

STATES OF JERSEY



DRAFT FINANCIAL SERVICES OMBUDSMAN (DISCLOSURE OF INFORMATION – AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 6th February 2018
by the Minister for Economic Development, Tourism, Sport and Culture**

STATES GREFFE



Jersey

DRAFT FINANCIAL SERVICES OMBUDSMAN (DISCLOSURE OF INFORMATION – AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

REPORT

The Draft Financial Services Ombudsman (Disclosure of Information – Amendment of Law) (Jersey) Regulations 201- amend the Article on restricted information in such a way as to allow the Office of the Financial Services Ombudsman (“OFSO”) to publish statistical data relating to all complaints resolved by OFSO, i.e. whether by mediation or determination, to be published on a named respondent basis. Currently, the OFSO could only publish such comparative data to illustrate its experience of complaints on a subset of complaints, namely those that receive an Ombudsman determination.

OFSO has indicated it would not seek to use these powers until the implementation of a similar amendment of the Guernsey OFSO legislation and stakeholder consultation in both Jersey and the Bailiwick of Guernsey.

Currently, Articles 21 and 22 of the [Financial Services Ombudsman \(Jersey\) Law 2014](#) permit OFSO to provide information and guidance about OFSO’s experience of complaints, and what may be learnt from that experience, as long as information relating to any particular person (such as the complainant or the financial services provider that is the subject of the complaint) cannot be ascertained from it. OFSO currently publishes complaints statistics in quarterly reports and in the annual report on the complaints received and concluded in that time period. These give breakdowns as to the nature of the complaints, the location and types of the complainants, the proportion that were rejected as ineligible and the outcome of those that were reviewed. OFSO also publishes case studies, which are summaries of complaints that have been resolved by OFSO. None of these identify either the complainant or the financial services provider that is the subject of the complaint (the respondent).

Article 21 permits the disclosure of Ombudsman determinations, other than the identity of the complainant in accordance with OFSO policy to keep this private. OFSO publishes Ombudsman determinations, as permitted by the Law and in order to be open and transparent about its work. OFSO voluntarily granted a phase-in period, during which the internal complaints handling process of financial services providers could mature, before published determinations would include the identity of the respondent. The phase-in period was for complaints received from the commencement of OFSO’s role in 2015 up until the end of 2017, so published determinations relating to this period are anonymised for both the complainant and the respondent. Determinations for complaints received from the start of 2018 will include the name of the respondent when

they are published. This approach has been set out in OFSO published annual reports for 2015 and 2016, as well as in meetings with, and newsletters to stakeholders.

Under the current legislation, OFSO would be permitted to publish statistical data relating to Ombudsman determinations on a named respondent basis. However, not all complaints investigated by OFSO proceed as far as an Ombudsman's decision; many are resolved by agreement between the parties mediated by OFSO. For example in 2016, 110 complaints were resolved by the Channel Islands Financial Ombudsman (the joint operation of OFSO and the Guernsey Office of the Financial Services Ombudsman) and 80 (79%) of these were resolved by mediation, and only 30 (21%) by determination. The current legislation would not permit statistical data relating to all complaints resolved by OFSO, i.e. whether by mediation or determination, to be published on a named respondent basis. Publishing comparative reports only on those complaints that require an Ombudsman's decision would not provide an accurate picture of OFSO's experience of complaints relating to those respondents.

These Regulations address this issue, and the amendment would permit OFSO to publish statistical, objective information on complaints experience that includes comparative analysis of financial services providers, on variables such as the incidence of complaints and outcome of complaints. These could show the number of complaints received in a set period and the proportion of complaints resolved in favour of the complainant or in favour of the financial services provider broken down by the financial services providers that were the respondents. To show this for all complaints resolved by OFSO, rather than only determined complaints which are a subset of OFSO-resolved complaints, would be more representative of OFSO's true experience with complaints. This would also be helpful in publishing information to this level of detail to inform and consult on OFSO's funding approach.

While recognising the independence of OFSO, this amendment is to enable transparency and openness across OFSO's performance of this important public interest mandate, rather than only in a subset of OFSO's work.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers and the Assistant Ministers for Economic Development, Tourism, Sport and Culture are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations amend the Financial Services Ombudsman (Jersey) Law 2014 to add circumstances in which otherwise restricted information may be disclosed to the public by the Office of the Financial Services Ombudsman, or by a person acting on its behalf. Anonymised summaries or collections of information are already exempt, under Article 21(2)(d) of that Law, from the prohibition on disclosing restricted information. The new provision adds an exemption for the disclosure, for the purpose of explaining the incidence of complaints, of a statistical summary of information about complaints, even though the statistical summary names persons against whom complaints were made. However, the statistical summary still cannot disclose the identity of other persons (including complainants) or the substance of particular complaints.



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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 21 of the Financial Services Ombudsman (Jersey) Law 2014¹, have made the following Regulations –

1 Amendment of Financial Services Ombudsman (Jersey) Law 2014

In Article 21(3) of the Financial Services Ombudsman (Jersey) Law 2014², after sub-paragraph (a) there is inserted the following sub-paragraph –

“(aa) without prejudice to the generality of paragraph (2)(d), to the public by the OFSO or any person acting on its behalf, for the purpose of explaining the incidence of complaints, or of descriptions of complaints, if –

- (i) that disclosure is in the form of a statistical summary of information about complaints or descriptions of complaints, and
- (ii) the summary is so framed as not to enable the public to ascertain from it –
 - (A) the substance of any particular complaint, or
 - (B) the identity of any person, other than a person named in (or otherwise identifiable from) the summary as a person against whom a complaint has been made;”.

2 Citation and commencement

These Regulations may be cited as the Financial Services Ombudsman (Disclosure of Information – Amendment of Law) (Jersey) Regulations 201- and come into force 14 days after they are made.

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- ¹ *chapter 13.255*
² *chapter 13.255*