unreasonably or in an improper manner; • been careless or negligent in the service provided; • taken a decision based on irrelevant grounds or based on incorrect or incomplete information; • taken a decision without proper authority to do so; • taken too long to deal with a matter, without reasonable excuse |
| 9. | <p>What decisions are expressly excluded from Ombudsman jurisdiction?</p> <p>Exclusions include where Ombudsman considers that complainant has access to an alternative remedy through court or tribunal or specifically a claim for medical negligence. Also excludes:</p> <ul style="list-style-type: none"> • clinical judgment by medical professionals, including diagnoses and treatment • negligence or malpractice by doctors and other medical professionals • employment Issues such as recruitment; pay and conditions of employment; and contracts of employment • other issues that may be subject to legal proceedings before the courts or independent tribunals <p>With some exceptions, complaints must be about acts that occurred in Gibraltar 11(3) 1998 Act.</p> |
| 10 | <p>Who can complain?</p> <p>Complaints to the Ombudsman can be made by any member of the general public.</p> <p>Under section 11 of the Public Services Ombudsman Act, 'a complaint under this act may be made by any person aggrieved. Where the person aggrieved has died or is for any reason unable to act for himself, a complaint may be made on behalf of the person aggrieved by his personal representative, Guardian ad Litem, next friend, executor of executrix, administrator or administratrix'.</p> |
| 11 | <p>What are its governance arrangements?</p> <p>Under section 25 of the Constitution of Gibraltar, the Ombudsman is an officer of the Parliament. The Annual Report of the Ombudsman is required to be laid before the Parliament by the Chief Minister, within 60 days of its submission by the Ombudsman.</p> <p>Under Section 4 of the Public Services Ombudsman Act, 'the salary, expenses and allowances of the office of the Ombudsman shall be a charge on the Consolidated Fund without the need for appropriation'.</p> <p>The accounts of the Ombudsman are audited by the Principal Auditor and are published as part of the Annual Public Accounts of Gibraltar.</p> |

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| <p>12</p> <p>.</p> | <p>Who appoints the Ombudsman and by what process?</p> <p>Under Section 3 (2) of the Public Services Ombudsman Act, the Chief Minister may, from time to time, by notice in the Gazette appoint a person to be the Ombudsman.</p> <p>The appointment is normally for an initial term of 3 years and this comes into effect upon the Parliament confirming the appointment by way of resolution passed within 30 days of the appointment.</p> <p>Under Section 5(2) of the Act, ‘a person appointed under section 3(2) shall be eligible for reappointment on the completion of his first term of office for one or more consecutive terms none of which shall exceed 3 years’.</p> |
| <p>13</p> <p>.</p> | <p>What powers does it have to investigate?</p> <p>Wide powers to decide form of investigation – although has a duty to give the Authority an opportunity to comment on the complaint when it is received. Otherwise wide discretion:</p> <p><i>‘the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case’</i> (para 16(1) 1998 Act).</p> <p>Powers to obtain evidence same as those of Supreme Court:</p> <p><i>‘the Ombudsman may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented by counsel, solicitor or agent, in the investigation’</i> (para 15(2) 1998 Act)</p> <p>and</p> <p><i>‘the Ombudsman shall have the same powers as the Supreme Court in respect of attendance and examination of witnesses, including the administration of oaths or affirmations and the examination of witnesses abroad, and in respect of the production of documents’</i> (para 17(1) 1998 Act)</p> <p>The Ombudsman also has power to compel evidence from Ministers, although not where Chief Minister says disclosing such evidence would put at risk the Government’s relationship with other Governments; disclose proceedings of the Council of Ministers or any Committee of Ministers; would be harmful to the economy; prejudice criminal investigations or injure the public interest. This is quite broad discretion on the part of the Chief Minister and it would be interesting to see how that is interpreted and how it works in practice. See also paras 23(1) and (2) regarding the Chief Minister’s power to insist on nondisclosure in the public interest. In practice, the discretion that is available to the Chief Minister has never been exercised.</p> <p>Investigations must be conducted in private.</p> |
| <p>14</p> <p>.</p> | <p>What powers does it have to achieve resolution, including what remedies can be awarded?</p> <p>Remedies include:</p> <ul style="list-style-type: none"> • provide an apology |

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| | <ul style="list-style-type: none"> • give an explanation • correct an error • change its practices, procedures and systems <p>Also see the 'Principles for Remedy' that have been approved by Public Services Ombudsmen.</p> <p>Website states:</p> <p>'Some of the things we might ask a department or an entity to do are:</p> <ol style="list-style-type: none"> 1 improve its procedures so that similar problems do not happen again 2 take action or make a decision that it should have made before 3 reconsider a decision that it did not take properly in the first place 4 apologise to you' |
| 15 | <p>What powers does it have in cases of non-compliance?</p> <p>• The recommendations that are made by the Ombudsman are invariably respected and followed by Government departments. Cases of non-compliance are reported by the Ombudsman in the Annual Report to Parliament.</p> |
| 16 | <p>Does it have own-initiative power?</p> <p>• The Ombudsman may investigate any administrative action where a written complaint has been duly made by a member of the public and where the Ombudsman considers that it is right and proper to conduct an investigation in respect of such complaint (section 13 of the Public Services Ombudsman Act).</p> |
| 17 | <p>Time limits for submitting complaints to the Ombudsman</p> <p>• Complaints must be made within 6 months of the date when the complainant had notice of matters alleged – section 12 (1) of the Act.</p> <p>Notwithstanding the provisions of subsection (1), the Ombudsman may conduct an investigation pursuant to a complaint not made within the period therein limited, if the Ombudsman considers that there are special circumstances which make it proper to do so.</p> |
| 18 | <p>Size of organization</p> <p>• Number of operational complaints-handling staff: 6 (including the Ombudsman)</p> <p>Number of support staff: 2</p> <p>Total: 8</p> <p>The current approved complement of the office is 8, made up as follows:</p> |

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| | Public Services Ombudsman 1 Deputy Ombudsman 1 Executive Officer Grade 5 Administrative Officer Grade 1 |
| 19 | <p>What is its caseload (most recent completed year)?</p> <p>From Annual Report 2017:</p> <p>Total for year 2017: 802</p> <p>Total in jurisdiction: 731</p> <p>2017 (for Public Services Ombudsman):</p> <p>Enquiries: not recorded</p> <p>Complaints received in 2017: 434 (+84 brought forward from 2016)</p> <p>Complaints accepted: 358 (+84 brought forward from 2016)</p> <p>Complaints resolved: 348 'completed' (94 carried forward to 2018)</p> <p>Categories used:</p> <p>Relevant avenues not exhausted: 151</p> <p>Outside jurisdiction: 76</p> <p>Immediate resolution: 132</p> <p>Settled informally: 24</p> <p>Detailed Investigation: 41</p> <p>Of which:</p> <p>Upheld: 25</p> <p>Partly upheld: 5</p> <p>Not upheld: 11</p> <p>2017 (for Complaints Handling Scheme):</p> <p>Complaints about health are handled and logged separately. There were 402 complaints in 2017 against the Gibraltar Health Authority.</p> <p>A total of 368 of these complaints were received by the Complaints Handling Scheme ("CHS"), which deals with complaints against Departments of the Gibraltar Health Authority ("GHA"). The remaining 34 complaints against the GHA were received directly by the PSO.</p> |

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| | <p>Of the 368 complaints received by the CHS, a total of 18 were sent by the CHS to the PSO for more detailed investigation.</p> <p>In 2017 Health is biggest category of complaint by far, followed by Housing.</p> <p>Complaints Received in the last 3 years:</p> <p>PSO caseload (previous years):</p> <p>2014: 398 2015: 332 2016: 420 (PSO) (+ CHS: 399) (note CHS started dealing with health complaints in 2015 so 2016 is first year)</p> <p>See Annual report 2017 p. 64-65 for stats and breakdown of cases</p> |
| 20 | <p>Annual budget amount</p> <p>Total Budget of Ombudsman's Office for the financial year 2018/19 is £417k – see Estimates of Receipts and Payments – (published as Appendix A in Government Approved Estimates 2018/2019).</p> |
| 21 | <p>Funding arrangements</p> <ol style="list-style-type: none"> 1. Funding source: Contribution from Consolidated Fund 1998 Act states: 'The salary, expenses and allowances of the office of the Ombudsman shall be a charge on the Consolidated Fund without the need for appropriation' 2. Funding mechanism: see Approved Estimates of Receipts and Payments for 2018/2019 3. Cost for users (eg cost per case charged to bodies in jurisdiction): None. |
| 22 | <p>How do potential complainants contact the scheme? (in writing, referrals, telephone helpline, online, social media)</p> <p>Formal complaints have to be in writing, according to legislation (para 13(1)(a) 1998 Act), but complainants are able to call in to the Ombudsman's Office for an interview in person, which can be followed up by a formal complaint in writing.</p> <p>Subsequent contact can be by phone, email or in person at the office.</p> <p>Written complaint by letter or using complaint form. Form is downloadable from the website, or complainants can come into the office to fill out the complaint form</p> <p>Note: It has information on its website in Arabic and Spanish but primarily English.</p> |
| 23 | <p>Is there triage, signposting, etc if outside jurisdiction? If so, describe.</p> <p>Yes, triage - an assessment of eligibility, and if not accepted for investigation, reasons will be given. Some signposting offered by phone if complainants phone before submitting a complaint.</p> |

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| 24 . | <p>What complaint-handling processes are used (eg mediation, investigation, hearings)?</p> <p>Primary processes are:</p> <ol style="list-style-type: none"> 1. triage to assess if in jurisdiction and eligible; 2. send to Authority for comment; and 3. investigation. This might involve: <ul style="list-style-type: none"> • get further information from complainant or the relevant entity; • examine the department's files; • meet the complainant, or officials from the relevant entity; and • visit the site if appropriate |
| 25 . | <p>Use of informal resolution; method/s, rate, when and why applied</p> <p>'Informal action' is mentioned: 'resolved through informal action' is one category of outcome. But website notes that these are still thoroughly investigated: '...an exchange of communication between our office and the entity concerned during the investigation is always a predominant feature in these investigations'.</p> <p>The other category of outcome is investigated with full report:</p> <p>'report will be made available to the public and will be contained in our Annual Report.' But will not name parties.</p> |
| 26 . | <p>What remedies are awarded in practice?</p> <p>In practice, remedies recommended by the Ombudsman have included:</p> <ul style="list-style-type: none"> • the authority to provide an apology or explanation to the Complainant • the correction of an error • an agreement to change practices, procedures or systems • in limited cases, a recommendation for the authority to provide the complainant with financial redress |
| 27 . | <p>What is the level of compliance with recommendations (eg %) and any issues with compliance?</p> <p>'The investigations carried out by the Ombudsman's Office and the many recommendations made by the Ombudsman...are invariably respected and followed by Government Departments' and Public Service Providers (Annual Report 2017).</p> |
| 28 . | <p>In practice, what sanctions/procedures used if public body does not comply?</p> <p>Cases of non-compliance by a public body can be published in the Ombudsman's Annual report to Parliament.</p> |

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| 29 | <p>What role does it have in improving quality of administrative decision-making?</p> <ul style="list-style-type: none"> The Ombudsman has a role in identifying unfair and unjust administrative decision-making and recommending improvements going forward. Interesting case among investigation reports sampled that shows Ombudsman recommending change in housing allocation policy to encourage wealthier tenants to move – seems to consider fairness of policy: <p>http://www.ombudsman.org.gi/investigations-1/report-on-case-no-586</p> |
| 30 | <p>How does it raise public awareness of its role?</p> <ul style="list-style-type: none"> Requirement in legislation to publish Annual Report All investigation reports are published on website Guide to the Services provided by the Public Services Ombudsman published on website: <p>http://www.ombudsman.org.gi/announcements/guide-to-the-services-provided-by-the-public-services-ombudsman</p> |
| 31 | <p>Why was it established?</p> <ul style="list-style-type: none"> Started in 1999. Website states: <p>‘Perhaps it is significant and of interest to point out that at the 1987 ceremony marking the commencement of the legal year, the then leader of the Bar, the late Mr. Samuel Benady QC spoke on a matter of importance affecting the rights of the individual. Mr. Benady pointed out that Gibraltar lacked the machinery to protect the individual against any act of maladministration by a government department. He explained how other jurisdictions had already established the office of the Ombudsman and proposed that the time had come for the appointment of such an Ombudsman here in Gibraltar to act on behalf of the community.</p> <p style="text-align: right;">Mr. Benady stated:</p> <p><i>"The appointment of an Ombudsman would be a further assurance that those elected cannot, once in office, renege on their obligation to see justice done on behalf of every individual."</i></p> <p>Twelve years had to elapse before Mr. Benady's proposal materialised and the office was established. This came about after the Gibraltar Social Democrats (GSD), in their electoral manifesto, had pledged that if elected they would create such an authority.’</p> |
| 32 | <p>Interesting features/features unique to specific scheme</p> <ul style="list-style-type: none"> Mario Hook, second Ombudsman, served for 14 years. Ombudsman is the competent ADR authority for Gibraltar and so has a regulatory function in relation to approving ADR providers as part of the EU ADR Directive. |

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| | <p>See: http://ombudsman.dynamocms.com/adr.htm</p> <p>Richard Kirkham was commissioned to do an evaluation of the Gibraltar Ombudsman:</p> <p><i>'Dr Kirkham's Gibraltar evaluation has been presented to the Gibraltar chief minister and separately to senior figures in the Gibraltar government, with a view to introducing legislative reform. His recommendations include: expanding the office's jurisdiction, increasing legal powers and clarifying key details of the relationship between the ombudsman and the government in Gibraltar.'</i> https://www.sheffield.ac.uk/ourplan/guiding-principles/case-studies-archive/transforming-uk-ombudsmen-law-richard-kirkham-1.426452</p> <p>To help complainants make initial complaint to the government authority, the website provides a list of email addresses and phone numbers for departments:</p> <p>http://www.ombudsman.org.gi/relevant-entities.htm</p> |
| 33 | <p>Issues that need further exploration in follow-up interview</p> <p>Says that it carries out annual customer satisfaction surveys, but latest one on website is from 2011?</p> <p>http://www.ombudsman.org.gi/about/surveys.htm</p> <p>Para 20(5) of 1998 Act says that Chief Minister can insist on exclusions from the Annual Report – has this ever happened, and if so in what circumstances? [In practice, the discretion that is available to the Chief Minister has never been exercised]</p> <p><i>'20(5) In the event of the Chief Minister directing the exclusion of any material in the Annual Report pursuant to subsection (4), the Annual Report shall, nevertheless, contain a reference to the investigation and the fact that material has been excluded pursuant to subsection (4) on the ground of public interest at the direction of the Chief Minister pursuant to this section.'</i></p> <p>Note 2003 Supreme Court decision of Ombudsman vs Attorney General that involved non-disclosure of a report relevant to a complaint about police – disclosure was resisted on basis of public interest.</p> |
| 34 | <p>If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report)</p> <ul style="list-style-type: none"> - Annual Report 2017 <p>http://www.ombudsman.org.gi/annual_reports/Public%20Services%20Ombudsman%20Annual%20%20Report%202017.pdf</p> <ul style="list-style-type: none"> - Legislation: 1998 Ombudsman Act - Website - Further information sent by Ombudsman and changes made by him 2/7/18 |

12.4 Tynwald Commissioner for Administration (Isle of Man)

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| 1. | Name of ombuds/scheme Tynwald Commissioner for Administration (Isle of Man) |
| 2. | Contact name and details Malachy Cornwell-Kelly (appointed Nov 2017) ombudsman@parliament.org.im |
| 3. | Website URL http://www.tynwald.org.im/about/TCA/Pages/default.aspx |
| 4. | Membership of ombudsman organisations (eg OA, IOI, CAROA)? None (new scheme) |
| 5. | Population it serves and geographical scope 83,314 |
| 6. | Underpinning legislation (URL if available) Tynwald Commissioner for Administration Act 2011: http://www.legislation.gov.im/cms/images/phocadownload/Acts_of_Tynwald/Primary_2011/tynwaldcommissionerforadministrationact2011_v1.pdf Also: Appointed Day Order (June 2017): http://www.tynwald.org.im/links/tls/SD/2017/2017-SD-0198.pdf |
| 7. | What bodies are in jurisdiction? Website: <i>'to investigate complaints from members of the public who claim to have sustained injustice or hardship as a result of service failures by, or the administrative actions of, the Government Departments (including action taken on their behalf)'</i> . Bodies in jurisdiction are listed in Schedule 2 of the 2011 Act. They include Government departments, local authorities and other bodies. [Note: the scheme is in pilot phase and currently only covers central government (8 departments).] About Isle of Man Government Departments: |

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| | <p><i>‘There are eight Government Departments, each of which is a separate legal entity with its own functions, powers and responsibilities. Each is represented on the Council of Ministers by its Minister.</i></p> <p><i>The Departments account for the great bulk of Government’s personnel and budget and are the principal agencies through which public services are provided.</i></p> <p><i>Each Department is headed by its Minister and the functions of the Department are exercised by the Minister. Each Department has, in addition, one or more members, who are Members of Tynwald. The members are appointed by the Governor in Council and they may be authorised by the Minister to exercise any of his functions in his place, either alone or jointly with him or with any other person or persons.’</i></p> <p>The Departments are:</p> <p>Cabinet Office Education, Sport and Culture Enterprise Environment, Food and Agriculture Health and Social Care Home Affairs Infrastructure The Treasury.</p> <p>See link here to PDF showing departments and relevant ministers, heads etc: https://www.gov.im/media/629105/government-departments-chart-april-2018.pdf</p> |
| 8. | <p>How is its legal jurisdiction/scope/remit defined (e.g “maladministration”) – quote from legislation.</p> <p>The Act does not use the term ‘maladministration’ when defining legal scope. S.9 refers to ‘any action taken by or on behalf of a listed authority in the exercise of administrative functions of the authority’ and ‘any alleged service failure’ – defined as ‘any failure in a service provided by a listed authority [or] any failure of the listed authority to provide a service which it was a function of that authority to provide’ – thus covering public services by private providers.</p> <p>It does use the term later, when referring to complaints:</p> <p><i>‘The Commissioner may investigate a matter falling within section 9(1) by virtue of a complaint only if —</i></p> <p><i>(a) a member of the public claims to have sustained injustice or hardship in consequence of —</i></p> <p><i>(i) maladministration in connection with an action falling within paragraph (a) of that subsection; or</i></p> <p><i>(ii) a service failure...’</i></p> |
| 9. | <p>What decisions are expressly excluded from Ombudsman jurisdiction?</p> |

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| | <ul style="list-style-type: none"> • Police investigations or public security matters generally. • An investigation by a specially authorised investigator. • An issue already being investigated by a committee of Tynwald. • The taking or pursuing of proceedings before a court or tribunal. • Action in the court or tribunal administrations by a person acting under judicial authority. • Actions taken under the Criminal Injuries Compensation Scheme. • Personnel matters generally. • Teaching and related matters in schools. • Contractual or commercial issues, except those relating to the compulsory acquisition of land, or where the procedures prescribed in law have not been complied with. • Issues where there is by law a right of review or appeal such as to a tribunal or adjudicator, or a right to take proceedings in court, unless in any case the Commissioner considers it unreasonable to expect such a right to be exercised. <p>The Commissioner cannot look at proceedings of the Council of Ministers or its committees, or have access to documents in the custody of a Member or officer of Tynwald, the House of Keys or the Legislative Council.</p> <p>Note: during consultation on the draft bill consideration was given to a wider remit:</p> <p><i>‘Consideration has been given as to whether the Commissioner should be given a wider jurisdiction encompassing Police complaints and complaints against the Health Service. However such a broad jurisdiction would require legislation of some complexity and require an office and a large number of staff. The Commissioner and staff would be required to obtain a sizable knowledge about the different processes.</i></p> <p><i>It is felt that the investigation processes for the civil service, health service and the Constabulary are by their very nature different.’</i></p> |
| 10 | <p>Who can complain?</p> <p>• Must be resident of Isle of Man.</p> |
| 11 | <p>What are its governance arrangements?</p> <p>• The Commissioner is considered to be employed by Tynwald but Tynwald has no role in investigations.</p> |
| 12 | <p>Who appoints the Ombudsman and by what process?</p> <p>• The Commissioner is selected by a Selection Committee comprising: the Chair of the Tynwald Management Committee; the Chair of the Tynwald Public Accounts Committee; and the Chief Minister. The Committee then makes a recommendation to Tynwald, who make the appointment. Terms are determined by Tynwald after recommendation of Select Committee. The Commissioner is employed by Tynwald.</p> |

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| | <p>Required qualifications are: has an appropriate knowledge and experience of the law; and will command the confidence of the public and Tynwald. [Note, currently Commissioner and Assistant Commissioner are legally qualified.]</p> <p>The Commissioner is an officer of Tynwald and cannot be a member of Tynwald or an officer of a local authority or government department or member of the Constabulary.</p> <p>The Commissioner can also be appointed as Tynwald Auditor General.</p> <p>List of reasons why Tynwald can remove the Commissioner from office is at Schedule 1 to the 2011 Act, s8.</p> |
| 13 | <p>What powers does it have to investigate?</p> <p>• <i>‘The Commissioner is empowered to require the production of documents and the attendance of witnesses to the same extent as the High Court. There are strict provisions about the disclosure of confidential information, especially that relating to a person’s tax or customs affairs.’</i></p> |
| 14 | <p>What powers does it have to achieve resolution, including what remedies can be awarded?</p> <p>• All complaints investigated are reported on, and <i>‘sent to the complainant, the Department and the Council of Ministers, and it is laid before Tynwald and made available publicly’</i>.</p> <p>All decisions not to investigate are also reported publicly and laid before Tynwald.</p> <p>Decisions are not binding on the department:</p> <p><i>‘the Commissioner may request the Department to put it on hold if satisfied that the decision is likely to cause serious harm to the complainant. The Department then has a discretion whether or not to do so.’</i></p> |
| 15 | <p>What powers does it have in cases of non-compliance?</p> <p>• Appears none, but the Tynwald can decide to take it further:</p> <p><i>‘If a Department does refuse, then it is a matter for Tynwald to decide whether or not to take the case further.’</i></p> |
| 16 | <p>Does it have own-initiative power?</p> <p>• No.</p> |
| 17 | <p>Time limits for submitting complaints to the Ombudsman</p> <p>• As a new scheme, it can only consider complaints that arose on or after 31 December 2017. Complaints must be referred to the Commissioner within 6 months of final decision on internal complaints process of department.</p> |

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| <p>18</p> <p>.</p> | <p>Size of organisation</p> <p>Number of operational complaints-handling staff: 2 (Commissioner and Assistant Commissioner, both part-time)</p> <p>Number of support staff: 0, but ad hoc admin support when needed.</p> <p>When the <u>draft bill</u> was consulted on, it was said that it would be difficult to gauge demand so the Commissioner would not be on a full-time basis and would have no staff, but this would be kept under consideration.</p> <p><i>'5.1.4 Although it is not possible to fully gauge the volume and nature of the complaints which will go to the Commissioner it is not considered that there will be sufficient volume of complaints to merit the appointment of a Commissioner on a full time basis. Furthermore the Commissioner will not be provided with any independent administration staff.'</i></p> <p><i>5.1.5 Therefore it is proposed to establish a contracted Commissioner with no dedicated office support at this time.</i></p> <p><i>5.1.6 The part time appointment with no staff support will be closely monitored and the Bill will allow for the Commissioner to be appointed full time and for office accommodation to be provided.'</i></p> <p>Total: Currently the office is 2 (the part-time Commissioner and part-time Assistant Commissioner), but the Commissioner has power to appoint staff (2011 Act, Schedule 1, s.12)</p> <p><i>'The Commissioner may, with the approval of the Tynwald Management Committee as to numbers, appoint staff to assist in carrying out the Commissioner's functions.'</i></p> <p><i>The terms and conditions of appointment of such staff, including arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff of the Commissioner shall be determined by the Commissioner in accordance with overall annual financial limits determined by the Tynwald Management Committee.'</i></p> |
| <p>19</p> <p>.</p> | <p>What is its caseload (most recent completed year)?</p> <p>No trend yet available (new scheme). But in draft bill Impact Assessment this was said:</p> <p><i>'The last three Annual Complaints Reports show that the figure for unresolved complaints at the end of an average year is 15 but this figure could rise once the public and Officials know that the Commissioner is available to assist.'</i></p> <p>First Annual Report (July 2018)</p> <p>Enquiries: 9 Complaints received: 9 Complaints accepted: 2 Complaints resolved: 1 (no maladministration)</p> |
| <p>20</p> <p>.</p> | <p>Annual budget amount</p> |

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| | <p>Not known, but estimated at £20K annually (based on 26 hours per month). Commissioner and Assistant Commissioner paid on fee basis as consultants. Note that in the draft bill Impact Assessment one suggestion was that the Commissioner should be paid at the same rate as the High Bailiff. But the 'preferred option' suggested an hourly contractual basis:</p> <p><i>'Council propose that the Commissioner be contracted for a certain amount of hours per month at an hourly rate with the flexibility for additional hours if this should prove necessary, dependent on workload etc.</i></p> <p><i>No Staff or office space will be provided at this time. The Commissioner will work from home and carry out any administration. Office supplies, computers etc. will be provided.</i></p> <p><i>Costs will include -</i></p> <ul style="list-style-type: none"> <i>• one off costs of computer equipment and a mobile phone;</i> <i>• on-going costs associated with salary and office supplies.'</i> <p>Other options considered were F/T Commissioner with administrative staff either employed or on retainer. Cost of preferred option was estimated at <£20K annually based on 26 hours per month of Commissioner time.</p> <p>The Impact Assessment said that Financial Benefits were unknown but <i>'there will be savings from Government Officials and Tynwald Members not being involved in a continuing process. There may be savings from improved administration practices and procedures.'</i></p> |
| 21 | <p>Funding arrangements</p> <p>Funding source: General Revenue (the salary, pension and allowances of the Commissioner and any expenses incurred by the Commissioner in the exercise of the Commissioner's functions)</p> <p>Funding mechanism: Likely to be classified with the Expenses of the Legislature</p> <p>Cost for users (eg cost per case charged to bodies in jurisdiction): none</p> |
| 22 | <p>How do potential complainants contact the scheme? (in writing, referrals, telephone helpline, online, social media)</p> <p>Complaints must be in writing (email or post).</p> |
| 23 | <p>Is there triage, signposting, etc if outside jurisdiction? If so, describe.</p> <p>There are requirements in the Act on government departments to publicise the existence of the Commissioner and the right to take a complaint (S.27).</p> |
| 24 | <p>What complaint-handling processes are used (eg mediation, investigation, hearings)?</p> |

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| | The Act states that the procedure to be used is ‘as the Commissioner thinks fit’. At Commissioner’s discretion: ‘face to face interviews may take place, site visits may be required or matters may be dealt with in writing’. |
| 25 . | Use of informal resolution; method/s, rate, when and why applied None. |
| 26 . | What remedies are awarded in practice? Too soon to tell (the only completed investigation resulted in no maladministration finding), but likely to be ‘classic remedies’ of apology, re-taking of decisions, reform of procedures and financial compensation. |
| 27 . | What is the level of compliance with recommendations (eg %) and any issues with compliance? Too soon to tell. |
| 28 . | In practice, what sanctions/procedures used if public body does not comply? No sanctions from Commissioner, but Tynwald can debate and take further. |
| 29 . | What role does it have in improving quality of administrative decision-making? Will be evidenced in Annual Report. |
| 30 . | How does it raise public awareness of its role? Nothing yet – only has page on Tynwald website, but might have independent website at some point. |
| 31 . | Why was it established? Useful to look at the Impact Assessment of the <u>draft bill for consultation</u> . It sets out the reasoning for an Ombudsman and the potential impacts. Eg: <i>‘Most Western democracies have a system where an independent, non-government official will investigate complaints from the public about the administrative actions of public authorities (including government departments, boards and offices and agencies funded by government). The proposed Bill will introduce this system to the Isle of Man and will provide for an impartial form of alternate dispute resolution which will be flexible and accessible.’</i> In contrast, the ‘Do Nothing’ option said: <i>‘The option of retaining the status quo may lead to the Isle of Man being perceived as falling behind other Western democracies in being open to public inspection and censure.’</i> Establishment of an Ombudsman was recommended in a Council of Ministers Report in 2004. The <u>draft bill</u> was brought in 2009 alongside one for the Auditor General to strengthen scrutiny across government ‘as it is felt that the two Bills together will ensure |

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| | <p><i>good governance and provide the public with confidence that the Government is concerned about how it deals with members of the public and with public money. ... By making it explicit that public bodies are expected to meet high standards it can give confidence to potential partners, the public, private, or voluntary sectors, and to the people of the Isle of Man.'</i></p> <p><i>'The purpose of the Bill will be to introduce a formalised independent system whereby complaints against public bodies can be addressed, and the processes and decisions of public bodies thoroughly investigated by a person external from Government.'</i></p> |
| 32 | <p>Interesting features/features unique to specific scheme</p> <p>The Commissioner can pay expenses for complainant and others 'by way of compensation for loss of time' (Act 2011, S.15(5) – although it appears this has to be approved by Tynwald. How often does it happen?</p> <p>S22(4) of 2011 Act explains that it's an offence to prevent someone from making a complaint or to take repercussions against someone who has made a complaint to the Commissioner. Is this unusual? Perhaps helpful in small jurisdictions?</p> |
| 33 | <p>Issues that need further exploration in follow-up interview</p> <p>Need information on caseload, budget and relationship with Tynwald. Also if possible information on compliance levels and sanctions (if any) for non-compliance.</p> |
| 34 | <p>If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report)</p> <p>Very basic information on Commissioner page on Tynwald website: http://www.tynwald.org.im/about/TCA/Pages/default.aspx</p> <p>Legislation – 2011 Act</p> <p>Draft Bill 2009: https://www.gov.im/lib/docs/co/consultations/commissioner.pdf</p> <p>First Annual Report July 2018</p> |

12.5 Ombudsman Sint Maarten

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| 1. | <p>Name of ombuds/scheme</p> <p>Ombudsman Sint Maarten</p> |
| 2. | <p>Contact name and details</p> <p>Rachnilda J.A. Arduin, aka Nilda Arduin, Ombudsman info@ombudsmansxm.com http://www.ombudsmansxm.com/contact.php</p> |

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| 3. | Website URL http://www.ombudsmansxm.com |
| 4. | Membership of ombudsman organisations (eg OA, IOI, CAROA)? Member of IOI and of CAROA |
| 5. | Population it serves and geographical scope 39,410 |
| 6. | Underpinning legislation (URL if available) Ordinances governing the tasks and competences of the Ombudsman: The Constitution of Sint Maarten (AB 2010 no. I) http://www.ombudsmansxm.com/documents.php?id=11 'Article 78 1. There shall be an Ombudsman. 2. The Ombudsman shall undertake investigations, if requested to do so or on his own initiative, into the conduct of administrative bodies of the Country and of other administrative bodies designated by national ordinance. 3. The Ombudsman shall be appointed by the States for a period of seven years and shall be eligible for reappointment on one occasion. He shall resign either at his own request or when he attains such age as may be determined by national ordinance. 4. He may be suspended or dismissed by the States in circumstances specified by national ordinance. His legal position shall be otherwise regulated by national ordinance. 5. The powers and procedure of the Ombudsman shall be regulated by national ordinance. 6. Other duties may also be assigned to the Ombudsman in terms of national ordinance.' Article 127 Sub 2: providing for an exclusive mandate to the Ombudsman to submit a legal instrument to the Constitutional Court within six weeks of ratification for review on contravention with the Constitution. The National Ordinance Ombudsman (AB 2010 no. 20) http://www.sintmaartengov.org/government/AZ/laws/Organic%20Laws/AB%202010,%20GT%20No.%2020_Landsverordening%20ombudsman.pdf Contains details of Ombudsman appointment and procedures. The National Ordinance Constitutional Court (AB 2010 no.29) |

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| | http://www.ombudsmansxm.com/documents.php?id=13 [Only available in Dutch] |
| 7. | What bodies are in jurisdiction? Specific list of bodies not found. A (tentative) list is published on the scheme website. The website states: 'complaints filed against a civil servant, government body or government entity charged with public authority for behavior or conduct exhibited in the execution of their function'. Entities charged with public authority have been defined by the Ombudsman based on three criteria: 1) provision by law, 2) subsidy 3) relevance/impact on the community. |
| 8. | How is its legal jurisdiction/scope/remit defined (e.g. "maladministration") – quote from legislation. Not found. The website states: <i>'The Ombudsman investigates the conduct of government in the relationship with its citizens that goes beyond the written laws: the Ombudsman investigates "propriety" in accordance with the rules of conduct /standards of proper conduct developed to promote 'good governance.'</i> 'Propriety' in the broadest sense of the word is investigated; infringements on fundamental human rights, procedural and substantive propriety, as well as administrative accuracy, which includes maladministration, are investigated. |
| 9. | What decisions are expressly excluded from Ombudsman jurisdiction? The following bodies are not in jurisdiction: Parliament Court of Justice Electoral Board Art 17 of Ombudsman Ordinance excludes the following: <i>'if the issue is part of the general policy of a governing body; b. related to generally binding regulations; c. if, with regard to the conduct, an administrative, civil or criminal procedure is in process or an administrative decision was made.'</i> |
| 10 | Who can complain? . Any 'natural person' or legal entity |
| 11 | What are its governance arrangements? . The Ombudsman is an independent one-headed institution, supported by a Bureau, appointed by and accountable to the Ombudsman. The Ombudsman reports to Parliament |

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| | but is not subject to instructions from Parliament. The competence and authorities of the Ombudsman are governed by the Ombudsman Ordinance. |
| 12 | Who appoints the Ombudsman and by what process? . Appointed by Parliament for 7-year term (renewable once). Ombudsman must be of Dutch nationality and a resident of Sint Maarten. |
| 13 | What powers does it have to investigate? . Procedure and powers are set out in Arts 19 and 20 of Ombudsman Ordinance. Ombudsman can request documents and information and parties are obliged to comply – but powers not described as those of High Court or similar as in other schemes. |
| 14 | What powers does it have to achieve resolution, including what remedies can be awarded? . Article 16 of Ombudsman Ordinance suggests the Ombudsman will only investigate but also ‘may present proposals to the complainant and the governing body, during the investigation to resolve the problem among them’. Ombudsman has to give preliminary findings to department or civil servant and give opportunity to comment. Investigations of the Ombudsman are also subject to the principles of propriety. As such a PFR is presented to both parties for comments. The Ombudsman does not have coercive powers, only reporting to Parliament, which has the power to summon the government bodies. Year reports published on the website www.ombudsmansxm.com for information regarding complaint handling in practice and compliance (in particular YR 2016 and 2017). |
| 15 | What powers does it have in cases of non-compliance? . Publication and reporting to Parliament. |
| 16 | Does it have own-initiative power? . Yes. |
| 17 | Time limits for submitting complaints to the Ombudsman . Complaints must be made within one year of the time of the conduct complained of (Ombudsman Ordinance Art 17). This is at the discretion of the Ombudsman. |
| 18 | Size of organisation . Number of operational complaints-handling staff: 2 plus Ombudsman Number of support staff: 3 Total: 6 (including Ombudsman) |

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| | <p>'In accordance with the National Ordinance Ombudsman the Ombudsman is supported by a Bureau.' This appears to be:</p> <p>Secretary General Complaint Officer Legal Advisor All-Around Administrator Complaint Officer</p> <p>The All-Around Administrator handles the front office, attending to questions from the public, while the Legal Advisor leads the investigation team. The small scale of the staff requires multi-tasking.</p> |
| 19 | <p>What is its caseload (most recent completed year)?</p> <p>In 2017 Annual Report (most recent published annual report):</p> <p>Enquiries: 267-(364 in 2016) (Referred to as Information Window)</p> <p>Complaints received and investigated:</p> <p>'Cases' received = 70</p> <p>Complaints accepted: n/a</p> <p>Complaints resolved: n/a</p> <p>In 2017, 29% of complaints received were handled and closed without investigation.</p> <p>Note: Enquiries are listed separately in 2017 Annual Report:</p> <p><i>'A separate registration 'Information Window' is kept for inquiries, which fall outside the jurisdiction of the Ombudsman, or do not comply yet with the duty to inform the governing body prior to a complaint being filed with the Ombudsman. All visitors are ...directed to the competent entities or are provided information or assistance to address the pertinent administrative body.'</i></p> <p>Cases received in previous years:</p> <p>2016: 78 2015: 70 2014: 68 2013: 62</p> <p>Ministry of Justice and Ministry of Tourism were the departments with largest number of complaints.</p> |
| 20 | <p>Annual budget amount</p> <p>Annual Report notes that in 2016 the budget given to the Ombudsman was Nafl. 1.543.550,00. [Currency converter says this is about £641k]</p> |

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| | <p>Staff costs = Nafl 874,495.68 [approx. £364k]</p> <p>Note: Article 8 of National Ordinance Ombudsman states:</p> <p><i>'Article 8</i></p> <p><i>1. The Ombudsman shall enjoy an annual remuneration equal to scale 17 of the remuneration in effect for civil servants. The remuneration shall be indexed in the same manner as the remuneration of civil servants. 2. The Ombudsman shall enjoy an allowance for representation, of six per cent of his remuneration.'</i></p> <p>Article 12 refers to the budget of the office and the Ombudsman's role in setting up the office:</p> <p><i>'Article 12</i></p> <p><i>1. There is an Ombudsman office. The budget and financial reporting of this office form part of the budget, respectively the account of the general affairs ministry of the country.</i></p> <p><i>2. Parliament, in agreement with him and the minister in question, shall provide the Ombudsman with all facilities necessary for the proper and independent performance of his duties.</i></p> <p><i>3. The Ombudsman shall establish the working procedures and the lay out of the office.'</i></p> |
| 21 | <p>Funding arrangements</p> <ul style="list-style-type: none"> • Funding source: The budget of the country Sint Maarten. • Funding mechanism: The government's budget. • Cost for users (eg cost per case charged to bodies in jurisdiction): None. |
| 22 | <p>How do potential complainants contact the scheme? (in writing, referrals, telephone helpline, online, social media)</p> <p>Article 15 of Ordinance says complaints must be in writing and complainants can ask for assistance to do this. Website explains that complaints:</p> <ul style="list-style-type: none"> • must be in writing; • must have the name and address of the complainant; • clear description of the conduct against which the complaint is directed; • indication of the institution and, where applicable, the official against whom the complaint is directed; • a description where, when and against whom conduct took place; • why the complainant feels affected by the conduct; • date of conduct; • the complainant must notify the government body, or if applicable the civil servant about the grievances; they must be given ample time (at least one month) to respond/deal with the complaint. <p>A Complaint form, containing all legal requirements is provided to the public via the website, upon request via email, or at the offices of the Ombudsman.</p> |

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| 23 . | <p>Is there triage, signposting, etc if outside jurisdiction? If so, describe.</p> <p>Website mentions 'screening', which appears to be an initial check that complaint is in jurisdiction. Other than that all complaints appear to go to Investigation Plan.</p> |
| 24 . | <p>What complaint-handling processes are used (eg mediation, investigation, hearings)?</p> <p>Investigation and hearings, as well as 'ombudsmediation', a form of mediation developed with the mandate of the Ombudsman in mind.</p> |
| 25 . | <p>Use of informal resolution; method/s, rate, when and why applied</p> <p>Intervention proposals offering a possible solution prior to the start of a formal investigation.</p> |
| 26 . | <p>What remedies are awarded in practice?</p> <p>See recommendations in YR 2016 and 2017.</p> <p>The majority of recommendations issued were geared towards a quick solution of the complaint, short term (63.3%). Approximately thirty percent (26.7%) were long term recommendations, which require implementation of improved information or administrative procedures and or policies. In 10% of the cases government was recommended to revisit (3.3%) or review (6.7%) existing regulations (Annual Report 2017).</p> |
| 27 . | <p>What is the level of compliance with recommendations (eg %) and any issues with compliance?</p> <p>Annual Report 2016 notes that about 2/3 of cases where recommendations were made in 2015 met with full compliance. Compliance appears to have increased in 2016, with 15 of 16 cases meeting with full compliance and in 2014 only 43% of recommendations complied with. Annual Report also notes follow up on recommendations has been a weakness and is being improved:</p> <p>'Follow up to recommendations issued has been a weakness in the first years of the Institution. With the introduction of an improved registration system in 2016, this part of the investigation procedure could be better monitored. Notwithstanding the reasonable progress made in this area, obtaining timely status reports regarding the implementation of recommendations remains a bottleneck to be dealt with in 2017.'</p> <p>It also discusses that recommendations are discussed early on with the govt body, and this 'could be an indication that the Ministries take the complaints and recommendations rather serious, and try to solve the problem in an early stage through the intervention of the Ombudsman. Full compliance with the recommendations and reporting regarding the implementation need however be improved'.</p> |
| 28 . | <p>In practice, what sanctions/procedures used if public body does not comply?</p> <p>Publication, media exposure, reporting to Parliament.</p> |

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| 29 | <p>What role does it have in improving quality of administrative decision-making?</p> <p>Not found, but see work on compliance with recommendations detailed in 2016 Annual Report.</p> |
| 30 | <p>How does it raise public awareness of its role?</p> <p>Media campaign, Annual Open House at the Office, involvement of high schools, information evenings at community centres, talks upon invitation to service clubs and other civic organizations, press releases, radio and television interviews etc.</p> |
| 31 | <p>Why was it established?</p> <p>From website:</p> <p><i>‘The Ombudsman Sint Maarten was founded on October 10th 2010 by National Ordinance Ombudsman (AB 2010 no.20). As one of the High Councils of State its legal origin is founded in the Constitution of Sint Maarten (article 78) and as such its independence is safeguarded. The first Ombudsman of Sint Maarten is Dr. Rachnilda (Nilda) J.A. Arduin.’</i></p> <p>On 10 October 2010 Sint Maarten got an autonomous status within the Kingdom of the Netherlands.</p> |
| 32 | <p>Interesting features/features unique to specific scheme</p> <p>From website:</p> <p><i>‘As the first National Ombudsman of Sint Maarten she holds this position since October 10, 2010 when Sint Maarten acquired an autonomous status within the Kingdom of The Netherlands, and is charged by the Constitution with investigating conduct of Government and Government entities with public authority. Investigations are initiated through complaints filed by citizens, or on her own initiative. As Ombudsman she is also the Guardian of the Constitution, authorized to challenge a law, approved by Parliament and ratified by the Government of Sint Maarten, by presenting same to the Constitutional Court for constitutional review. This task and authority is unique within the Dutch Kingdom. History was made within the Dutch Kingdom when Dr. Arduin on January 23, 2013 presented her first petition to the Constitutional Court for constitutional review.’</i></p> <p>The Ombudsman also has a role in lawmaking:</p> <p><i>‘According to the Constitution only the Ombudsman can submit new laws and regulations, that seem to be in conflict with the Constitution, for partial or total annulment to the Constitutional Court. This has to be done in writing within 6 weeks after ratification of the law. Exceptions: Uniformed laws (in association with Aruba, Curaçao and Sint Maarten) and Laws of an urgent nature.’</i></p> <p>Annual Report has a lot of detail on compliance with recommendations by departments.</p> |
| 33 | <p>Issues that need further exploration in follow-up interview</p> <p>Jurisdiction issues need clarifying. There is mention of ‘conduct’ complaints against individual civil servants, which is not usual Ombudsman fare.</p> |

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| | Cannot locate specific definition for jurisdiction or list of bodies in jurisdiction. Possibly English translation of legislation not very clear on these. See website for tentative list of Government bodies with public authority in addition to the government administration/ Ministries and civil servants. |
| 34 . | <p>If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report)</p> <p>Website</p> <p>Most recent Annual Reports (2016 and 2017)</p> <p>Legislation</p> |

12.6 Ombudsman Antigua and Barbuda

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| 1. | <p>Name of ombuds/scheme</p> <p>Ombudsman Antigua and Barbuda</p> |
| 2. | <p>Contact name and details</p> <p>Dr Marion Blair ombudsman@antigua.gov.ag</p> <p>Note: the office was vacant from 2014 to 2016, when current Ombudsman was appointed.</p> |
| 3. | <p>Website URL</p> <p>Website not working: www.ombudsman.gov.ag</p> <p>Has Facebook page but empty: https://www.facebook.com/pages/Office-of-the-Ombudsman-Antigua/1001213333304268</p> <p>IOI website has some info: http://www.theioi.org/ioi-members/caribbean-latin-america/antigua-barbuda/ombudsman</p> |
| 4. | <p>Membership of ombudsman organisations (eg OA, IOI, CAROA)?</p> <p>Member of CAROA, IOI</p> |
| 5. | <p>Population it serves and geographical scope</p> <p>86,295</p> |
| 6. | <p>Underpinning legislation (URL if available)</p> |

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| | <p>Ombudsman Act 1994</p> <p>Web link available on IOI website: http://www.theioi.org/ioi-members/caribbean-latin-america/antigua-barbuda/ombudsman</p> |
| 7. | <p>What bodies are in jurisdiction?</p> <p>Not found.</p> |
| 8. | <p>How is its legal jurisdiction/scope/remit defined (e.g “maladministration”) – quote from legislation.</p> <p>Not found.</p> |
| 9. | <p>What decisions are expressly excluded from Ombudsman jurisdiction?</p> <p>Not found.</p> |
| 10 | <p>Who can complain?</p> <p>Not found.</p> |
| 11 | <p>What are its governance arrangements?</p> <p>Not found.</p> |
| 12 | <p>Who appoints the Ombudsman and by what process?</p> <p>Not found.</p> |
| 13 | <p>What powers does it have to investigate?</p> <p>Not found.</p> |
| 14 | <p>What powers does it have to achieve resolution, including what remedies can be awarded?</p> <p>Not found.</p> |
| 15 | <p>What powers does it have in cases of non-compliance?</p> <p>Not found.</p> |
| 16 | <p>Does it have own-initiative power?</p> <p>Not found.</p> |
| 17 | <p>Time limits for submitting complaints to the Ombudsman</p> |

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| | Not found. |
| 18 | Size of organisation . Not found. In 2007 the Annual Report identifies staff total as 8: 1 ombudsman, 1 investigating officer (on secondment), 1 assistant investigating officer (also the office manager), 1 senior clerk, 1 petty officer, 1 cleaner, 1 driver, 1 groundsman No of operational complaints-handling staff: not found No of support staff: not found |
| 19 | What is its caseload (most recent completed year)? . Not found. Annual Report 2007 says there were 78 cases received that year. Not broken down by enquiries versus complaints accepted. |
| 20 | Annual budget amount . Not found. |
| 21 | Funding arrangements . Funding source: Not found. Funding mechanism: Not found. Cost for users (eg cost per case charged to bodies in jurisdiction): Not found. |
| 22 | How do potential complainants contact the scheme? (in writing, referrals, telephone helpline, online, social media) . Not found. |
| 23 | Is there triage, signposting, etc if outside jurisdiction? If so, describe. . Not found. |
| 24 | What complaint-handling processes are used (eg mediation, investigation, hearings)? . Not found. |
| 25 | Use of informal resolution; method/s, rate, when and why applied . Not found. |
| 26 | What remedies are awarded in practice? . Not found. |

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| 27 . | What is the level of compliance with recommendations (eg %) and any issues with compliance? Not found. |
| 28 . | In practice, what sanctions/procedures used if public body does not comply? Not found. |
| 29 . | What role does it have in improving quality of administrative decision-making? Not found. |
| 30 . | How does it raise public awareness of its role? Not found. |
| 31 . | Why was it established? Not found. |
| 32 . | Interesting features/features unique to specific scheme Not found. Not clear if it is an active organisation. |
| 33 . | Issues that need further exploration in follow-up interview The 2007 Annual Report notes that unresponsiveness from departments and public officers was an ongoing issue. |
| 34 . | If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report) No sources found other than CAROA description and Annual Report from 2007 (found on IOI website at: http://www.theioi.org/ioi-members/caribbean-latin-america/antigua-barbuda/ombudsman) |

12.7 Barbados Ombudsman

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| 1. | Name of ombuds/scheme Barbados Ombudsman |
| 2. | Contact name and details |

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| | Valton Bend ombudsman@caribsurf.com |
| 3. | <p>Website URL</p> <p>No website found.</p> <p>Listed on the IOI members' section:</p> <p>http://www.theioi.org/ioi-members/caribbean-latin-america/barbados/ombudsman</p> <p>This is only the legislation (Ombudsman Act) and an organisational chart.</p> |
| 4. | <p>Membership of ombudsman organisations (eg OA, IOI, CAROA)?</p> <p>Member of IOI and CAROA</p> |
| 5. | <p>Population it serves and geographical scope</p> <p>Population 285,719</p> |
| 6. | <p>Underpinning legislation (URL if available)</p> <p>Known as Ombudsman Act - L.R.O. 1995 Ombudsman CAP. Chapter 8A (Jan 1981) (PDF available)</p> |
| 7. | <p>What bodies are in jurisdiction?</p> <p>Ombudsman Act states that Ombudsman can investigate <i>'any course of conduct or anything done or omitted by any person in the exercise of administrative functions respecting any business of the Government, including the administration of any statutory board or department of the Government responsibility for which has been assigned to the Prime Minister or any other Minister pursuant to section 72 of the Constitution, not being functions concerned with a matter specified in the Second Schedule.'</i></p> <p>Cannot locate a list of bodies in jurisdiction.</p> |
| 8. | <p>How is its legal jurisdiction/scope/remit defined (e.g "maladministration") – quote from legislation.</p> <p>Ombudsman Act states that the Ombudsman will 'investigate and report upon allegations of improper, unreasonable or inadequate administrative conduct'.</p> <p><i>'The purpose of an investigation by the Ombudsman shall be to ascertain whether injustice has been caused by improper, unreasonable or inadequate administrative conduct on the part of a government ministry, department or other authority subject to this Act.'</i></p> |
| 9. | <p>What decisions are expressly excluded from Ombudsman jurisdiction?</p> <p>Ombudsman Act states Ombudsman can't investigate: 'any case where, in his opinion, the complainant would at any time have had a remedy or right of appeal in a court of law,</p> |

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| | <p>tribunal or similar body' (but gives Ombudsman discretion to investigate if not reasonable for complainant to pursue those).</p> <p>Also, Schedule 2 of Ombudsman Act lists matters not subject to investigation (civil and criminal proceedings, actions relating to foreign governments, commercial matters, medical clinical judgment, regulation of public utilities, granting of licenses, etc).</p> |
| 10 | <p>Who can complain?</p> <p>Any person but must be a citizen or resident of Barbados at the time.</p> |
| 11 | <p>What are its governance arrangements?</p> <p>The Ombudsman reports to Parliament.</p> |
| 12 | <p>Who appoints the Ombudsman and by what process?</p> <p>Appointed by Governor General on recommendation of the Prime Minister; appointment to be approved by Parliament.</p> |
| 13 | <p>What powers does it have to investigate?</p> <p>Power to determine procedure for investigation, which must be in private. Also powers of High Court in obtaining information and evidence and in access to premises.</p> |
| 14 | <p>What powers does it have to achieve resolution, including what remedies can be awarded?</p> <p>Not found.</p> |
| 15 | <p>What powers does it have in cases of non-compliance?</p> <p>Not found.</p> |
| 16 | <p>Does it have own-initiative power?</p> <p>It appears not. But see S 13(2) of Ombudsman Act, which refers to own initiative.</p> |
| 17 | <p>Time limits for submitting complaints to the Ombudsman</p> <p>Complaint must be made within 12 months of when complainant knew of the problem/facts.</p> |
| 18 | <p>Size of organisation</p> <p>Total: 7 (including Ombudsman)</p> <p>Number of operational complaints-handling staff: Possibly 2: 1 Ombudsman, 1 Investigations officer</p> |

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| | Number of support staff: Possibly 5: 1 executive officer, 1 clerk-typist, 1 secretary, 1 driver/messenger, 1 maid |
| 19 . | What is its caseload (most recent completed year)? Enquiries: Not found. Complaints received: Not found. Complaints accepted: Not found. Complaints resolved: Not found. |
| 20 . | Annual budget amount Not found. Governor General sets Ombudsman's salary. |
| 21 . | Funding arrangements Funding source: Not found. Funding mechanism: Not found. Cost for users (eg cost per case charged to bodies in jurisdiction): Not found. |
| 22 . | How do potential complainants contact the scheme? (in writing, referrals, telephone helpline, online, social media) Not found. |
| 23 . | Is there triage, signposting, etc if outside jurisdiction? If so, describe. Not found. |
| 24 . | What complaint-handling processes are used (eg mediation, investigation, hearings)? Not found, but no mention of mediation or hearings. |
| 25 . | Use of informal resolution; method/s, rate, when and why applied Not found, but no mention in legislation. |
| 26 . | What remedies are awarded in practice? Not found. Compensation is mentioned in legislation. |
| 27 . | What is the level of compliance with recommendations (eg %) and any issues with compliance? Not found. |

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| 28 | <p>In practice, what sanctions/procedures used if public body does not comply?</p> <p>Not found.</p> |
| 29 | <p>What role does it have in improving quality of administrative decision-making?</p> <p>Not found.</p> |
| 30 | <p>How does it raise public awareness of its role?</p> <p>Not found.</p> |
| 31 | <p>Why was it established?</p> <p>Not found. Office was established in 1987, six years after legislation was enacted.</p> |
| 32 | <p>Interesting features/features unique to specific scheme</p> <p>None found – need more information.</p> |
| 33 | <p>Issues that need further exploration in follow-up interview</p> <p>Lots of gaps in information but in particular need info on caseload, budget, effectiveness.</p> <p>Press article (Feb 2018) suggests not many people have heard of the Ombudsman and not much information is in public domain:</p> <p>https://www.pressreader.com/barbados/daily-nation-barbados/20180214/281745564853533</p> |
| 34 | <p>If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report)</p> <p>Only sources found are on IOI website (legislation and organisational chart).</p> <p>Article from 2010 by Najmul Abedin:</p> <p><i>‘Sir Frank Blackman, the first Ombudsman of Barbados (1987-1993), had also repeatedly expressed over a fairly long period of time serious concern over the inadequacy of the financial independence of his office. He emphasized “the need to safeguard and to show clearly, the independence conferred by law on the Ombudsman in carrying out his responsibilities.” He further pointed out that “in this connection it was therefore disappointing, and tending towards alarm to have had the Estimates of Expenditures for my office” as a subhead of a particular Ministry [i.e., Ministry of Finance]’ (Ombudsman of Barbados, 1989, para. 12; also see Ombudsman of Barbados, 1990, para. 12-13; Sunday Advocate, 1990). However, in a later report (Ombudsman of Barbados, 1991, para. 12) he was “happy to record that the matter has been remedied.” But the government took more than five years to make this change.’</i></p> |

12.8 Office of the Ombudsman, Cook Islands

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| 1. | Name of ombuds/scheme: Te Mato Akamoeau, Office of the Ombudsman |
| 2. | Contact name and details: Ombudsman Mr Tearoa John Tini Assistant Ombudsman - Jeannine Daniel Email: complaints@ombudsman.gov.ck |
| 3. | Website URL: www.ombudsman.gov.ck – not available, but see http://www.mfem.gov.ck/rmd/87-anti-corruption/477-te-mato-akamoeau-office-of-the-ombudsman |
| 4. | Membership of ombudsman organisations (eg OA, IOI, CAROA)? IOI http://www.theioi.org/ioi-members/australasia-pazifik/cook-islands/national-ombudsman Pacific Ombudsman Alliance http://www.pacificombudsman.org/about ‘The Pacific Ombudsman Alliance provides a sustainable vehicle to meet the Pacific Plan’s call for coordinated regional ombudsman services. The Pacific Ombudsman Alliance serves to strengthen regional cooperation and coordination between Pacific Island ombudsmen, those working to establish ombudsman functions and like agencies. The Alliance is a service delivery and support initiative based primarily on mutual support, sharing resources, peer review and a possibility of trials for pooling some resources’ (https://www.ombudsman.gov.au/data/assets/pdf_file/0024/31398/May-2009-Complaint-Handling-in-Pacific-Island-Nations-without-an-Ombudsman.pdf) |
| 5. | Population it serves and geographical scope: 17,380 15 small islands scattered over 2 million km squared of the South Pacific. Spread in population between the mainland capital, Rarotonga, and the Outer Islands mean inequality in terms of delivery of public services. (Wikipedia) |
| 6. | Underpinning legislation (URL if available) Ombudsman Act 1984 The Ombudsman New Schedule Order (increasing jurisdiction) Official Information Act 2008 Disability Act 2008 Police Act 2012 |

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| | <p>Legislation link-below- not working</p> <p>(PS. legal system is based on New Zealand and English common law)</p> |
| 7. | <p>What bodies are in jurisdiction?</p> <p>Public sector administration including local government. See schedule attached to the 1984 Act. Includes government departments as well as Resident Engineer's Office; Office of the Public Service Commissioner ;Ministry of Outer Island Affairs & Local Government; Post Office; Parliament Services; Crown Law Office; Police Department</p> <p>Public sector administration including local government. The 2007 Order increased jurisdiction to include investigating public sector agencies with respect to freedom of information requests.</p> <p>Investigates complaints received from the general public, but is also mandated to initiate an investigation of own motion. It is also responsible for investigating complaints under the Official Information Act, Disability Act and the Police Act. It was tasked by Cabinet to set up a Human Rights mechanism within the Cook Islands</p> <p>In November 2007, the Cabinet appointed the Ombudsman to head the Cook Islands Human Rights Office. This has been interpreted to mean that Cabinet has issued a directive for the Ombudsman to set up a Human Rights Division within its portfolio. This appears not to have happened due to lack of funding according to Frahm in 'Australasia and Pacific Ombudsman Institutions' at p. 214)</p> <p>Under the 2008 Cook Islands Disability Act, the Ombudsman's jurisdiction was further extended to investigate complaints of discrimination against the disabled. The Cook Islands is the first Pacific Island country to develop a rights-based disability policy and action plan (Wikipedia)</p> <p>Has jurisdiction over both public and private sector to investigate complaints about unlawful discrimination (Frahm at p. 215)</p> |
| 8. | <p>How is its legal jurisdiction/scope/remit defined (e.g "maladministration") – quote from legislation.</p> <p>'to investigate any decision or recommendation made, or any act done or omitted, whether before or after the passing of this Act, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the Departments or organisations specified in the Schedule to this Act, or by any officer, employee, or member of any such Department or organisation in his capacity as such officer, employee, or member.' (s.11 Ombudsman Act)</p> |
| 9. | <p>What decisions are expressly excluded from Ombudsman jurisdiction?</p> <p>S.11 (7) Nothing in this Act shall authorise the Ombudsman to investigate-</p> <p>(a) Any decision, recommendation, act, or omission in respect of which there is under the provisions of the Constitution or any Act or regulation, a right of appeal or objection, or a right to apply for a review, available to the complainant, on the merits of the case to any Court, or to any tribunal constituted by or under any enactment, whether or not that right of</p> |

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| | <p>appeal or objection or application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired:</p> <p>Provided that the Ombudsman may conduct an investigation (not being an investigation relating to any decision, recommendation, act, or omission to which any other paragraph of this subsection applies) notwithstanding that the complainant has or had such right if by reason of special circumstances it would be unreasonable to expect him to resort or have resorted to it;</p> <p>(b) Any decision, recommendation, act, or omission of any person in his capacity as a trustee within the meaning of the Trustee Act 1956;</p> <p>(c) Any decision, recommendation, act, or omission of any person acting as legal adviser to the Crown or as Counsel for the Crown in relation to any proceedings;</p> <p>(d) Any decision, recommendation, act, or omission of any member of the Police that may be the subject of an inquiry under the Police Act 1981 unless a complaint in relation thereto has been made or conveyed to a member of the Police superior in rank to the member to whom the complaint relates; and</p> <p>(i) The complaint has not been investigated; or</p> <p>(ii) The complaint has been investigated and the complainant is dissatisfied with the final result.</p> <p>(8) If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the High Court for a declaratory order determining the question in accordance with the Declaratory Judgements Act 1908, and the provisions of that Act shall extend and apply accordingly.</p> |
| 10 | <p>Who can complain?</p> <p>• 'members of the public'</p> |
| 11 | <p>What are its governance arrangements?</p> <p>• Annual reporting to Parliament.</p> |
| 12 | <p>Who appoints the Ombudsman and by what process?</p> <p>• OA 1984 s. 3(2) The Ombudsman shall be appointed by the Queen's Representative on the advice of the Prime Minister who shall convey the recommendations of Parliament - for a term of 3 years.</p> |
| 13 | <p>What powers does it have to investigate?</p> <p>• s.24. <u>Power of entry on premises</u> - (1) For the purposes of this Act, but subject to the provisions of this section, the ombudsman may at any time enter upon any premises occupied by any of the Departments or organisations named or specified in the Schedule to this Act and inspect the premises and, subject to the provisions of sections 16 and 17 of this Act carry out therein any investigation that is within his jurisdiction.</p> <p>(2) Before entering upon any such premises an Ombudsman shall notify the Permanent</p> |

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| | Head of the Department or, as the case may require, the principal administrative officer of the organisation by which the premises are occupied. |
| 14 . | <p>What powers does it have to achieve resolution, including what remedies can be awarded?</p> <p>S.19(2) 'The provisions of this section shall also apply in any case where the Ombudsman is of the opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.</p> <p>(3) If in any case to which this section applies the Ombudsman is of the opinion-</p> <p>(a) That the matter should be referred to the appropriate authority for further consideration; or</p> <p>(b) That the omission should be rectified; or</p> <p>(c) That the decision should be cancelled or varied; or</p> <p>(d) That any practice on which the decision, recommendation, act, or omission was based should be altered; or</p> <p>(e) That any law on which the decision, recommendation, act, or omission was based should be reconsidered; or</p> <p>(f) That reasons should have been given for the decision; or</p> <p>(g) That any other steps should be taken-</p> <p>the Ombudsman shall report his [sic] opinion, and his reasons therefore, to the appropriate Department or organisation, and may make such recommendations as he thinks fit. In any such case he may request the Department or organisation to notify him, within a specified time, of the steps (if any) that it proposes to take to give effect to his recommendations. The Ombudsman shall also, in the case of an investigation relating to a Department or organisation named or specified in Part I of the Schedule to this Act, send a copy of his report or recommendations to the minister concerned, and, in the case of an investigation relating to an organisation named or specified in Part II of the Schedule to this Act, send a copy of his report or recommendations to the Chairman of the organisation concerned, and to the Minister, if any.'</p> <p>Powers described in Facebook as 'At the conclusion of an investigation, the Ombudsman may make formal recommendations, including to:</p> <ul style="list-style-type: none"> * refer the matter to another agency; * rectify administrative actions; * vary administrative practice; * reconsider the law which underpins administrative action; or |

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| | <p>give reasons for a decision.</p> <p>The Ombudsman places a strong emphasis on making practical recommendations about significant matters. The Ombudsman does not make recommendations unless it is considered that they will be beneficial to the public.'</p> |
| 15 | <p>What powers does it have in cases of non-compliance?</p> <p>s.19(4):' If within a reasonable time after the report is made no action is taken which seems to an Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments (if any) made by or on behalf of any Department or organisation affected, may send a copy of the report and recommendations to the Prime Minister, and may thereafter make such report to Parliament on the matter as he thinks fit.</p> <p>Under Freedom of Information legislation, an Ombudsman recommendation becomes binding after 21 working days unless the Queen's Representative directs otherwise (s..35(1)(2) Official Information Act 2008).</p> |
| 16 | <p>Does it have own-initiative power?</p> <p>Yes, for:</p> <ul style="list-style-type: none"> • Decisions or recommendations relating to a matter of administration. • Acts or omissions relating to a matter of administration. • Refusal, charges, manner of release, imposition of conditions of use for information requested under the Official Information Act (OIC). • Unlawful discrimination against a person with a disability. • Acts, decisions, omissions, recommendations, conduct, policy and procedure of the Cook Islands Police. |
| 17 | <p>Time limits for submitting complaints to the Ombudsman:</p> <p>Complaints must be submitted within 12 months.</p> |
| 18 | <p>Size of organisation</p> <p>Number of operational complaints-handling staff: Not found.</p> <p>Number of support staff: Not found.</p> <p>S.10. Staff - (1) Subject to the provisions of this section, the Ombudsman may appoint such officers and employees as may be necessary for the efficient carrying out of his functions, powers, and duties under this Act.</p> <p>(2) The number of persons that may be appointed under this section, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the Minister for Parliamentary Services</p> <p>However, it was not possible to fund such additional positions in the 2008-09 financial year, so this direction was not implemented (according to Michael Frahm; see below).</p> |

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| <p>19</p> <p>.</p> | <p>What is its caseload (most recent completed year)?</p> <p>Enquiries: Not found.</p> <p>Complaints received: Not found.</p> <p>Complaints accepted: Not found.</p> <p>Complaints resolved: Not found.</p> <p>From newspaper report July 2014: 'By February 2013, the office had received a total of 297 complaints since March 2009, with 94 of those cases having been resolved between two investigators. For part of this period, the office operated without the formal powers of the Ombudsman. http://www.cookislandsnews.com/national/local/item/47432-help-arrives-for-ombudsman-s-office/47432-help-arrives-for-ombudsman-s-office</p> |
| <p>20</p> <p>.</p> | <p>Annual budget amount</p> <p>Not found.</p> |
| <p>21</p> <p>.</p> | <p>Funding arrangements</p> <p>Funding source: Parliament</p> <p>Funding mechanism: Not found.</p> <p>Cost for users (eg cost per case charged to bodies in jurisdiction): Not found.</p> <p>Costs paid out of money apportioned by parliament for this purpose, but see Q 18 above.</p> <p>Newspaper report July 2014 (link below) reported that NZ investigator arrived to assist with backlog and complex cases. 'It is well known that the Cook Islands Office of the Ombudsman is under-resourced and struggles to deal with the high volume of complaints it receives. Jeannine Daniel, from the local office, said there have been a number of challenges in recent years, including having to help Government Ministries, Crown Agencies and Statutory Corporations comply with obligations of the Official Information Act, passed in 2008.'</p> |
| <p>22</p> <p>.</p> | <p>How do potential complainants contact the scheme?</p> <p>In writing – s. 13(1) OA, but it appears possible also to be lodged orally, by telephone, fax, email and online form (Frahn at p. 215).</p> |
| <p>23</p> <p>.</p> | <p>Is there triage, signposting, etc if outside jurisdiction? If so, describe:</p> <p>Not found.</p> |
| <p>24</p> <p>.</p> | <p>What complaint-handling processes are used (eg mediation, investigation, hearings)?</p> |

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| | <p>Investigation; No obligation to hold a hearing, can obtain information from any person, must give department/organisation/person adversely affected by report an opportunity to be heard.</p> <p>Ombudsman must inform the head of agency investigated; investigation conducted in private (s. 15(2)) but otherwise can regulate the procedure (s.15(7)).</p> |
| 25 | <p>Use of informal resolution; method/s, rate, when and why applied:</p> <ul style="list-style-type: none"> Not found. |
| 26 | <p>What remedies are awarded in practice?</p> <ul style="list-style-type: none"> Not found. |
| 27 | <p>What is the level of compliance with recommendations (eg %) and any issues with compliance?</p> <ul style="list-style-type: none"> Not found. |
| 28 | <p>In practice, what sanctions/procedures used if public body does not comply?</p> <ul style="list-style-type: none"> No information found |
| 29 | <p>What role does it have in improving quality of administrative decision-making?</p> <ul style="list-style-type: none"> Not found. |
| 30 | <p>How does it raise public awareness of its role?</p> <ul style="list-style-type: none"> Facebook posting inviting the public to attend Awareness Programme, aiming to 'give all local residents the opportunity to hear more about our role within the community and our vision to promote fairness for all'. |
| 31 | <p>Why was it established?</p> <ul style="list-style-type: none"> Not found. |
| 32 | <p>Interesting features/features unique to specific scheme:</p> <ul style="list-style-type: none"> Human rights and disability rights jurisdiction and power to enter premises in course of investigation. |
| 33 | <p>Issues that need further exploration in follow-up interview</p> <ul style="list-style-type: none"> See 'no information available' boxes. <p>Website not available, and no up-to-date information. Main source: Ombudsman Act 1984.</p> |

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| 34 | <p>If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report)</p> <p>Ombudsman Act 1984 http://www.whupi.com/ombudsman/attachments/article/109/ombudsmans_act.pdf</p> <p>Official Information Act 2008 http://www.whupi.com/ombudsman/attachments/article/109/oi_act_2008.pdf</p> <p>Cook Islands News 01.07.2014 http://www.cookislandsnews.com/national/local/item/47432-help-arrives-for-ombudsman-s-office/47432-help-arrives-for-ombudsman-s-office</p> <p>Ministry of Finance and Economic Management http://www.mfem.gov.ck/rmd/87-anti-corruption/477-te-mato-akamoeau-office-of-the-ombudsman</p> <p>Frahm M. (2013) Cook Islands: Ombudsman. In: International Ombudsman Institute (eds) Australasia and Pacific Ombudsman Institutions. Springer, Berlin, Heidelberg (ch 16 is on Cook Islands – limited pages available on internet)</p> <p>https://books.google.co.uk/books?id=nSIEAAAAQBAJ&pg=PA211&lpg=PA211&dq=cook+islands+ombudsman&source=bl&ots=fBjWmbpr1G&sig=AH2Qt-q4E1HX9qJEoDZNG14T5pY&hl=mi&sa=X&ved=0ahUKEwjC77Gq5dfaAhUpB8AKHRMvDTU4ChDoAQhYMAg#v=onepage&q=cook%20islands%20ombudsman&f=false</p> <p>https://www.facebook.com/OfficeoftheOmbudsmanCookIslands/</p> |
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12.9 Ombudsman of Curaçao

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| 1. | <p>Name of ombuds/scheme</p> <p>Ombudsman of Curaçao</p> |
| 2. | <p>Contact name and details</p> <p>Mr Concincion info@ombudsman-curaçao.cw</p> |
| 3. | <p>Website URL</p> <p>http://www.ombudsman-curaçao.cw/nederlands/de-ombudsman_3139/</p> |
| 4. | <p>Membership of ombudsman organisations (eg OA, IOI, CAROA)?</p> <p>Member of CAROA and IOI</p> |
| 5. | <p>Population it serves and geographical scope</p> <p>160,337</p> |

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| 6. | <p>Underpinning legislation (URL if available)</p> <p>Ombudsman National Ordinance. (Not found online.)</p> |
| 7. | <p>What bodies are in jurisdiction?</p> <p><i>‘Complaints can be submitted against acts of governing bodies of the Land Curaçao and against acts of the persons working under the responsibility of these bodies. The National Ordinance Ombudsman means the Ministers of the Land by administrative bodies. Among the persons working under the responsibility of these bodies, for example, are the civil servants of a particular organization and / or the contract staff.’</i></p> <p>FAQs: http://www.ombudsman-curaçao.cw/nederlands/veelgestelde-vragen_3229/item/waartegen-kan-een-klacht-worden-ingediend_3.html</p> |
| 8. | <p>How is its legal jurisdiction/scope/remit defined (e.g “maladministration”) – quote from legislation.</p> <p>Not found.</p> |
| 9. | <p>What decisions are expressly excluded from Ombudsman jurisdiction?</p> <p>Not found.</p> |
| 10 | <p>Who can complain?</p> <p>• <i>‘Anyone who believes that an administrative body has behaved improperly in respect of a particular person or legal entity (for example, an NV or a foundation) may request the Ombudsman to investigate.’</i></p> <p>FAQs: http://www.ombudsman-curaçao.cw/nederlands/veelgestelde-vragen_3229/item/wie-kan-een-klacht-indienen-bij-de-ombudsman_1.html</p> |
| 11 | <p>What are its governance arrangements?</p> <p>• Not found.</p> |
| 12 | <p>Who appoints the Ombudsman and by what process?</p> <p>• Article 3 of the Ordinance:</p> <p><i>‘1. The ombudsman is appointed by Parliament. The appointment of the ombudsman shall occur on a recommendation, containing at least the names of three persons which was made in joint consultation by the vice-president of the Advisory Council, the president of the Common Court of Justice of the Netherlands Antilles and Aruba and the president of the Government Audit Office.</i></p> <p><i>2. In order to be appointed as Ombudsman, one needs to have the Dutch nationality and be a resident of Curaçao.</i></p> |

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| | <p><i>3. The appointment shall be for a period of six years. The ombudsman shall only once be eligible for reappointment for a second term.'</i></p> <p>Note: Ombudsman must retire at 70.</p> <p>Ordinance sets out many reasons for dismissal and suspension of Ombudsman (Articles 4 and 5).</p> <p>Article 6 sets out what other roles the Ombudsman cannot hold while in office (including being a lawyer):</p> <p><i>'1. The ombudsman cannot also be:</i></p> <p><i>a. a member of public boards for which the choice occurs by or under elections called under statutory regulation;</i></p> <p><i>b. a member of a fixed board of advice and assistance to the government;</i></p> <p><i>c. a lawyer, counsel or notary;</i></p> <p><i>d. a board member of a political party, a trade union or an association or foundation that receives a subsidy from the government.</i></p> <p><i>2. Furthermore, the ombudsman cannot occupy a public position to which a fixed remuneration or allowance is connected.</i></p> <p><i>3. Apart from that, the ombudsman shall not fill positions of which the execution is undesirable in view of a proper performance of his duties or on the preservation of his impartiality and independence or of the trust therein.</i></p> <p><i>4. The positions that the ombudsman fills outside of his office, shall be made public by him.'</i></p> |
| 13 | <p>What powers does it have to investigate?</p> <p>Not found.</p> |
| 14 | <p>What powers does it have to achieve resolution, including what remedies can be awarded?</p> <p>Not found.</p> |
| 15 | <p>What powers does it have in cases of non-compliance?</p> <p>Not found.</p> |
| 16 | <p>Does it have own-initiative power?</p> <p>Yes – Article 2 (2) of the Ordinance:</p> <p><i>'2. The ombudsman has the duty, upon request or on his own initiative, to investigate the conduct of administrative bodies.'</i></p> |

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| 17 | Time limits for submitting complaints to the Ombudsman Complaints must be made within one year from complained-of conduct occurring. |
| 18 | Size of organisation No of operational complaints-handling staff: Not found. No of support staff: Not found. Total staff appears to be 6 including Ombudsman but roles are not clear. |
| 19 | What is its caseload (most recent completed year)? Enquiries: Not found. Complaints received: Not found. Complaints accepted: Not found. Complaints resolved: Not found. |
| 20 | Annual budget amount Not found. |
| 21 | Funding arrangements <ul style="list-style-type: none"> Funding source: Not found. Funding mechanism: Article 10 of the Ordinance states that: '5. The budget of the office as well as the justification of the expenditure are part of the budget and expenses respectively of the Nation, under the chapter Public bodies.' And Article 11 states: <i>'1. The ombudsman shall be authorized, within a sum made available to him by budget, to spend money and enter into obligations for the execution of his duties.</i> <i>2. The ombudsman shall annually make a proposal to Parliament for the necessary resources for a proper execution of his duties.</i> <i>3. The ombudsman shall justify the receipts and expenditure for the preceding financial year in the report to Parliament as referred to in article 27.'</i> Cost for users (eg cost per case charged to bodies in jurisdiction): Not found. |
| 22 | How do potential complainants contact the scheme? (in writing, referrals, telephone helpline, online, social media) Ordinance states that a complaint ('petition') must be made in writing. |
| 23 | Is there triage, signposting, etc if outside jurisdiction? If so, describe. Not found. |

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| 24 . | <p>What complaint-handling processes are used (eg mediation, investigation, hearings)?</p> <p>Investigation appears to be a rather protracted matter of going back and forth to parties, starting with the administrative body, with questions and seeking comment. A 'note of preliminary findings' is drawn up and shared with the parties for comment. Hearings can be held. Finally, a report with conclusions (and sometimes recommendations) is produced.</p> <p>http://www.ombudsman-curaçao.cw/nederlands/klachtbehandeling_3172/</p> |
| 25 . | <p>Use of informal resolution; method/s, rate, when and why applied</p> <p><i>'Many complaints are dealt with through an intervention by the Ombudsman. This means that in a specific case the Ombudsman will look for a practical solution without going through the formal procedure that results in a report. An active attitude of the government organization is essential in this approach.'</i></p> <p>http://www.ombudsman-curaçao.cw/nederlands/klachtbehandeling_3172/</p> |
| 26 . | <p>What remedies are awarded in practice?</p> <p>Not found.</p> |
| 27 . | <p>What is the level of compliance with recommendations (eg %) and any issues with compliance?</p> <p>Not clear:</p> <p><i>'The recommendations of the Ombudsman are not binding. The administrative body to which the recommendations are made informs the Ombudsman whether, and if so how, it has adopted the recommendations and motivates not to take over or deviate from the recommendations.'</i></p> <p>FAQs: http://www.ombudsman-curaçao.cw/nederlands/veelgestelde-vragen_3229/item/zijn-de-aanbevelingen-van-de-ombudsman-bindend_9.html</p> |
| 28 . | <p>In practice, what sanctions/procedures used if public body does not comply?</p> <p>Not found.</p> |
| 29 . | <p>What role does it have in improving quality of administrative decision-making?</p> <p>Not found.</p> |
| 30 . | <p>How does it raise public awareness of its role?</p> <p>Not found.</p> |

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| 31 . | Why was it established? Not found. |
| 32 . | Interesting features/features unique to specific scheme Extract of a speech that refers to specifics of Curacao's administration: <i>'An Ombudsman is impartial and independent. Such a complaint-resolution mechanism was and is needed to supplement the traditional means of seeking redress. This is particularly true for Curacao, because in many cases the government and government agencies are unresponsive, or even take or refuse to take administrative decisions contrary to the laws and regulations as well as contrary to court judgments. Recently, it was established that in over 120 cases the Curacao Minister of Justice simply refused to follow court orders to decide on applications – or on objections against notional refusals – filed by aliens who applied for a (temporary) residence permit.'</i> http://www.curacao-law.com/2012/07/07/lawyers-compared-to-ombudsmen/ Describes ombuds as 'Tarzan in the administration jungle'. |
| 33 . | Issues that need further exploration in follow-up interview As highlighted. |
| 34 . | If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report) Publishes Annual Report and investigation reports, but note these are not opening for some reason. Started a TV series: <i>'From Friday 12 May 2017, the Ombudsman starts an information cycle at telecuracao television station.</i> <i>With effect from 12 May 2017, and thereafter every Friday for a period of 6 weeks, information will mainly be given on the tasks of the Ombudsman and his Office. A different topic is dealt with on each Friday and the various programs are intended to introduce the public to the Ombudsman, his Office and the duties that the Ombudsman and the Office carry out within the framework of the proper administration. The television programs start at 7 PM and each have a duration of 25 minutes.'</i> http://www.ombudsman-curacao.cw/nederlands/nieuws_3184/item/informatiecyclus_931.html |

12.10 Parliamentary Ombudsman, Faroe Islands

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| 1. | Name of ombuds/scheme Løgtingsins Umboðsmaður (Parliamentary Ombudsman), Faroe Islands |
| 2. | Contact name and details Ms Sólja í Ólavsstovu Email: lum@lum.fo |
| 3. | Website URL http://www.lum.fo/Default.aspx?ID=10211 |
| 4. | Membership of ombudsman organisations (eg OA, IOI, CAROA)? IOI + Vest Nordic countries bi- annual meetings (<i>Denmark, Norway, Iceland and Greenland; discuss and get advice from each other concerning actual cases, which have given rise to discussion or problems in their countries.</i> From Ombuds website http://www.lum.fo/Default.aspx?ID=10073) |
| 5. | Population it serves and geographical scope 18 49,117 Islands |
| 6. | Underpinning legislation (URL if available) Løgting Act no. 60 of 10 May 2000 on the Ombudsman of the Løgting as amended by Løgting Act no 157 of 20 December 2013 http://www.lum.fo/Default.aspx?ID=10074 |
| 7. | What bodies are in jurisdiction? <i>'The Ombudsman monitors the governmental administration and local authorities, as well as the activities of private bodies, when these have been by law vested with authority to decide as to individuals' rights and obligations. Consequently, complaints may be filed to the Ombudsman about decisions, procedures and conduct exercised by ministry officials, governmental agencies and other bodies engaged in governmental administration. The same applies for local authorities officials and others, who are engaged in the administration for municipalities, as well as to employees of private bodies, when these have been by law vested with authority to decide as to individuals' rights and obligations.'</i> (http://www.lum.fo/Default.aspx?ID=10073) <i>'§ 4. The responsibilities of the Ombudsman extend to all of the Faroese public administration (of the Land and of the Kommunur municipalities), and the conditions of children in private institutions, etc. whose assignment directly concerns children.</i> <i>(2) The scope of the Act shall extend to associations, institutions, organisations etc. that function as part of the public administration within the scope of the Administration Act, the Freedom of Information Act or the Data Protection Act.</i> |

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| | <p>(3) <i>In his assessment of municipal administration, the Ombudsman shall consider the special circumstances under which municipalities function.</i></p> <p>(4) <i>Inter-municipal corporations fall within the jurisdiction of the Ombudsman.</i></p> <p>(5) <i>The jurisdiction of the Ombudsman does not include administrative entities of the Realm, the Løgting and bodies under the Løgting.'</i></p> |
| 8. | <p>How is its legal jurisdiction/scope/remit defined (e.g "maladministration") – quote from legislation.</p> <p><i>'§ 5. The ombudsman shall supervise that those administrative entities mentioned in § 4 do not make mistakes or wrongfully discharge their duties and that the public administration does not commit injustice towards the individual citizen.'</i></p> |
| 9. | <p>What decisions are expressly excluded from Ombudsman jurisdiction?</p> <p><i>'§ 8 A complaint concerning decisions that a possible higher authority may change cannot be submitted to the Ombudsman before the higher authority concerned has made its decisions on the matter</i></p> <p><i>Complaints concerning matters which do not fall within the jurisdiction of the Faroese home rule have to be processed by the Danish Ombudsman. These are e.g. matters concerning police, prison, immigration and refugees'</i></p> <p>http://www.lum.fo/Default.aspx?ID=10073 :</p> <p>Among the matters which fall outside the Ombudsman's jurisdiction are:</p> <ul style="list-style-type: none"> • the proceedings of the parliament, • the proceedings of the courts of law, • the proceedings of the Danish state, or Danish authorities in the Faroe Islands, • decisions by the authorities, which shall put to the courts, as provided by law, • differences between individuals' |
| 10 | <p>Who can complain?</p> <p><i>'Any person who regards themselves unjustly treated by the authorities may file a complaint free of charge to the Ombudsman. All individuals, whether Faroese nationals or foreigners, may file a complaint to the Ombudsman. The same applies to associations and bodies formed by individuals.'</i> http://www.lum.fo/Default.aspx?ID=10073</p> |
| 11 | <p>What are its governance arrangements?</p> <p>Reports annually to parliament on the work, detailing inter alia how cases have been concluded and the subsequent action by the authorities.</p> <p>S.1(3): If the Løgting no longer has confidence in the Ombudsman, two thirds of the Members of the Løgting may terminate his period in office.</p> |

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| 12 | <p>Who appoints the Ombudsman and by what process?</p> <p>Elected by parliament for five years.</p> |
| 13 | <p>What powers does it have to investigate?</p> <p><i>‘§ 8. Those administrations referred to in § 4 have a duty to provide the Ombudsman with the information and provide all those documents that he in his capacity demands to have presented.</i></p> <p><i>(2) The Ombudsman can subpoena people to a court of law to testify as witness on circumstances that are material in the conduct of investigations. In such cases, the provisions of the Administration of Justice Act shall apply. The court meetings are not public. The person, the complaint relates to, shall be entitled to be present in the company of an advisor when such witness statements are made.</i></p> <p><i>(3) The Ombudsman has the right to visit places that are investigated and he has free access to conduct investigations on all necessary premises.</i></p> <p><i>(4) The Ombudsman can, at his discretion, without court order, investigate private institutions, etc. whose assignment directly concerns children, under § 4, (1).</i></p> <p>Summary as per ombuds website :</p> <p><i>‘The Ombudsman may demand the information he needs from the authorities for carrying out his task, including reports, documents, records and other items. He may summon administrative officials to give oral information and reports. Furthermore, the Ombudsman has free access to the premises of the authorities in order to carry out investigations for his official purposes. Should the Ombudsman decide to examine a case further, following to a preliminary investigation of a case, he will give the authority concerned an opportunity to present its case.’ http://www.lum.fo/Default.aspx?ID=10073</i></p> <p>NOTE: strong powers of proactive investigation</p> |
| 14 | <p>What powers does it have to achieve resolution, including what remedies can be awarded?</p> <p>Not detailed.</p> <p><i>‘Cases which undergo further investigation are normally concluded through an act of remedy by the authority involved, or an opinion issued by the Ombudsman as to whether the authority has infringed the law or good administrative practice by its actions. Where the actions of an authority form the object of reproach or criticism by the Ombudsman, he will address a recommendation to make amends to the authority.’</i></p> <p>(Ombuds website, the ombudsman office – the conclusion of a case - http://www.lum.fo/Default.aspx?ID=10073)</p> <p>Also:</p> <p><i>‘If the ombudsman, having investigated the matter, concludes that he finds in favour of the complainant, he can criticise the authority in question. The ombudsman can also ask the authority to reconsider a matter and reach a different decision.</i></p> |

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| | <p><i>Please note that the ombudsman himself cannot change a decision. The ombudsman's task is to explain to the authorities that he believes that they have made a mistake. In this regard, please bear in mind that the ombudsman has limited possibilities to take a position on decisions, which are purely based on assessments or decisions that require special qualifications (such as medical).'</i></p> <p>(Ombuds website http://www.lum.fo/Default.aspx?ID=10073 under 'What can the ombudsman do')</p> <p>Legislation § 10 provides that where 'serious mistakes or carelessness occurred, the ombudsman will inform the president of parliament, the prime minister, relevant minister or municipality and make a recommendation to them; may publicise the assessment and criticise the authority and can recommend that <i>'a free court trial is given in accordance with the Administration of Justice Act §§ 330-336c in matters that have been dealt with in accordance with this Act.'</i></p> <p>The Ombudsman can criticise the authority, name and shame, ask for reconsideration and make a recommendation for a remedy – but no examples of nature of remedy.</p> <p>With regard to 'free court trial, this may mean free representation for the victim of the 'serious mistake' - see Q 15 below.</p> |
| 15 | <p>What powers does it have in cases of non-compliance?</p> <p>• <i>'Conclusions by the Ombudsman in cases submitted for his consideration are not by law binding for the authorities, yet they are normally followed by the Faroese authorities. Should a public authority not follow the recommendations of the Ombudsman, the Ombudsman may recommend that the party concerned will be given free legal aid in a lawsuit against the authority in question.'</i></p> |
| 16 | <p>Does it have own-initiative power?</p> <p>• Yes – S. 6(5). For example, as a result of media coverage, as a result of a complaint received:</p> <p><i>'Media coverage may for example alert the ombudsman to a matter he wishes to investigate further.'</i></p> <p>Sometimes a complaint can lead to the ombudsman investigating matters that were not the subject of a complaint.</p> <p>Has wide powers of investigation. See Q 13 above.</p> |
| 17 | <p>Time limits for submitting complaints to the Ombudsman</p> <p>• Complaints must be submitted within one year.</p> |
| 18 | <p>Size of organisation</p> <p>• Number of operational complaints-handling staff: Ombudswoman + 3 legal advisers</p> <p>Number of support staff: 1 managing secretary</p> |

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| | (on website, under personnel http://lum.fo/Default.aspx?ID=10075) |
| 19 . | <p>What is its caseload (most recent completed year)?</p> <p>Enquiries: Not found.</p> <p>Complaints received: Not found.</p> <p>Complaints accepted: Not found.</p> <p>Complaints resolved: Not found.</p> <p>Only information found was that there has been a steady increase, and there were 100 cases in 2009.</p> <p>(http://www.lum.fo/Default.aspx?ID=10073 under heading: the office of the ombudsman)</p> |
| 20 . | <p>Annual budget amount</p> <p>Not found.</p> |
| 21 . | <p>Funding arrangements</p> <p>Funding source: Not found.</p> <p>Funding mechanism: Not found.</p> <p>Cost for users (eg cost per case charged to bodies in jurisdiction): None.</p> |
| 22 . | <p>How do potential complainants contact the scheme? (in writing, referrals, telephone helpline, online, social media)</p> <p>The complaint has to be in writing and signed; by letter or use of complaint form.</p> |
| 23 . | <p>Is there triage, signposting, etc if outside jurisdiction? If so, describe.</p> <p>Not found.</p> |
| 24 . | <p>What complaint-handling processes are used (eg mediation, investigation, hearings)?</p> <p><i>'The ombudsman has three possible responses to a complaint:</i></p> <ul style="list-style-type: none"> <i>- Investigating the complaint.</i> <i>- Rejecting the complaint, because the ombudsman cannot settle it...</i> <i>- Choosing not to investigate -</i> <p><i>...The ombudsman always considers a complaint carefully before deciding to reject it. This decision is usually based on whether it is likely that the ombudsman can help the complainant.</i></p> |

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| | <p><i>The ombudsman often writes or calls the complainant or the authority to make sure that he has a solid basis for reaching a decision. This could involve requesting the relevant documents. A rejection of a complaint can thus be the result of a thorough investigation by the ombudsman.'</i></p> <p>http://www.lum.fo/Default.aspx?ID=10077</p> |
| 25 | <p>Use of informal resolution; method/s, rate, when and why applied</p> <p>Not found.</p> |
| 26 | <p>What remedies are awarded in practice?</p> <p>Not found.</p> |
| 27 | <p>What is the level of compliance with recommendations (eg %) and any issues with compliance?</p> <p>Not found.</p> |
| 28 | <p>In practice, what sanctions/procedures used if public body does not comply?</p> <p>Not found.</p> |
| 29 | <p>What role does it have in improving quality of administrative decision-making?</p> <p>Not found.</p> |
| 30 | <p>How does it raise public awareness of its role?</p> <p>Not found.</p> |
| 31 | <p>Why was it established? [Identify if possible any specific drivers for its establishment]</p> <p>Since 1948 The Faroe Islands have been a self-governing part of the Danish Kingdom. The islands have their own parliament and government. In 2000, the Faroese Parliament, Løgtingið, decided to establish a Parliamentary Ombudsman: "Løgtingsins Umboðsmaður".</p> |
| 32 | <p>Interesting features/features unique to specific scheme</p> <p>'The Ombudsman, who cannot sit in the Løgting (Parliament) nor on municipal councils, shall, if at all possible, have a legal scientific education.' (s.2 of the Act).</p> <p>Strong investigatory powers.</p> <p>§ 12. If the Ombudsman becomes aware of faults in statutes, secondary legislation or administrative decisions, the Ombudsman shall notify the Løgting and relevant minister. If this pertains to municipal matters or inter-municipal administration, the Ombudsman shall also notify municipal councils.</p> |

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| | <p>(2) The Ombudsman oversees that legislation in force and administrative regulations are concordant with international obligations to secure children's rights, including United Nation Convention on the Rights of the Child. If the Ombudsman becomes aware of faults in this respect, the Ombudsman shall notify the Løgting and the relevant minister. In case of municipal matters, the Ombudsman shall notify the relevant municipal council.</p> <p>§ 13. If the Ombudsman so demands, the law courts may refuse to admit civil litigation against the Ombudsman for decisions that he has made based on this Act.</p> |
| 33 | <p>Issues that need further exploration in follow-up interview</p> <p>Volume and nature of cases, remedies in practice, use of ADR, budget, funding. Information probably to be found in annual reports which need to be submitted annually, but none found.</p> |
| 34 | <p>If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report)</p> <p>In notes, but for ease of reference:</p> <p>The only source of information is the ombuds official website http://www.lum.fo/Default.aspx?ID=10107</p> <p>No results to numerous searches for additional information.</p> |

12.11 Ombudsman for Inatsisartut (Greenland)

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| 1. | <p>Name of ombuds/scheme</p> <p>Ombudsman for Inatsisartut (Greenland)</p> |
| 2. | <p>Contact name and details</p> <p>Vera Leth (since 1997) E-mail: post@ombudsmand.gl</p> |
| 3. | <p>Website URL</p> <p>https://www.ombudsmand.gl/</p> |
| 4. | <p>Membership of ombudsman organisations (eg OA, IOI, CAROA)?</p> <p>IOI; West Nordic Ombudsman.</p> |
| 5. | <p>Population it serves and geographical scope</p> <p>55,877</p> |

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| 6. | <p>Underpinning legislation (URL if available)</p> <p>Landsting Act No. 7 of 13 June 1994, replaced by Intersisartlov nr. 8 of 3 December 2009 on the Ombudsman for Inatsisartut replaced by</p> <p>Inatsisartutlov nr. 7 af 1. juni 2017 om Ombudsmanden for Inatsisartut =</p> <p>Act 7 of 1 June 2017 on Ombudsman for Inatsisartut</p> <p>http://lovgivning.gl/Lov?rid=%7bCA8F46B2-92B7-4BCF-A7CF-4ADFD9D6B969%7d&sc_lang=da-DK</p> <p><u>The latter expanded the Ombudsman's jurisdiction to include deprivation of liberty by private institutions.</u></p> |
| 7. | <p>What bodies are in jurisdiction?</p> <ul style="list-style-type: none"> • All parts of the public administration under the Greenland Authority and the municipalities, including the circumstances of detainees in private institutions, etc. where the detention has taken place either pursuant to a decision or request of a public authority, as well as children relationships with private institutions which carry out tasks directly in relation to children (2017 Act § 7). • Also, under the 2017 Act § 7 (3), the Ombudsman can decide that companies, institutions, associations, etc. that operate in whole or in part in accordance with the rules or principles applicable to public administration, shall be included in the Ombudsman's activities. (complainants are invited to contact the Ombudsman if in doubt. Examples on website: the ombudsman has been considered to be competent in relation to complaints against Greenland Consumer Council, Supervisory Board of the Greenland Municipalities and The Greenlandic Epidemic Commission – from Ombudsman website 'who can you complain against' https://www.ombudsmand.gl/klag/hvem). • The church of the people is, to the extent that the Greenland Self-Government can lay down provisions on ecclesiastical matters, is covered by the Ombudsman's activities, except questions that directly or indirectly relate to the doctrine or preaching of the Church (2017 Act § 9). |
| 8. | <p>How is its legal jurisdiction/scope/remit defined (e.g “maladministration”) – quote from legislation.</p> <p>Complaints about the authorities' decisions, case handling and their treatment of citizens; where 'a public authority has violated the Act or otherwise has committed maladministration' (as translated in https://www.ombudsmand.gl/klag/hvad).</p> <p>But own translation reads: 'You may appeal to the Ombudsman if you believe that a public authority has <u>breached the law or otherwise has committed an error or oversight</u> in connection with your case.'</p> |
| 9. | <p>What decisions are expressly excluded from Ombudsman jurisdiction?</p> <ul style="list-style-type: none"> • Complaints about a board which decides on disputes between private persons, where in other respects the board is considered to be part of the public administration. (2017 Act § 7 (2)) |

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| | <ul style="list-style-type: none"> • Complaints about private individuals and private companies • Some complaints about the church. • Authorities belonging to the Danish state, e.g. the police, the courts, the prosecution and the public prosecutor • Public limited companies - for example, Royal Greenland A / S, Tele Greenland A / S and the KNI companies' https://www.ombudsmand.gl/klag/hvem <p>(But see § 7 (3) in Q7 above regarding power to include private bodies exercising some public functions.)</p> |
| 10 | <p>Who can complain?</p> <p>Anyone can complain to the Ombudsman, including foreigners as well as private companies and institutions.</p> |
| 11 | <p>What are its governance arrangements?</p> <p>Elected by Inatsisartut (Greenland's legislative assembly) and, on behalf of Inatsisartut, checks that the administration of the self-government and the municipalities is in accordance with applicable law and good administrative practice. It is independent of Inatsisartut and Naalakkersuisut (government of Greenland) but can be dismissed if the Inatsisartut in case of loss of confidence in the Ombudsman (2017 Act § 1. (2)).</p> <p>§ 27. The Ombudsman may decide that one of the employees shall temporarily exercise the Ombudsman's functions.</p> |
| 12 | <p>Who appoints the Ombudsman and by what process?</p> <p>Elected by Inatsisartut (Greenland's legislative assembly) who can also dismiss the Ombudsman. (see 11 above).</p> <p>Ombudsman must resign at reaching age 65 § 4 (2).</p> |
| 13 | <p>What powers does it have to investigate?</p> <p>S.18: authorities investigated are required to cooperate with inquiries and to hand over documents as requested; the Ombudsman may require persons to provide to court an explanation of matters relevant to the inquiries; may inspect any institution or business and any other place of employment used by the relevant authorities; if deemed necessary, the Ombudsman shall at all times have the right to inspect private institutions, with due diligence and without a court order, where persons are or may be deprived of their liberty, and private institutions which carry out tasks directly in relation to children. The police will, if necessary, provide assistance for implementation.</p> <p>Also has power to inspect (need to check if inspection=investigation or is a separate activity):</p> <p>'Six times during 2017, the Ombudsman has been visiting various public institutions, etc. for inter alia elderly people with disabilities and children and adolescents.</p> <p>The purpose of the visits – which is also called for inspections – is to investigate whether the institutions take care of residents and comply with the rules. During the visits, the</p> |

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| | <p>Ombudsman and office staff look at the premises and talk with both management, employees, residents and relatives.</p> <p>The institutions are usually notified in advance. However, the Ombudsman may also visit unannounced visits. It happened once in 2017.</p> <p>After the visits, the Ombudsman writes a report. Here you can read about the issues the Ombudsman became aware of during the visits, and what the Ombudsman recommended to the institutions to do differently.'</p> <p>https://www.ombudsmand.gl/nyheder/2018/ombudsmandens-inspektioner-i-2017</p> |
| 14 . | <p>What powers does it have to achieve resolution, including what remedies can be awarded?</p> <p>From website guidance to complainants: 'The Ombudsman may recommend that the Authority consider your case and make a new decision'</p> <p>https://www.ombudsmand.gl/klag/hvis-du-faar-ret</p> <p>No power to award compensation. (need to go to court for that)</p> <p>https://www.ombudsmand.gl/klag/</p> <p>§20: The Ombudsman may make criticism, make recommendations and furthermore express his views on a case</p> <p>§ 22. The Ombudsman may recommend that a free trial be given in relation to matters covered by the Ombudsman's activities.</p> <p>§ 23. If the Ombudsman's investigation of a case shows that public administration may be assumed to have been in error or negligence of major importance, the Ombudsman shall report the matter to the Law Committee in Inatsisartut and at the same time either to Naalakkersuisut or the municipal council</p> |
| 15 . | <p>What powers does it have in cases of non-compliance?</p> <p>Not found.</p> |
| 16 . | <p>Does it have own-initiative power?</p> <p>Yes:</p> <p><i>'The Ombudsman may, on his own initiative, conduct municipal missions and inspections and investigate the conditions of public institutions. The investigation may include concern the organization and operation of an institution or authority. The investigation may also relate to the treatment and activities of the institution or authority users based on general human and humanitarian views. In the case of municipal visits, the Ombudsman may also take a number of cases for sampling. During visits, there may be a possibility that citizens can contact the Ombudsman personally.'</i></p> <p>https://www.ombudsmand.gl/om</p> <p>The Ombudsman may conduct general investigations into an authority's handling of cases.</p> |

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| 17 | <p>Time limits for submitting complaints to the Ombudsman:</p> <p>Complaints must be made within one year, with possible extension in exceptional cases (2017 Act §12).</p> |
| 18 | <p>Size of organisation</p> <p>Number of operational complaints-handling staff: Ombudsman + 7 employees</p> <p>Number of support staff: 1 secretary</p> <p>(Annual Report 2017 p.7)</p> |
| 19 | <p>What is its caseload (most recent completed year)?</p> <p>p.13 Annual Report 2017: 108 complaints (cf 99 in 2016) + issued guidance in 114 cases (cf 127 in 2016, and 141 in 2015). Also issued guidance on six occasions at the request of authorities and businesses. file:///C:/Users/Marion/Downloads/Beretning%20for%202017%20dk%20(6).pdf</p> <p>In 2017, approximately half of the inquiries (113) have been rejected and complainant referred to alternative authorities, and half were dealt with by ombuds.</p> <p>Enquiries:</p> <p>Complaints received: see above</p> <p>Complaints accepted: see above</p> <p>Complaints resolved: see above</p> <p>Own initiative: Completed 4 cases (3 in 2016 and 2015 respectively). Also carried out 6 inspections (e.g. psychiatric and young person institutions)</p> <p>Complaints rejected: 2017: 113; 2016: 86; 2015:71.</p> <p>Cases rejected in inadmissibility</p> |
| 20 | <p>Annual budget amount:</p> <p>Not found.</p> |
| 21 | <p>Funding arrangements</p> <p>Funding source: § 26. The Ombudsman assumes and dismisses own employees. Employee numbers, wages and pensions are determined in accordance with the rules of the Rules of Procedure for Inatsisartut. § 26 (2): The Ombudsman's budget is part of the budget for Inatsisartut.</p> <p>Funding mechanism: Not found.</p> <p>Cost for users (eg cost per case charged to bodies in jurisdiction): Not found.</p> |

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| 22 . | <p>How do potential complainants contact the scheme? (in writing, referrals, telephone helpline, online, social media)</p> <p>In writing or orally – in writing if possible.</p> <p>Includes letter, email or fax, but complaint must be signed (i.e. if by email,, signed letter to be scanned).</p> <p>Can phone or meet personally with someone from Onbud office for guidance).</p> |
| 23 . | <p>Is there triage, signposting, etc if outside jurisdiction? If so, describe.</p> <p>Not found.</p> |
| 24 . | <p>What complaint-handling processes are used (eg mediation, investigation, hearings)?</p> <p><u>Post box process: Ombudsman requests information from authority, relays it to the complainant and forms an opinion.</u></p> <p>https://www.ombudsmand.gl/klag/ombudsmandens-behandling-af-din-sag</p> |
| 25 . | <p>Use of informal resolution; method/s, rate, when and why applied:</p> <p>Not found.</p> |
| 26 . | <p>What remedies are awarded in practice?</p> <p>Presumably those as per powers: recommending re-consideration.</p> |
| 27 . | <p>What is the level of compliance with recommendations (eg %) and any issues with compliance?</p> <p>Not found.</p> |
| 28 . | <p>In practice, what sanctions/procedures used if public body does not comply?</p> <p>Not found, but Ombudsman can obtain police assistance if access to premises denied in course of investigation.</p> |
| 29 . | <p>What role does it have in improving quality of administrative decision-making?</p> <p>Not found.</p> |
| 30 . | <p>How does it raise public awareness of its role?</p> <p>In 2018, numerous meetings were held around the country, in schools and community centres, to inform local residents of the work of the ombuds office. E.g.:</p> <p><i>'In week 14 and 15, staff from the Ombudsman for Inatsisartut will implement an information campaign in the Tasilaq area of East Greenland. The purpose of the trip is to</i></p> |

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| | <p><i>spread the knowledge of the Ombudsman and to guide the possibilities for complaining to the Ombudsman.</i></p> <p><i>Everyone is welcome to come by and talk to the Ombudsman's staff. If you have a specific case that you would like to discuss with the Ombudsman's employees, it is an advantage to bring any letters from the authorities on the matter.'</i></p> <p>https://www.ombudsmand.gl/nyheder/2018/informationskampagne-i-oestgroenland</p> <p><u>The same activities took place in weeks 17 & 18 in other parts of the country:</u></p> <p>https://www.ombudsmand.gl/nyheder/2018/informationskampagne-i-oestgroenland</p> |
| 31 | <p>Why was it established?</p> <p>Not found.</p> |
| 32 | <p>Interesting features/features unique to specific scheme</p> <ul style="list-style-type: none"> • 'In assessing the municipal administration, the Ombudsman must take into account the conditions under which the municipal government operate'(2017 Act §8)- (VB note: not sure what it means in practice). • Ombudsman must be a law graduate. • Child-friendly pages for children who wish to complain, including 'Who can you call if you're sad or need to talk?' <p>https://www.ombudsmand.gl/boern-og-unge</p> |
| 33 | <p>Issues that need further exploration in follow-up interview</p> <p>See 'Not found.' boxes.</p> |
| 34 | <p>If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report)</p> <p>Ombudsman website translated</p> <p>https://www.ombudsmand.gl/om</p> <p>Annual report 2017 in Danish: file:///C:/Users/Marion/Downloads/Beretning%20for%202017%20dk%20(4).pdf</p> |

12.12 Office of the Ombudsman, Tonga

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| 1. | <p>Name of ombuds/scheme</p> <p>Office of the Ombudsman (Tonga)</p> |
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| 2. | <p>Contact name and details</p> <p>'Aisea Taumoepeau SC</p> <p>Barrister and solicitor from New Zealand; appointed 2014 for 5 years (was former Commissioner for Public Relations and became Ombudsman when change made to Ombudsman Office)</p> <p>investigation@ombudsman.to</p> |
| 3. | <p>Website URL</p> <p>http://ombudsman.we.bs</p> |
| 4. | <p>Membership of ombudsman organisations (eg OA, IOI, CAROA)?</p> <p>IOI</p> |
| 5. | <p>Population it serves and geographical scope</p> <p>103,252</p> <p>Note: Tonga is made up of more than 170 islands spread over an area roughly the size of Japan</p> |
| 6. | <p>Underpinning legislation (URL if available)</p> <p>Ombudsman Act 2016</p> <p>https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/2016/2016-0404/OmbudsmanAct_2.pdf</p> |
| 7. | <p>What bodies are in jurisdiction?</p> <p>Schedule to Ombudsman Act 2016 lists all bodies in jurisdiction, including utilities</p> |
| 8. | <p>How is its legal jurisdiction/scope/remit defined (e.g “maladministration”) – quote from legislation.</p> <p>'Maladministration' appears not to be used.</p> <p>Any decision or act related to the administration and affecting someone in a personal capacity:</p> <p><i>'any decision or recommendation made, or any act done or omitted, whether before or after the passing of this Act, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any department or organisation to which this Act applies or by any officer (including the Minister or Governor), employee, or member of any such Department or organisation in his capacity as such officer, employee, or member.'</i> Ombudsman Act 2016 s.11(1)</p> |

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| | <p>In Ombudsman Act 2016 (S18(1)) it describes what Ombudsman can find in relation to whether a decision or act by the administration:</p> <p>(a) appears to have been contrary to law;</p> <p>(b) was unreasonable, unjust, oppressive, or improperly discriminatory;</p> <p>(c) was based wholly or partly on a mistake of law or fact; or</p> <p>(d) was wrong.</p> <p>Also at S.18(2), that the Ombudsman can find <i>'that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.'</i></p> |
| 9. | <p>What decisions are expressly excluded from Ombudsman jurisdiction?</p> <p>Any decisions or complaints in which there is a right of appeal or to request a review.</p> <p>Exclusions also relating to trustees, legal adviser to the Crown, members of Armed Forces</p> <p>Exclusions can be amended by the Speaker</p> |
| 10 | <p>Who can complain?</p> <p>Anyone can make a complaint.</p> <p>Prime Minister can also refer a complaint for investigation.</p> <p>A specific remit in relation to 'protection of rights' allows complainants who are in custody to submit complaints in confidence to the Ombudsman:</p> <p>'The Ombudsman plays a role in protecting the rights of any person –</p> <p>(a) in custody on a charge or after conviction of any offence; or</p> <p>(b) who is a patient of any hospital within the meaning of the Mental Health At 2001'</p> |
| 11 | <p>What are its governance arrangements?</p> <p>Not found.</p> |
| 12 | <p>Who appoints the Ombudsman and by what process?</p> <p>By the Speaker with the consent of the Legislative Assembly – an important change to increase independence (formerly it was Cabinet (and presumably ministers) who appointed, but they are within jurisdiction</p> <p>Note: Ombudsman Act 2016 states that Ombudsman must be a lawyer in Tonga or Commonwealth (S.3(3)(c) – unusual requirement</p> |

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| <p>13</p> | <p>What powers does it have to investigate?</p> <p>Before investigating, the Ombudsman must let the Dept complained about know of intention to investigate.</p> <p>Generally, discretion to investigate as Ombudsman sees fit: ‘may hear or obtain information from such persons as he thinks fit, and may make such inquiries as he thinks fit. It shall not be necessary for the Ombudsman to hold any hearing, and no person shall be entitled as of right to be heard by the Ombudsman’ Ombudsman Act 2016 S.14(3)</p> <p>There is a requirement to consult with Dept that is subject of complaint when a recommendation has been made but before the investigation is finalised and ‘final opinion’ formed.</p> <p>Investigations must be in private and documents not disclosed.</p> <p>Can widen scope of investigation to include decisions taken that are not the subject of the complaint:</p> <p><i>‘where a complaint is made he may investigate any decision, recommendation, act or omission to which subsection (1) relates, notwithstanding that the complaint may not appear to relate to that decision, recommendation, act or omission.’</i></p> <p>Powers to compel disclosure of evidence, to enter premises for inspection and to summon and examine people:</p> <p><i>‘the Ombudsman may require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him any such information, and to produce any documents or papers or things which in the Ombudsman’s opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person.’</i> Ombudsman Act 2016 S.15(1)</p> <p>but exclusions include where Attorney General decides this might compromise security or international relations, for example, or where it involves proceedings of Cabinet or Privy Council</p> |
| <p>14</p> | <p>What powers does it have to achieve resolution, including what remedies can be awarded?</p> <p>Can recommend (Ombudsman Act 2016 S.18(3)):</p> <p>(a) that the matter should be referred to the appropriate authority for further consideration;</p> <p>(b) that the omission should be rectified;</p> <p>(c) that the decision should be cancelled or varied;</p> <p>(d) that any practice on which the decision, recommendation, act, or omission was based should be altered;</p> <p>(e) that any law on which the decision, recommendation, act, or omission was based should be reconsidered;</p> |

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| | <p>(f) that reasons should have been given for the decision;</p> <p>(g) or that any other steps should be taken.</p> |
| 15 | <p>What powers does it have in cases of non-compliance?</p> <p>If no action is taken on Ombudsman's recommendations, Ombudsman '<i>may send a copy of the report and recommendations to the Speaker who shall table the matter in the Legislative Assembly with his appropriate recommendation</i>'.</p> |
| 16 | <p>Does it have own-initiative power?</p> <p>Yes. In April 2018 the Ombudsman published report into own-initiative investigation into Tonga Water Board's billing and disconnection practices.</p> |
| 17 | <p>Time limits for submitting complaints to the Ombudsman</p> <p>Complaints must be made within 12 months, but with discretion of the Ombudsman to accept complaints outside that time limit.</p> |
| 18 | <p>Size of organisation</p> <p>Number of operational complaints-handling staff: 5 investigators</p> <p>Number of support staff: 1 plus 1 driver</p> <p>In addition to these 7, office has Ombudsman plus CEO – total staff: 9</p> <p>Three investigators are 'registered law practitioners and have various legal experience, including in fire services, communication, tax and customs'.</p> |
| 19 | <p>What is its caseload (most recent completed year)?</p> <p>Not found. Cannot find Annual Report issued by Ombudsman, only previous Commissioner reports (latest is 2015). Only information is from bimonthly newsletters – see below.</p> <p>Enquiries: Not found.</p> <p>Complaints received: Not found.</p> <p>Complaints accepted: Not found.</p> <p>Complaints resolved: Not found/</p> <p>Sept 2017 newsletter (earliest one available) gives comparison of Sept 2016 (19 complaints) to Sept 2017 (18).</p> <p>Oct 2017 newsletter gives comparison of Oct 2016 (9 complaints) to Oct 2017 (43).</p> <p>Nov 2017 newsletter gives comparison of Nov 2016 (12 complaints) to Nov 2017 (26).</p> |

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| | <p>Jan/Feb 2018 newsletter states:</p> <p>Nov 2017 complaints: 26</p> <p>December 2017 complaints: 12</p> <p>Jan 2018 complaints: 18</p> <p>Feb 2018 complaints: 10</p> <p>March/April 2018 newsletter states:</p> <p>March 2018 complaints: 10</p> <p>April 2018 complaints: 14</p> <p>Note: Not possible to look further back as only began in 2016.</p> |
| 20 . | <p>Annual budget amount</p> <p>Not found.</p> |
| 21 . | <p>Funding arrangements</p> <p>Funding source: <i>'all salaries and allowances and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by the Legislative Assembly for the purpose.'</i> Ombudsman Act 2016 S.27.</p> <p>Funding mechanism: Not found.</p> <p>Cost for users (eg cost per case charged to bodies in jurisdiction): None.</p> <p><i>'The Ombudsman is paid a salary and allowances from public money, under a contract of employment between the Ombudsman and the Speaker of the Legislative Assembly as recommended by the Remuneration Authority'</i> http://www.pireport.org/articles/2017/03/16/tonga-commissioner-public-relations-becomes-country's-first-ombudsman)</p> |
| 22 . | <p>How do potential complainants contact the scheme? (in writing, referrals, telephone helpline, online, social media)</p> <p>Complaints to be submitted by letter, email, phone or using the online Complaint Form available on website.</p> |
| 23 . | <p>Is there triage, signposting, etc if outside jurisdiction? If so, describe.</p> <p>Yes, can give advice and guidance on where complainants can be referred if complaints are outside jurisdiction. No further information available.</p> |

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| 24 | <p>What complaint-handling processes are used (eg mediation, investigation, hearings)?</p> <p>Seems only investigation is mentioned in Ombudsman Act 2016.</p> |
| 25 | <p>Use of informal resolution; method/s, rate, when and why applied</p> <p>Not found. But website does say 'some cases will be resolved quickly' but no further details given.</p> |
| 26 | <p>What remedies are awarded in practice?</p> <p>Not found.</p> |
| 27 | <p>What is the level of compliance with recommendations (eg %) and any issues with compliance?</p> <p>Not found.</p> |
| 28 | <p>In practice, what sanctions/procedures used if public body does not comply?</p> <p>Not found.</p> |
| 29 | <p>What role does it have in improving quality of administrative decision-making?</p> <p>Not found.</p> |
| 30 | <p>How does it raise public awareness of its role?</p> <p>Is required to publish an Annual Report:</p> <p><i>'the Ombudsman shall in each year make a report to the Speaker on the exercise of his functions under the Act and the report shall be tabled in the Legislative Assembly by the Speaker.'</i> Ombudsman Act S.25</p> <p>Newsletter (March/April 2018) gives examples of outreach work:</p> <p>http://ombudsman.we.bs/wp-content/uploads/2018/05/newsletter-march-april-pdf.pdf</p> <p><i>'an ongoing outreach program for 2017 which will be conducted by staff of the Office of the Ombudsman on the radio, television, newspapers, on-site clinics and visits to villages and outer islands are planned to be carried out'.</i></p> <p>Source: IOI News: http://www.theioi.org/ioi-news/current-news/establishment-of-the-office-of-the-ombudsman-in-tonga</p> |
| 31 | <p>Why was it established?</p> <p>Formerly Tonga had a Commissioner for Public Relations from 2001 to 2016. Most of that time there was lack of support and resources from government, no awareness by the public and no work carried out by the office, and the post was vacant from 2006 to 2013. In</p> |

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| | <p>2014, the Government strongly promoted the principles of good governance and in turn provided ample support to integrity agencies which included the Office. HM King Tupou VI in Privy Council consented to the amendment of the Commissioner for Public Relations Act 2016 on 24 November 2016 to establish the Ombudsman. The amendment changed the title of the Act from Commissioner for Public Relations Act 2001 to Ombudsman Act 2016. It repeals Sections relating to the appointment of the Commissioner, and replaces them with a new procedure for appointment of an Ombudsman, by the Speaker with the consent of the Legislative Assembly.</p> <p>Source: IOI News: http://www.theioi.org/ioi-news/current-news/establishment-of-the-office-of-the-ombudsman-in-tonga</p> |
| 32 | <p>Interesting features/features unique to specific scheme</p> <ul style="list-style-type: none"> Has an office slogan: “Good for you, good for government and good for Tonga!” Ombudsman title is protected and no one else allowed to use it without Ombudsman’s permission (and will be subject to fine). Has Ombudsman Tonga YouTube channel. |
| 33 | <p>Issues that need further exploration in follow-up interview</p> <ul style="list-style-type: none"> Need to view Annual Report – not available but looks like there was one issued in April 2018. Seems to want to exclude any possibility of Ombudsman decision being challenged in court – can this be right? Refer to 2016 Supreme Court decision upholding discretion of Commissioner for Public Relations (former scheme) and what Ombudsman Act states: <ul style="list-style-type: none"> <i>‘No proceeding of the Ombudsman shall be held bad for want of form, and except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman shall be liable to be challenged, reviewed, quashed, or called in question in any Court.’</i> |
| 34 | <p>If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report)</p> <ul style="list-style-type: none"> Website March/April 2018 Newsletter: <ul style="list-style-type: none"> http://ombudsman.we.bs/wp-content/uploads/2018/05/newsletter-march-april-pdf.pdf ‘Tonga Commissioner For Public Relations Becomes The Country’s First Ombudsman’, March 16 2017, http://www.pireport.org/articles/2017/03/16/tonga-commissioner-public-relations-becomes-country’s-first-ombudsman IOI News: http://www.theioi.org/ioi-news/current-news/establishment-of-the-office-of-the-ombudsman-in-tonga |

12.13 Office of the Ombudsman, Vanuatu

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| | Name of ombuds/scheme Office of the Ombudsman (Vanuatu) |
| 2. | Contact name and details Kalkot Mataskelekele, former President of Vanuatu, was ombudsman from November 2012 till December 2017. No information found regarding a new appointment. ombud.vt@vanuatu.com.vu |
| 3. | Website URL: No current active website. (Note: last ombudsman departed Dec 2017, and no information was found with regard to a new appointment.) Government website updated 2014: https://mjcs.gov.vu/index.php/justice-sector/ombudsman-office |
| 4. | Membership of ombudsman organisations (eg OA, IOI, CAROA)? IOI |
| 5. | Population it serves and geographical scope 276,244l |
| 6. | Underpinning legislation (<i>URL if available</i>) Chapter 9 Part II (articles 61 to 65) of the Constitution of Vanuatu provides for the Ombudsman Ombudsman's Act 27 of 1998 Ombudsman Act [Cap 252] LAWS OF THE REPUBLIC OF VANUATU CONSOLIDATED EDITION 2006 |
| 7. | What bodies are in jurisdiction? Art 62 of the Constitution grants the Ombudsman jurisdiction over all public servants, public authorities and departments, with only exclusions being the President of the Republic and the judiciary. Includes public hospitals. |
| 8. | How is its legal jurisdiction/scope/remit defined (e.g “maladministration”) – quote from legislation. Constitution 63(2) Wherever, after due enquiry, the Ombudsman concludes that conduct was contrary to the law, based on error of law or of fact, delayed for unjustified reasons, or unjust or blatantly unreasonable and that, consequently, any decision taken should be |

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| | <p>annulled or changed or that any practice followed should be revised, he shall forward his findings to the Prime Minister and to the head of the public authority or department directly concerned.</p> <p>These powers were more fully described in OA s.12:</p> <p>(1) The Ombudsman may, after due enquiry and on reasonable evidence, conclude that conduct was: a) <u>oppressive or improperly discriminatory</u>, whether or not it is in accordance with law or practice; or b) <u>based wholly or partly on improper motives</u>, irrelevant grounds or irrelevant considerations; or c) <u>contrary to natural justice</u>; or d) <u>conduct for which reasons should be given</u> but were not. (2) The Ombudsman may, after due enquiry and on reasonable evidence, conclude that the leader who is the subject of an enquiry: a) has failed to carry out or has breached the duties and responsibilities of office imposed on him or her under Article 66(1) or (2) of the Constitution; or b) has breached the Leadership Code [Cap. 240].</p> |
| 9. | <p>What decisions are expressly excluded from Ombudsman jurisdiction?</p> <p>Cannot investigate postal services, universities water, electricity and telecommunications services that are provided by private entities (Frahm p.297).</p> <p>Private persons cannot be subject to investigation.</p> <p>OA s.19. The Ombudsman must not conduct an enquiry into the following:</p> <p>a) a matter that has previously been the subject of an enquiry by the Ombudsman;</p> <p>b) the reasons a recommendation of the Ombudsman has not been followed;</p> <p>c) the action taken by a leader or person in charge of a government agency to give effect to a recommendation of the Ombudsman</p> |
| 10 | <p>Who can complain?</p> <p>Any person, including ministers and MPs:</p> <p>(a) a member of the public (or, if for reasons of incapacity, from his representative or a member of his family) who claims to have been the victim of an injustice as a result of particular conduct; (b) at the request of a Minister, a member of Parliament, of the National Council of Chiefs or of a Local Government Council;- Constitution 62(1).</p> |
| 11 | <p>What are its governance arrangements?</p> <p>The Ombudsman shall recommend legislative amendments where they are of the opinion, following an investigation, that an administrative action has produced an unfair result caused at least in part by legislation (s. 35(2) OA) and prepare an annual report for parliament for presentation by the Prime Minister who is the Ombudsman's spokesperson in relation to Parliament (OA s. 35(1) and s.38(1)).</p> |
| 12 | <p>Who appoints the Ombudsman and by what process?</p> |

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| | <p>Constitution and OA s.3(1).61(1) Appointed by the president after extensive consultation with senior officials, including Custom Chiefs (who have competence to discuss all matters relating to custom and tradition (Frahm p.285).</p> <p>The term of office is 5 years, but can be reappointed indefinitely (OA s.5).</p> <p>Can be removed from office by the President in certain circumstances (e.g. bankruptcy, criminal conviction, incapacity, ill health, misconduct – s.8 OA).</p> |
| 13 | <p>What powers does it have to investigate?</p> <p>Pacific Island Report http://www.pireport.org/articles/2017/01/24/vanuatu-ombudsman-says-tanna-mp-breached-leadership-code</p> <p><i>'In January 2017, a public report by the Office of the Ombudsman, Kalkot Mataskelekele has recommended that Member of Parliament for Tanna Constituency Bob Loughman, be prosecuted for breaching the Leadership Code. This comes after an investigation by the Ombudsman revealed that he interfered with the Vanuatu Institute of Teachers Education (VITE)'s selection process during his term as Minister of Education and should be prosecuted by the Public Prosecution Department for his actions, which breached the VITE Act [CAP 275] and the Leadership Code Act [CAP 240]... The enquiry into the allegations commenced on February 19 2015 after they were raised by Desmond Donald.'</i></p> |
| 14 | <p>What powers does it have to achieve resolution, including what remedies can be awarded?</p> <p>s.33 OA:</p> <p>For the purpose of giving effect to any findings or recommendations of the Ombudsman following an enquiry into the conduct of a government agency or a leader, the Ombudsman may:</p> <ul style="list-style-type: none"> a) publicise proceedings, reports and recommendations; and b) make reports and recommendations to the Parliament, the Prime Minister and other relevant persons and bodies as provided for by this Act, and c) give advice. <p>Can undertake mediation in accordance with section 13 of the Ombudsman's Act.</p> |
| 15 | <p>What powers does it have in cases of non-compliance?</p> <p>Not found.</p> |
| 16 | <p>Does it have own-initiative power?</p> <p>Yes.</p> |
| 17 | <p>Time limits for submitting complaints to the Ombudsman</p> <p>Not found.</p> |

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| <p>18</p> <p>.</p> | <p>Size of organisation</p> <p>No of operational complaints-handling staff: Not found.</p> <p>No of support staff: Not found.</p> <p>[Use headcount or, where available, FTE] Not found.</p> <p>No current information but Frahm p.286: 13 permanent staff in head office (Port Vila) and branch office (in Luganville) which include Ombudsman, Director of Complaints/investigations, Director of Leadership Code, legal counsel, principal investigators and legal and administrative staff.</p> |
| <p>19</p> <p>.</p> | <p>What is its caseload (most recent completed year)?</p> <p>Enquiries: Not found.</p> <p>Complaints received: Not found.</p> <p>Complaints accepted: Not found.</p> <p>Complaints resolved: Not found.</p> <p>No current information, but Frahm p.292 writes that the office reported 51 complaints in 2009 and 63 in 2010, concerning mainly breaches of law and rules, improper delays to take action without good reasons and unfair treatment. Of these, only five complaints (on average) were made by women and one each year by members of disadvantaged groups.</p> |
| <p>20</p> <p>.</p> | <p>Annual budget amount:</p> <p>No current information, but:</p> <p>S.4 OA: (1) The Ombudsman's salary and other conditions of employment are to be determined by the President. In doing so, the President is to act on, and in accordance with, the advice of the Council of Ministers given after receiving a report from the Public Service Commission. (2) However, the Ombudsman's salary and other conditions of employment are not to be less than or inferior to the salary and other conditions of employment of a Judge of the Supreme Court, without taking into account any conditions of employment personal to any Judge.</p> <p>Frahm at p. 286: The Ministerial Budget Committee determines the Ombudsman budget for each financial yea, but once allocated, the Ombudsman can decide on its spending; the budget for 2010-2011 was Vt 52,260,931 = US\$ 574,870 as at 4 May 2012).</p> |
| <p>21</p> <p>.</p> | <p>Funding arrangements</p> <p>Funding source: Government</p> <p>Funding mechanism: Not found.</p> <p>Cost for users (eg cost per case charged to bodies in jurisdiction): None</p> |

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| 22 | <p>How do potential complainants contact the scheme? (in writing, referrals, telephone helpline, online, social media)</p> <p>In writing or orally (s.17 OA).</p> |
| 23 | <p>Is there triage, signposting, etc if outside jurisdiction? If so, describe.</p> <p>Not found.</p> |
| 24 | <p>What complaint-handling processes are used (eg mediation, investigation, hearings)?</p> <p>Investigations and mediation.</p> |
| 25 | <p>Use of informal resolution; method/s, rate, when and why applied</p> <p>OA S13. Mediation (1) The Ombudsman may, as part of any enquiry conducted by him or her, mediate amongst the following persons: (a) the complainant (if any); (b) if the enquiry relates to the conduct of a government agency – the person in charge of that government agency; (c) if the enquiry relates to the conduct of a leader – that leader; (d) any other person directly affected by the enquiry. (2) A person referred to in subsection (1) may request the Ombudsman to mediate in accordance with that subsection. (3) The Ombudsman must, so far as is practicable for him or her to do so, comply with a request to mediate. (4) If, after receiving a request to mediate, the Ombudsman is of the opinion that it is not possible to mediate, the Ombudsman must give the person who made the request a written statement setting out the reasons for his or her opinion.</p> |
| 26 | <p>What remedies are awarded in practice?</p> <p>Not found.</p> |
| 27 | <p>What is the level of compliance with recommendations (eg %) and any issues with compliance?</p> <p>Not found.</p> |
| 28 | <p>In practice, what sanctions/procedures used if public body does not comply?</p> <p>Not found.</p> |
| 29 | <p>What role does it have in improving quality of administrative decision-making?</p> <p>Not found.</p> |
| 30 | <p>How does it raise public awareness of its role?</p> <p>Not found.</p> |
| 31 | <p>Why was it established?</p> |

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| | Island gained independence in 1980, and its Constitution, which contains explicit chapter on fundamental human rights (articles 5 and 6), also foresees the Ombudsman (articles 61-65) (source: Frahm at p.283). |
| 32 . | Interesting features/features unique to specific scheme Not found. |
| 33 . | Issues that need further exploration in follow-up interview Not found. |
| 34 . | If not noted above in relation to answers, explain here dates and locations of sources used in compiling this template (eg what year Annual Report or financial report) Ombudsman Act – ILO: https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/42141/101200/.../VUT42141.pdf https://www.usp.ac.fj/index.php?id=13701#c18231 |