STATES OF JERSEY

DRAFT ANNUAL BUSINESS PLAN 2010 (P.117/2009): SIXTH AMENDMENT

Lodged au Greffe on 8th September 2009
by Senator A. Breckon

STATES GREFFE

PAGE 3, PARAGRAPH (h) –

In paragraph (h), after the words "pages 105 to 108 of the report" insert the words –

"except that for the following item described in Section 1.1.2 Economic Development Department –

'a new Plant Varieties (Jersey) Law 200-, to protect rights in newly developed plant varieties'

there be substituted the following item –

'a new Financial Services Ombudsman Law'."

SENATOR A. BRECKON

REPORT

On a number of occasions I have sought to amend Law Drafting to remove something and insert the provision of a Financial Services Ombudsman Scheme for Jersey – so far without success.

In order to assist, I have appended to this Report at the **ANNEX,** P.93/2007 Amd.(10) – Annual Business Plan 2008 (P.93/2007): tenth amendment – as this includes nearly all of the history on this subject.

As can be seen, over 10 years ago a recommendation was contained in the "Edwards Report" (published on 19th November 1998: "Review of Financial Regulation in the Crown Dependencies"), which said that Jersey's Financial Services businesses should have a statutory Ombudsman scheme: "which will provide an efficient and cost-effective mechanism for the resolution of disputes between financial services businesses and their customers". A "Task Force" that was established in Jersey to respond to "Edwards" agreed with that recommendation, and the Financial Services Commission was asked to consult with interested parties and to prepare Law Drafting instructions for which Law Drafting time was allocated to enable a scheme to be introduced as soon as possible.

This was done and the concluded work was passed by the (then) Finance and Economics Committee in September 2002. In effect, nothing positive has happened to provide this basic layer of effective consumer protection.

Over the last 2 years since I last brought this amendment, much has happened in the financial services sector and global markets which suggests to me (and others) that greater protection is required for the individual against the might of the institutions.

Interestingly, those previously against protection for individuals from institutions are now actively promoting a Depositor Protection Scheme and, I believe, rightly so. However, in my opinion, it took a long while for that particular "penny to drop". I believe now more than ever, Jersey needs a Financial Services Ombudsman, not only to demonstrate that we are a quality finance centre but also to ensure that when things do go wrong for consumers we have an adequate, no cost, alternative dispute resolution process in place that is comparable with other jurisdictions.

I believe that it is an accepted practice for sectors and industries to finance their own Ombudsman Schemes.

Financial and manpower implications

In 2007, the Law Draftsman had assessed the Law Drafting requirement of the Financial Services Ombudsman Law as 29 days. The assessment given by the Law Draftsman's Office for the Plant Varieties Law is 30 days, virtually a straight swap in terms of Law Drafting time, and instructions for this Law are not due yet and have not been received. There would be a need for an officer to prepare Law Drafting instructions for the proposed Ombudsman Law.

STATES OF JERSEY

ANNUAL BUSINESS PLAN 2008 (P.93/2007): TENTH AMENDMENT

Lodged au Greffe on 4th September 2007
by Deputy A. Breckon of St. Saviour

STATES GREFFE

2007 Price code: F P.93 Amd.(10)

ANNUAL BUSINESS PLAN 2008 (P.93/2007): TENTH AMENDMENT

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In paragraph (i), after the words "pages 54 to 59 of the report" *insert the words* –

"except that in the said Table, for the following item –

PRIORITY	SPONSOR	DESCRIPTION	DRAFTING DAYS
29	Economic Development	Licensing Law A new Law to provide a simplified regulatory regime suited to present needs	30

there be substituted the following item –

PRIORITY	SPONSOR	DESCRIPTION	DRAFTING DAYS
29	Economic Development	Financial Services Ombudsman Law A new Law to establish a financial services ombudsman	30

DEPUTY A. BRECKON OF ST. SAVIOUR

REPORT

As a member of the States, but more specifically as Chairman of the Jersey Consumer Council, I have over a number of years received numerous complaints from individuals about the lack of a user-friendly, low or no-cost alternative dispute resolution process when difficulties arise with a financial institution.

Banks, Insurance companies and the like often have dedicated legal departments to deal with customer enquiries and they can often give an individual the run-around, often frustrating all but the most persistent. When this happens, or with the possible threat of personal loss to the individual, the legitimate claimant can often walk away feeling aggrieved. So the institution wins, which is not always fair play.

Ombudsman

Hence the need for a redressing of the balance of power. Ombudsmen have been in existence for nearly 200 years, with Sweden being the first country to establish such a service in 1809. Jersey would not be breaking new ground here.

Jersey Citizen's Advice Bureau (CAB)

On 30th May 2007 I attended the Annual General Meeting of Jersey's CAB. The guest speaker was Mr. Walter Merricks, who is Chief Ombudsman at the Financial Ombudsman Service. A copy of his presentation slides are attached at Appendix A. These are well worth a read and show clearly that the United Kingdom system is funded by a levy on industry. Jersey should do the same. Most industry schemes are funded by fees and subscriptions from the industry concerned: Estates Agents, Removal Companies, Undertakers, etc.

In brief, the UK annual levy would be that –

- Banks pay £1 per 300 bank accounts;
- Insurance companies pay £1 for every £22,000 of premiums;
- Small intermediaries pay £50.

Also in the UK Ombudsman's experience –

- More than 50% of complaints are about the 11 largest groups;
- More than 15% of complaints are about the next 20 largest groups;
- Less than 35% of complaints are about the other 22,000 firms;
- Only 8% of cases reach the Ombudsman: others find remedy before by either termination, mediation or a decision of an adjudicator;
- About 30% of complaints received are upheld.

Procedures

The Financial Services Authority (U.K.) requires firms to deal with complaints in a businesslike manner: guidelines are laid down as follows –

- Within 48 hours;
- Within 5 business days a written acknowledgement and record of complaint;

- Within 4 weeks a written final or holding response;
- Within 8 weeks a written final response advising of Ombudsman's referral rights if your situation is not resolved.

So it is wrong to presume a Jersey Financial Services Ombudsman would be swamped – anyone seeking attention would have to demonstrate a process similar to the above before it applied the mind of an Ombudsman.

Offshore confidence

However, the existence of an Ombudsman scheme in Jersey with powers to award up to £100,000 (as U.K.) would give a greater degree of confidence to the individual investor: should there be a problem, an efficient, no cost to the consumer system is in place to assist with remedy.

The benefits to financial services industry, with its many constituent parts, are numerous and the cost to industry should be considered, as an investment to go with triple A ratings.

Further background information

I have previously brought amendments to the States –

1. "States Resource Plan 2005 to 2009 (P.135/2004): second amendment";
2. "States Business Plan 2006 – 2010 (P.151/2005): amendment".

No. 2 above is attached as Appendix B. This shows in particular the presence and "Membership of Ombudsman Working Party" at page 14 of No. 2 above.

In general terms the Jersey Financial Services Commission (JSFC) would welcome the existence of an Ombudsman scheme, as is apparent from correspondence attached to the amendment to P.151/2005.

In a letter of 1st May 2003 from the Chairman of the JSFC, Mr. Colin Powell to Alan Breckon, he says –

"With the transfer of responsibility for the finance industry and for the Commission from the Finance and Economics Committee to the Economic Development Committee, that I understand is in immediate prospect, it will be for the Economic Development Committee to progress the matter of a Financial Services Ombudsman. As that Committee also has general responsibility for consumer affairs it might be expected that members of the Committee will be sympathetic to the idea.

I hope you are successful in rekindling the debate on the subject of an Ombudsman Service."

As will be apparent, the former Economic Development Committee were not at all pro-active with this matter as nothing is yet in place, hence this further Report and Proposition.

Also attached to my Amendment were comments from –

Policy and Resources Committee
and, Economic Development Committee (EDC)
(For information both are attached at Appendix C).

The comments of the EDC seem oblivious to anything happening earlier regarding the JFSC and in particular the existence or Membership of the Ombudsman Working Group.

Foolishly in hindsight I agreed to withdraw my amendment with a promise that something would happen – it has NOT.

A Report was produced –

Financial Services Ombudsman Scheme Report R.51/2006 (Attached at Appendix D).

This Report was neither helpful nor conclusive. The Report is not my understanding of what was agreed when I withdrew my Amendment in 2005.

14th September 2006

I attach for information at Appendix E extracts of the Hansard of 14th September 2006. Also attached at Appendix F is the answer of the Economic Development Minister to a written question from Deputy R.G. Le Hérissier of St. Saviour of 3rd July 2007. As you will read from both, this issue is going nowhere quickly.

So is there a need?

The most recent "Hot Topic" is Bank Penalty Charges (default charges). The Jersey Consumer Council has knowledge of over £500,000-worth of claims settled or in progress by individuals against Jersey's High Street Banks. In the U.K. there are a number of official bodies able to assist with remedy –

Office of Fair Trading
Financial Services Authority
Financial Services Ombudsman

In Jersey we have none of the above present and individuals have been tested by some banks resolve not to pay back charges that have been applied unfairly.

Billions of £'s

Estimates are that £1.7 billion of combined bank profits per year come from charges of one sort or another. Claims can be made for repayments of up to 6 years. This could mean over £10 billion is at stake for the banks.

£403 million+ paid to date

Interim results from major banks show that charges refunded to date are –

- HSBC refunded £120 million;
- Barclays refunded £87 million;
- Royal Bank of Scotland (Includes Natwest) refunded £81 million;
- HBOS (Includes Halifax) refunded £79 million.

I have seen cases where banks are guilty of what could be considered sharp practice. An example would be when:

- a person's salary is paid in on a certain date and standing orders or direct debits are paid;
- the banks have made the payments out leaving an account overdrawn;
- then levied a charge on each transaction (anywhere between £25 and £30 and maybe up to 3 times on each default);
- then credited the person's account with their salary.

Banks have been using charges as a licence to print their own money.

Mortgage and endowments

This was previously the area of most referrals to the U.K. Ombudsman. Again those in Jersey have been left to fend, many with some difficulty, for themselves to obtain remedy, on occasions using U.K. official bodies to assist if jurisdiction can be established.

Other areas of remedy

There are other financial areas where people feel aggrieved and they often give up on a dispute that is without remedy.

Law Drafting

There are estimates of between 15 to 30 days required for Law Drafting. The difficulty being that to get something in does mean proposing taking something out, and as I said 2 years ago, the world will stop turning with any proposals I make.

To demonstrate, in 2005 I suggested the removal of the "Limited Partnership Law" – Policy and Resources believed that this should stay in –

"as this will provide additional flexibility to the finance industry in an important area of business…."

So VITAL is this particular legislation that in 2 years it is still in the drafting proves and yet to surface (see page 196 of Annex).

No right for individual States Members

In this process of Law Drafting there are no rights for an individual Member for a number of reasons, but mainly that allocation of time is to Ministers and Departments only. For that reason I seek a positive decision from the States to give this matter both focus and priority.

Conclusion

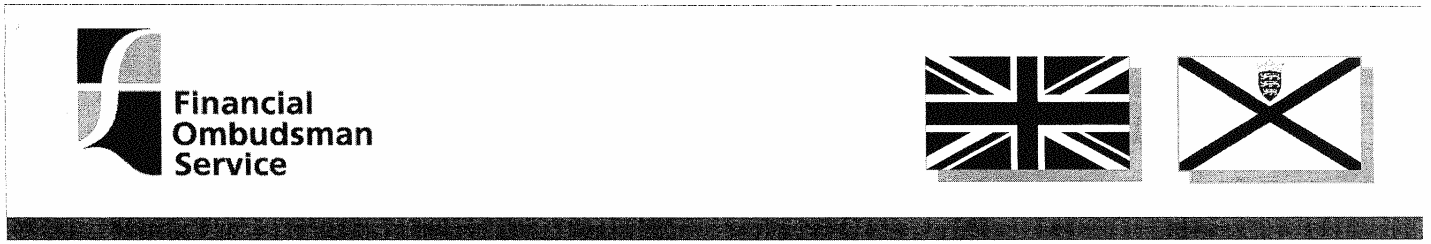
I hope support can be given to assist in finding remedy in an area of private finance that causes distress to many individuals, some of whom are not best able to represent themselves.

I believe we have a duty to provide the framework and that industry should be obliged to pay for it.

I believe that there are no financial or manpower implications for the States as the proposed Ombudsman would be industry funded.

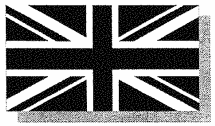
handling financial complaints in the UK

Walter Merricks
ChiefOmbudsman
Financial Ombudsman Service



where we fit in ...

- **Financial Services Authority**
  (the regulator)
- **Financial Ombudsman Service**
  (adjudicates on unresolved disputes)
- **Financial Services Compensation Scheme**



FOS replaced …

Insurance Ombudsman

Banking Ombudsman

Building Societies Ombudsman

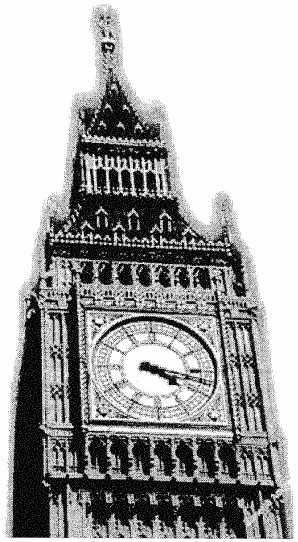
Investment Ombudsman

Personal Investment Authority Ombudsman

Securities and Futures Authority Complaints Bureau

Financial Ombudsman Service

FOS established by law …



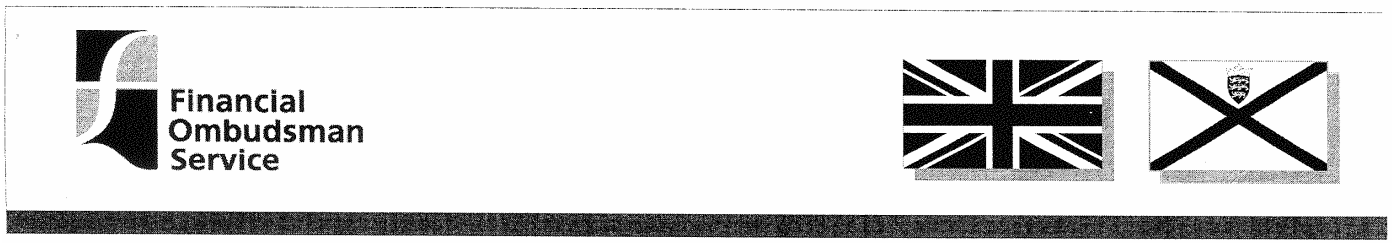
‘a scheme under which certain disputes may be resolved quickly and with minimum formality’

Financial Ombudsman Service

financial firms covered …

FSA-regulated

- banks and building societies
- other mortgage lenders
- mortgage intermediaries
- credit unions
- electronic money institutions …



financial firms covered …

FSA-regulated

- general insurance companies
- general insurance intermediaries
- investment/pension companies
- investment/pension intermediaries
- securities intermediaries

Financial Ombudsman Service

financial firms covered …

other firms, e.g.

- National Saving and Investments
- American Express Cards

and also

- 101,000 consumer credit firms

Financial Ombudsman Service

complainants covered

- individual
- business: if turnover < £1 million
- from United Kingdom
- and world-wide (50 a year from Jersey)
- if service provided in or from UK

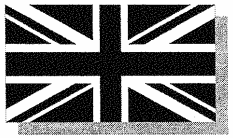
Financial Ombudsman Service

FIN-NET

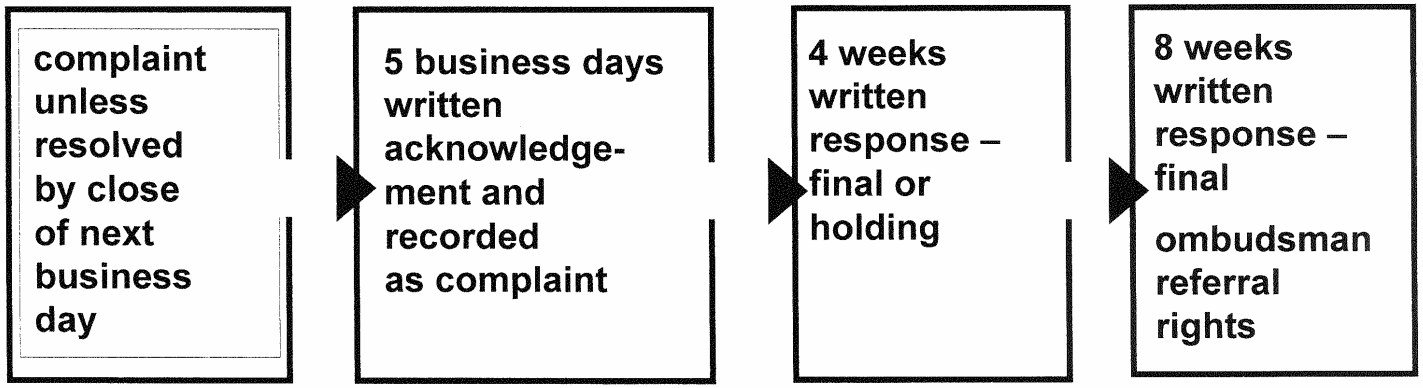
- financial redress body network
- refer cross-border complaints
- advise on local law
- meet six-monthly


Financial
Ombudsman
Service
1998 European recommendation
on principles for redress bodies
transparency
legality
due process
effectiveness
independence

Financial Ombudsman Service



what FSA requires firms to do about complaints



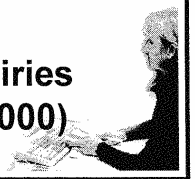
Financial
Ombudsman
Service
our aims ...

Financial Ombudsman Service

phone enquiries (330, 000)

written enquiries (285, 000)

total enquiries (615,000)



to casework

Enquiries to cases (111, 000)

year ended 31 March 2007 …

Financial Ombudsman Service
case
mediation/termination by adjudicator 42%
initial decision by adjudicator 50%
final decision by ombudsman 8%

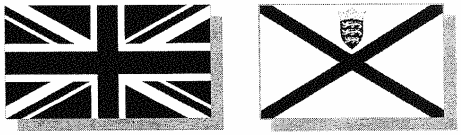
Financial Ombudsman Service

we decide what is fair in the circumstances of that case

taking into account

- law
- regulations
- regulator's rules
- relevant codes
- good industry practice

Financial Ombudsman Service



we can make the firm …

- do something for complainant
- compensate up to £100,000
- do both

Financial Ombudsman Service

we can't make the firm …

- compensate other customers in similar circumstances
- change its products, procedures or staff

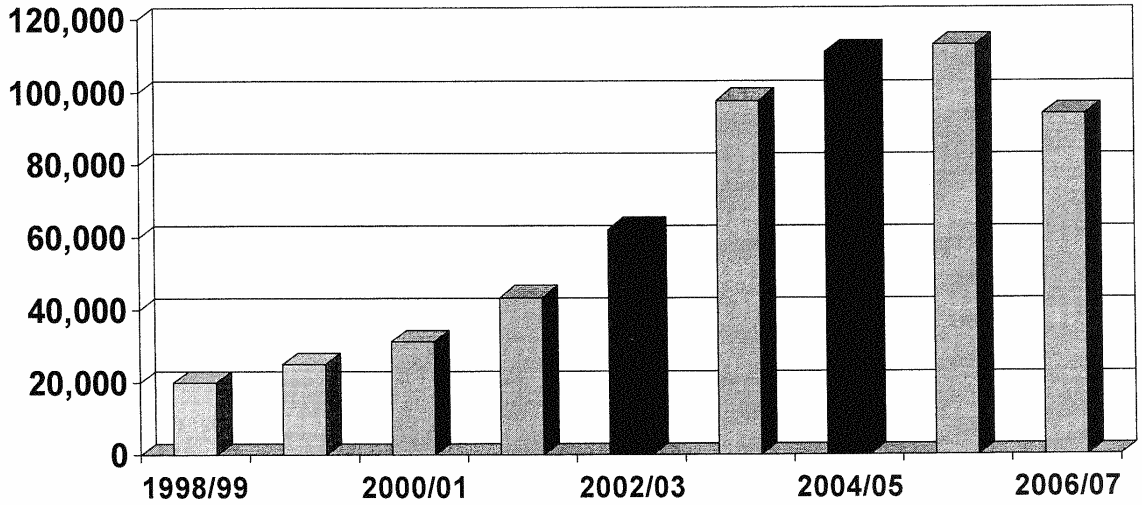
Financial Ombudsman Service

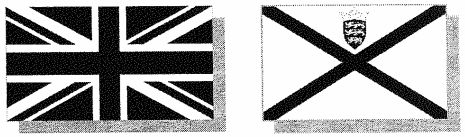
outcome of cases …

- we uphold about 30% of complaints
- but uphold rates by firm vary from 15% to 80%

Financial Ombudsman Service

number of cases from a population of 60 million …





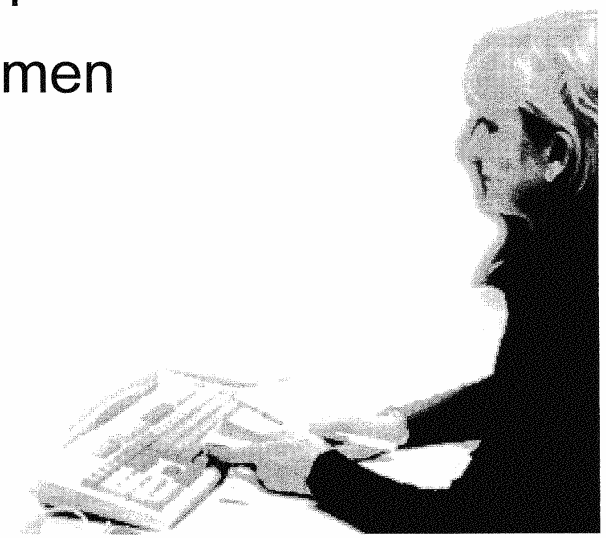
- >50% of complaints are about the 11 largest groups
- >15% of complaints are about the 20 next largest groups
- <35% of complaints are about the other 22,000 firms

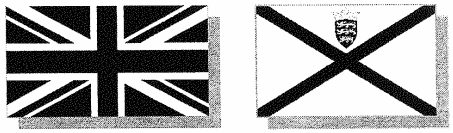
Financial Ombudsman Service
current inflow ...
mortgage endowments
securities
pensions
other investments
banking and mortgages
general insurance

Financial Ombudsman Service

staffing …

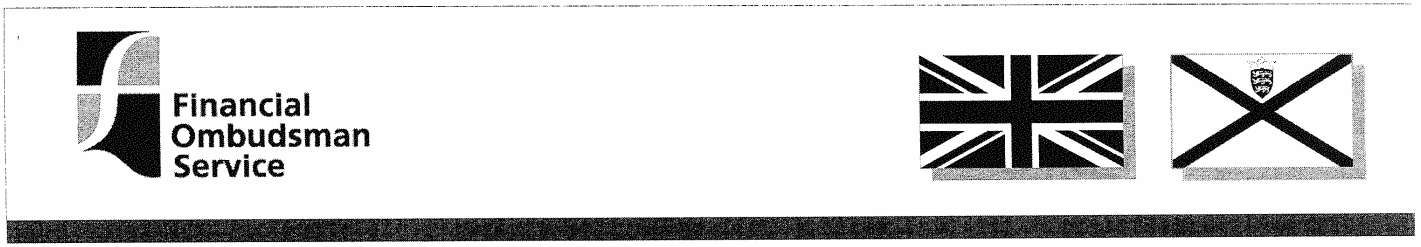
- 1 chief ombudsman
- 2 principal ombudsmen
- 28 ombudsmen
- 900+ other staff





cost …

- free to consumer
- average cost of case = <£500
- firms pay yearly levy (30% of cost)
- firms pay case fee (70% of cost)



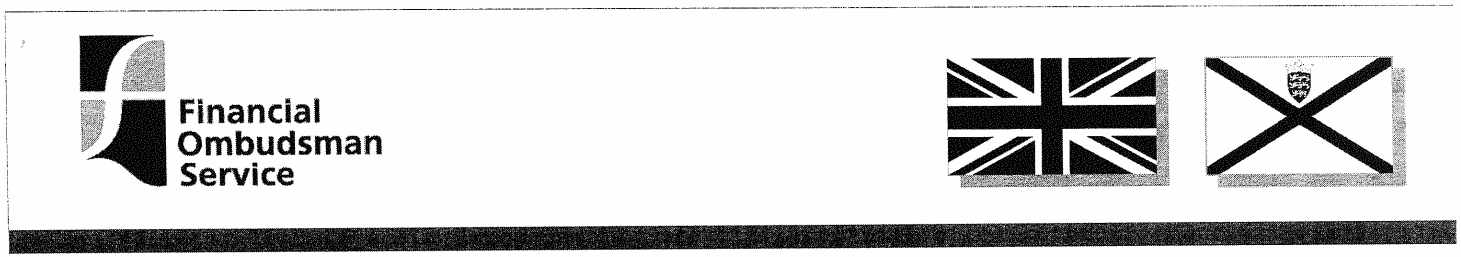
advantages for consumers …

- free to consumer
- consumer does not need lawyer
- we have specialist knowledge
- we mediate
- we investigate
- fair and reasonable decision

Financial Ombudsman Service

advantages for firms …

- generates confidence
- manages expectations
- access to expertise
- mediation
- provides finality

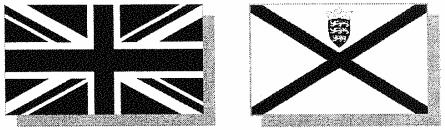


yearly levy

based on market share

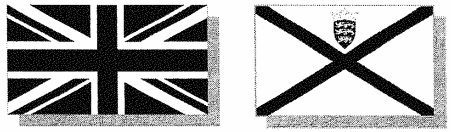
- bank pays £1
  for every 300 bank accounts
- insurance company pays £1
  for every £22,000 of premiums
- small intermediary pays £50

Financial Ombudsman Service



case fee …

- £400 fee per case
  but first two cases are free
- only 5% of firms covered
  pay case fees

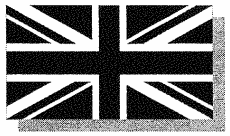


What about Jersey?

- the Edwards Report
- 9 years ago
- recommended ombudsman schemes

Since then…

- a draft Jersey scheme prepared 2002
- little further progress
- Isle of Man scheme started 2002



If Jersey has the will, we can help…

- planning
- co-operation
- partnership

Financial Ombudsman Service

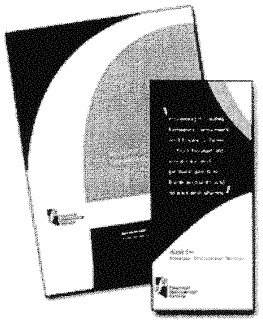
information …

consumer enquiries 0845 080 1800
enquiries@financial-ombudsman.org.uk

technical advice 020 7964 1400
technical.advice@financial-ombudsman.org.uk

publications 020 7964 0092
publications@financial-ombudsman.org.uk

public website
http://www.financial-ombudsman.org.uk



APPENDIX B

STATES OF JERSEY

STATES BUSINESS PLAN 2006 – 2010 (P.151/2005): AMENDMENT

Lodged au Greffe on 9th August 2005
by Deputy A. Breckon of St. Saviour

STATES GREFFE

2005 Price code: C P.151 Amd.

STATES BUSINESS PLAN 2006 – 2010 (P.151/2005): AMENDMENT

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At the end of paragraph (d), after the words "Table 11.3" *insert the words –*

"except that in the said table, for the following item –

27	LIMITED PARTNERSHIPS LAW – AMENDMENT (30 days)	ECONOMIC DEVELOPMENT COMMITTEE	Nil	Nil

there shall be substituted the following item –

27	FINANCIAL SERVICES OMBUDSMAN (JERSEY) LAW – NEW LAW (30 days)	ECONOMIC DEVELOPMENT COMMITTEE	Not yet identified	Not yet identified

"

DEPUTY A. BRECKON OF ST. SAVIOUR

REPORT

Introduction

In September 2004 I brought a similar amendment, which was narrowly defeated (for information I have attached that amendment and the States Minutes from 14th September 2004). I believed then and now, that by Jersey having a Financial Services Ombudsman it will strengthen the standing of the finance industry, by giving access, at no cost, to the individual, who may feel aggrieved by the action of a financial adviser or institution.

Balance of power

Individual consumers do not always have an easy cost-effective remedy to dispute resolution with financial institutions, whereas businesses can resource departments to deal with these matters, including legal advice, which will not come either easily or cheaply to the individual.

The presence of an Ombudsman gives some power back to the individual against the corporation. Also it gives focus to the grievance. When an Ombudsman becomes involved, quite often matters are resolved between the parties, however, the process needs to be there to facilitate remedy – often without an Ombudsman simple matters can become long, protracted and not resolved.

Isle of Man

I have attached some information about the Financial Services Ombudsman Scheme in the Isle of Man which came into operation in January 2002 but can consider complaints relating to events occurring on or after 20th April 1999.

The Isle of Man boasts that it "<u>is the only British offshore island providing such a scheme for financial complaints</u>".

Jersey can and should do something about that statement.

The Isle of Man "Information Centre" has more very good news.

> "The first Annual Report of the Financial Services Ombudsman Scheme is published today (14th April 2003), for the year ending 31st December 2002. The Scheme gives customers worldwide a free, independent and less formal method of resolving disputes with Isle of Man financial firms. The introduction of the Ombudsman Scheme has further enhanced the consumer protection arrangements on the Isle of Man, complementing the established regulators, compensation schemes and Pensions Ombudsman arrangements.
>
> Ombudsman Schemes are an accessible alternative to going to court if the complainant has been unable to resolve the matter directly with the company. In the absence of such a scheme, many people do not have the resources to use the court system especially for disputes involving small sums.
>
> In 2002 the Ombudsman Scheme received 400 initial contacts which resulted in 273 potential complaints.

In the main, issues raised in complaints tended to concern simple administrative errors by suppliers of financial services ('suppliers'), such as delays carrying out customers' instructions or provision of incorrect information on fund or surrender valuations, and other issues, such as transparency of charges for early surrender of an investment or early repayment of a mortgage.

Of the complaints received, 54 were outside the jurisdiction of the Scheme and a total of 57 complaints were completed in the year. The majority (35) of the complaints were resolved at the first stage of mediation and conciliation by Office of Fair Trading staff and 22 received formal determinations by an Adjudicator (or 'ombudsman'). While most of the 22 were upheld either in full or part, most of the sums awarded were modest (usually £600 or less), and in nearly every case included an element in respect of distress and inconvenience suffered.

Sophie Watkins, Head of Research and Operations at the Isle of Man office of Fair Trading said "We have had a very successful first year. We believe the Ombudsman Scheme has proved useful both for customers and suppliers by giving a free and independent method of resolving complaints. Ombudsman schemes are increasingly seen as an important part of a well-regulated marketplace and the Isle of Man is the only British offshore island providing such a scheme for financial complaints."

Jersey Financial Services Commission

I have in my possession a number of documents relating to the background work that has been done by the Financial Services Commission over the last 5 years. I have attached a number of these for information.

* A Working Party was set up in 2000/2002 to look at a Financial Services Commission Ombudsman.
  – Membership attached.

* September/October 2002 – sent to Finance and Economics "advised that the Committee will not look at the document until after the forthcoming election".

* 5th September 2002 – Alan Breckon received copy of Working Party recommendations for Law Drafting Instructions.
  – Extracts enclosed:
    Memorandum – with some options;
    Draft Memorandum – introduction and background;
    Table of Appendices;
    Funding options.

Furthermore, as a Financial Services Commission Ombudsman seemed to be stuck (or neglected) in the system, I wrote to States Members and 50 or so others, in general terms the responses were positive and supportive, including the Chairman of the Jersey Financial Services Commission, Mr. Colin Powell, and Director General (then), Mr. Richard Pratt.

Financing and manpower

There are a number of possibilities for funding, exciting trade associations like estate agents and funeral directors are “trade funded”.

The Isle of Man boasts –

> “The Scheme is set up under sections 21A, 21B and 21C of the Financial Supervision Act 1988 and operates out of the Isle of Man Office of Fair Trading. It is funded by the Isle of Man Government.”.

In general terms, “trade funding” and meaningful participation is the ‘norm’.

There are a number of ways this can be achieved – with a very small cost to existing businesses but with a substantial benefit.

Conclusion

I believe having a Financial Services Commission Ombudsman in Jersey is a win-win situation.

- Confidence for consumers.
- Confidence in the Finance Industry.
- A positive advert for Jersey.
- Government reacting for reality!

I do not think the world will stop turning if we put back for another day the LIMITED PARTNERSHIPS LAW.

APPENDIX
[to P.151/2005 Amd.]

STATES OF JERSEY

STATES RESOURCE PLAN 2005 TO 2009 (P.135/2004): SECOND AMENDMENT

Presented to the States on 14th September 2004
by Deputy A. Breckon of St. Saviour

STATES GREFFE

2004 Price code: A P.135 Amd.(2)

STATES RESOURCE PLAN 2005 TO 2009 (P.135/2004): SECOND AMENDMENT

_____

In Appendix 11 referred to in paragraph (c) of the proposition insert the following item into the Legislation Programme for 2005 –

“

FINANCIAL SERVICES OMBUDSMAN (JERSEY) LAW – NEW LAW (15 days)	ECONOMIC DEVELOPMENT COMMITTEE	None identified	None identified

”

DEPUTY A. BRECKON OF ST. SAVIOUR

REPORT

Ombudsman services were first established in Sweden in 1809 to "investigate citizens complaints against public officials".

Since then many basic systems have developed to enable ordinary people to air their complaint or grievance, (at no (or low) cost), about a specific area of public administration or trade/industry, e.g. financial services etc.

Balance of power

Areas of public administration or large, and to some extent small businesses, maybe seen to have a considerable advantage over the individual consumer, however, the Ombudsman can balance that power by being able to seek information and remedy for the "underdog" in an efficient, transparent and user friendly manner.

The Jersey Financial Services Commission is responsible for the regulation, supervision and development of the financial services industry in the Island; key features of this are:

(a) reducing risk to the public of financial loss,

(b) protecting and enhancing the Island's reputation and integrity in commercial and financial matters, and

(c) safeguarding the Island's best economic interests.

I believe this should include an Ombudsman Scheme, giving access to local and overseas individuals who may wish to seek cost effective remedy without a costly legal process. Examples of this would be mis-sold endowment policies, hidden charges and costs, linked insurance of other products. Jersey Financial Services Commission licences many businesses, however individuals cannot easily challenge their business practices.

Conclusion

A recommendation was contained in the "Edwards Report" (Published on 19th November 1998, "Review of Financial Regulation in the Crown Dependencies") which said that Jersey's Financial Services businesses should have a statutory Ombudsman scheme, "which will provide an efficient and cost-effective mechanism for the resolution of disputes between financial services businesses and their customers". The "Task Force" that was established in Jersey to respond to "Edwards" agreed with that recommendation and the Financial Services Commission was asked to consult with interested parties and to prepare law drafting instructions for which law drafting time was allocated to enable a scheme to be introduced as soon as possible.

An Ombudsman Working Party was set up by the Financial Services Commission with a brief to prepare law drafting instructions for a Financial Services Ombudsman Scheme. The Working Party included a good cross-section of the various strands of the finance industry and concluded its work in September 2002 and passed

information to the Finance and Economics Committee for approval - nothing happened.

This amendment seeks to generate some positive activity for the benefit of the individual and the finance industry.

There are no financial or manpower implications for the States arising from this amendment.

States Minutes of 14th September 2004 show –

THE STATES, following further consideration, rejected an amendment of Deputy Alan Breckon of St. Saviour that in Appendix 11 referred to in paragraph (c) of the proposition there be inserted the following item into the Legislation Programme for 2005 –

"

FINANCIAL SERVICES OMBUDSMAN (JERSEY) LAW – NEW LAW (15 days)	*ECONOMIC DEVELOPMENT COMMITTEE*	*None identified*	*None identified*

"

Members present voted as follows –

POUR: 21

Senator S. Syvret
Senator W. Kinnard
Senator P.V.F. Le Claire
Senator P.F. Routier
Senator E.P. Vibert
Senator R.J. Shenton
Connétable of St. Ouen
Connétable of St. Mary
Deputy R.C. Duhamel (S)
Deputy A. Breckon (S)
Deputy J.J. Huet (H)
Deputy of St. John
Deputy G.C.L. Baudains (C)
Deputy P.N. Troy (B)
Deputy R.G. Le Hérissier (S)
Deputy J.B. Fox (H)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy J.A. Bernstein (B)
Deputy of Grouville
Deputy of St. Peter

CONTRE: 26

Senator L. Norman
Senator F.H. Walker
Senator T.A. Le Sueur
Senator M.E. Vibert
Senator P.F.C. Ozouf
Connétable of St. Martin
Connétable of St. Saviour
Connétable of St. Brelade
Connétable of St. Clement
Connétable of St. Helier
Connétable of St. Lawrence
Connétable of Grouville
Connétable of St. John
Deputy of Trinity
Deputy of St. Martin
Deputy T.J. Le Main (H)
Deputy M.F. Dubras (L)
Deputy J.L. Dorey (H)
Deputy F.G. Voisin (L)
Deputy S.C. Ferguson (B)
Deputy of St. Mary
Deputy of St. Ouen
Deputy P.J.D. Ryan (H)
Deputy M.A. Taylor (C)
Deputy J.A. Hilton (H)
Deputy G.W.J de Faye (H)

ABSTAIN: 0

Information Centre

Office of Fair Trading

Oik Dellal Cair Ellan Vannin

Office of Fair Trading
Government Buildings
Lord Street
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IM1 1LE
Telephone:(01624) 686500
Fax: (01624) 686504
Email: ombudsman@iomoft.gov.im
Website: http://www.gov.im/oft/ombudsman

11th April 2003

FIRST ANNUAL REPORT OF THE ISLE OF MAN FINANCIAL SERVICES OMBUDSMAN SCHEME- Office of Fair Trading News Release

For immediate release

The first Annual Report of the Financial Services Ombudsman Scheme is published today (14th April 2003), for the year ending 31st December 2002. The Scheme gives customers worldwide a free, independent and less formal method of resolving disputes with Isle of Man financial services firms. The introduction of the Ombudsman Scheme has further enhanced the consumer protection arrangements on the Isle of Man, complementing the established regulators, compensation schemes and Pensions Ombudsman arrangements.

Ombudsman Schemes are an accessible alternative to going to court if the complainant has been unable to resolve the matter directly with the company. In the absence of such a scheme, many people do not have the resources to use the court system especially for disputes involving small sums.

In 2002, the Ombudsman Scheme received 400 initial contacts which resulted in 273 potential complaints.

In the main, issues raised in complaints tended to concern simple administrative errors by suppliers of financial services ('suppliers'), such as delays carrying out customers' instructions or provision of incorrect information on fund or surrender valuations, and other issues, such as transparency of charges for early surrender of an investment or early repayment of a mortgage.

Of the complaints received 54 were outside the jurisdiction of the Scheme and a total of 57 complaints were completed in the year. The majority (35) of the complaints were resolved at the first stage of mediation and conciliation by Office of Fair Trading staff and 22 received formal determinations by an Adjudicator (or 'ombudsman'). While most of the 22 were upheld either in full or part, most of the sums awarded were modest (usually £600 or less) and in nearly every case included an element in respect of distress and inconvenience suffered.

Sophie Watkins, Head of Research and Operations at the Isle of Man Office of Fair Trading said "We have had a very successful first year. We believe the Ombudsman Scheme has proved useful both for customers and suppliers by giving a free and independent method of resolving complaints. Ombudsman schemes are increasingly seen as an important part of a well-regulated marketplace and the Isle of Man is the only British offshore island providing such a scheme for financial complaints. "

Information Centre

Office of Fair Trading

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Office of Fair Trading
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IM1 1LE
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Fax: (01624) 686504
Email: iomfairtrading@gov.im
Website: www.gov.im/oft

31st January 2002

News Release

Financial Services Ombudsman Scheme Receives Seal of Approval

The Isle of Man Financial Services Ombudsman Scheme has been accepted as a member of the British and Irish Ombudsman Association.

For an Ombudsman Scheme to be recognised by the Association it must meet four key condition. Those conditions are independence of the Ombudsman from the organisations the Ombudsman has the power to investigate; effectiveness; fairness and public accountability.

The Isle of Man Scheme is a free, independent dispute resolution service for individuals with an unresolved complaint against an Isle of Man financial firm such as a bank, insurance company or financial adviser. Although coming into operation on the 1st January 2002, the Scheme can consider complaints relating to events occurring on or after 20th April 1999.

The Scheme operates out of the Isle of Man Office of Fair Trading from where Sophie Watkins commented "Membership of the Association is important for the Scheme as it recognises that it has met all of the criteria to ensure an independent, effective, fair service which is open to public scrutiny. The recognition of the Association will reinforce the Island's reputation as a well regulated and successful offshore finance centre".

A Copy of the Financial Services Ombudsman Scheme information leaflet can be obtained from the Isle of Man Office of Fair Trading website at: www.gov.im/oft

back to previous location

Appendix No. 8

Membership of Ombudsman Working Party

1. Nicholas Crocker Olsens
2. Richard Musty LloydsTSB Offshore
3. Keith Moss Lloyds TSB
4. John Heaps Coutts
5. Ian Strang Law Society
6. Gary Envis Abacus
7. Elaine Millar Royal Bank of Scotland International
8. Lindsay Bracegirdle Royal Bank of Canada Trust
9. Peter Sullivan Jersey Bankers Association
10. Francis Le Gresley Citizens Advice Bureau

Other people attended on an ad hoc basis including Hans Baerlocher, the current President of the Jersey Bankers Association who attended the last working party meeting to review the previous draft of the Financial Services Ombudsman Scheme.

JERSEY FINANCIAL SERVICES COMMISSION

Deputy A Breckon
Falcon House
17a York Street
St Helier
JE2 3RQ

Our Ref.: MH/P&L

4 September 2002

Dear Deputy Breckon

Ombudsman Scheme for Jersey

Further to our recent telephone conversations regarding the work we have been doing on an Ombudsman Scheme for Jersey please find enclosed a copy of the Ombudsman document I have just sent out to members of the Ombudsman Working Party.

This document itself is self explanatory. It has already been given unofficially to John Harris at Finance and Economics and will be handed over formally to the Committee once I have received back the comments from the working party and collated them into a new Appendix No.9. We have also been advised that the Committee will not look at the document until after the forthcoming election.

I shall forward you a copy of Appendix No. 9 as soon as it is prepared.

I hope that these papers will be of use to you and that it will not be too long before we have Ombudsman schemes operating in the Island.

Yours sincerely

TELEPHONE: +44 (0) 1534 822000 FACSIMILE: +44 (0) 1534 822001
E-MAIL: info@jerseyfsc.org INTERNET: www.jerseyfsc.org

05 SEP 2002
Alan Brecke

JERSEY FINANCIAL SERVICES COMMISSION

MEMORANDUM

To:	Name:	Members of the Ombudsman Working Party	From:	Name:	
	File Ref:	[type ref]		Date:	3 September 2002

Law drafting instructions for Ombudsman Schemes

1. This document sets out the Jersey Financial Services Commission's proposed law drafting instructions for a Financial Services Ombudsman Scheme and represents the draft that will be presented to the Finance and Economics Committee for approval.

2. The draft is substantially the same in content as the last draft considered by the working party but differs markedly in terms of presentation. It now gives the Finance and Economics Committee two options as to the way forward:

   2.1 Option 1

   Introduce a Financial Services Ombudsman (Jersey) Law 200*; or

   2.2 Option 2

   Introduce a Ombudsman (Jersey) Law 200* and a Financial Services Ombudsman (Jersey) Order 200* under this proposed law.

3. The law drafting instructions cover both options so that we hope there will be no further delays in bringing in the scheme for the financial services industry.

4. The second option enables the Finance and Economics Committee/Industries Committee to take advantage of the work we have done in the working party and use the proposed corporate sole model and the law drafting time we have available to bring in a general Ombudsman law that would enable nominated States Committees to introduce Ombudsman schemes by Order rather than by primary legislation , thus speeding up the process of introducing such schemes. The first of which could be the Financial Services Ombudsman (Jersey) Order 200* if the Finance and Economics Committee decide to choose this route forward.

5. The enclosed draft memorandum to the Finance and Economics Committee also asks the Committee for guidance on :

5.1 whether to include non-regulated financial service providers under the scheme, and if so, when? (para. 3.1.1);

5.2 how the scheme should be funded? (para. 3.1.2);

5.3 how to handle complaints against the Ombudsman? (para. 3.1.3);

5.4 whether the Committee wants to takeover this project following the creation of its own executive or whether it wants the Financial Services Commission to continue with it (para. 3.2.1); and,

5.5 how future consultation should be handled.

6. Although this document sets out the Financial Services Commission's proposals I promised you all at the last working party meeting to give you the opportunity to comment on what is being submitted to the Committee. It is my intention, therefore, to add a ninth appendix to this document. It shall contain a summary of all your comments on the proposed drafts and scheme. Could you please forward any comments you may have on the document to me, in writing, by the 16 September 2002. I will provide each of you with a summary of the comments received once I have collated them.

6. Depending upon the Finance and Economics Committee's decision to para. 3.2.1 in my memorandum to them the role of the working party and the Financial Services Commission may be at an end. If this is the case I would like to thank you all for your help with this project. I have found the meetings not only very constructive but also good humoured. I have valued your input and guidance and I hope I have the pleasure of working with you again in the future on some other project.

Legal and Policy Division.

JERSEY FINANCIAL SERVICES COMMISSION

DRAFT MEMORANDUM

To:	Name:	The President and Members of the Finance and Economics Committee	**From:** Name:	
	File Ref:	P&L/MH	Date:	

Ombudsman Scheme for Jersey

1. Introduction and background

1.1 In 1998 following his review of the Island's Finance Industry and Regulation Andrew Edwards recommended that the Island Authorities consider introducing an Ombudsman Scheme. This recommendation was accepted and the Financial Services Commission was asked to consult with interested parties and to prepare law drafting instructions for such a scheme. In addition, law drafting time was allocated in the law drafting schedule to enable the scheme to be introduced as soon as possible.

1.2 Since late 1999, the Financial Services Commission has:

1.2.1 issued, and considered the responses to, a consultation paper on introducing a Financial Services Ombudsman Scheme in Jersey;

1.2.2 set up a working party drawn from respondents to the consultation paper who represented both the finance industry and consumers; and,

1.2.3 consulted with the United Kingdom Financial Services Ombudsman, the Office of Fair Trading in the Isle of Man and the British Irish Ombudsman's Association. We have also worked closely with the Guernsey Financial Services Commission who also intend introducing an Ombudsman scheme in response to Andrew Edwards recommendation.

1.3 The papers contained in this document set out the Financial Service Commission's proposals for an Ombudsman Scheme for Jersey. Although its brief was to produce a Financial Services Ombudsman Scheme it became apparent that the model it is proposing and the law drafting time it has been allocated could equally be used to assist the States in introducing other Ombudsman schemes in the Island. It is for this reason that it is

submitting two separate schemes for consideration and giving the Finance and Economics Committee the option of deciding which one to introduce.

2. Options

2.1 The two options are:

2.1.1 to introduce a Financial Services Ombudsman (Jersey) Law 200* which will relate exclusively to regulated and possibly non-regulated financial service providers; or

2.1.2 to introduce a Ombudsman (Jersey) Law 200* which would provide an umbrella structure for separate Ombudsman schemes to be brought in by Order of [ ] Committee.

2.2 The appendices to this document contain draft scheme rules for either option:

2.2.1 Appendix 1 contains the law drafting instructions for a Financial Services Ombudsman (Jersey) Law 200*.

2.2.2 Appendix 2 contains the law drafting instructions for a Ombudsman (Jersey) Law 200*.

2.2.3 Appendix 3 contains the law drafting instructions for a Financial Services Ombudsman (Jersey) Order 200* which would be made under the Ombudsman (Jersey) Law 200*

3. Guidance sought

3.1 Three issues of a political nature have not been addressed in the law drafting instructions and the Financial Services Commission would welcome the Finance and Economics Committee's guidance as to how it should proceed. These are:

3.1.1 Whether to include non-regulated financial service providers under the Ombudsman scheme and, if so, when they should be incorporated. See the separate scheme documents and Appendix No. 4

3.1.2 How the Ombudsman scheme will be funded See Appendix No. 5

3.1.3 How to handle complaints against the Ombudsman. See Appendix No. 7

3.2 The Financial Services Commission also seeks the Committee's guidance as to how to proceed from this point:

3.2.1 Following the appointment of the Finance Industry Executive does the Committee want to take over this project and see it to completion or would it like the Financial Services Commission to continue with it ?

3.2.2 Does the Committee want to engage in a further round of consultation on these proposals with a wider audience than that represented by the working party set up by the Financial Services Commission? [See Appendix No.8 for details of working party members]. If the answer is yes, does the Committee wish to

consult on the schemes set out in the attached appendices or on the draft Laws/Orders produced by by the Law Draftsman's Office?

4. Information

4.1 In order to assist both the Ombudsman and consumers the Financial Services Commission is proposing to incorporate complaint handling requirements in the Codes of Practice it issues to regulated financial service businesses. These are contained in Appendix No. 6.

Table of Appendices

Appendix No: 5

Funding of the Ombudsman Scheme

1. Most Ombudsman schemes are free to complainants and are either paid for by the State (eg. Isle of Man) or are funded by levies on the different sectors of industry that the schemes cover (UK), or a combination of both. Some include case related charges on respondent firms.

2. In light of the publicity surrounding States Finances the working party considered the following funding proposals, which were tabled by the Senior Policy Manager in the Policy and Legal Division of the Financial Services Commission. These discussions were not concluded, however, as it was felt that the funding issue went beyond the remit of the Commission and should be left to the Finance and Economics Committee.

Proposed funding model

3. The proposed Financial Services Ombudsman Scheme will initially be funded by means of compulsory annual charges levied on the regulated and non-regulated financial service businesses located in the Island, which are covered by the Scheme.

4. Different levies will apply to different categories of financial service business. The size of the levy will initially be set by the *Financial Services Commission / Ombudsman* (acting on behalf of the Finance and Economics Committee) after consultation with the parties covered by the Scheme. Subsequently, the levy will take into account the number of complaints received by each category of business and the cost of dealing with the complaints received from those categories. [More complex cases will take longer to resolve and cost more to adjudicate].

5. Provision will be made in the Law for the introduction of case related charges to supplement or reduce the compulsory annual levy once sufficient data on the working of the Scheme has been obtained.

JERSEY FINANCIAL SERVICES
COMMISSION

From the office of the Chairman

Telephone: + 44 (0) 1534 822114
E-mail: c.powell@jerseyfsc.org

Deputy Alan Breckon
Flat 2
Bristol Villas
Aubin Lane
St Saviour
JE2 7PP

Our Ref.: GCP/AMV P07-001

1st May 2003

Dear Deputy

Ombudsman Services

Thank you for your letter of the 19th April and for the supporting papers on the subject of Ombudsman Services.

As I was a member of the Clothier Panel, and as all the members of the Panel shared completely in the recommendations in the Panel's report, you should not be surprised to know that I fully support the Clothier Recommendation that an Ombudsman should be appointed to hear complaints of mal-administration by government departments.

As Chairman of the Financial Services Commission I am also supportive of the idea of a Financial Services Ombudsman. With the transfer of responsibility for the finance industry and for the Commission from the Finance and Economics Committee to the Economic Development Committee, that I understand is in immediate prospect, it will be for the Economic Development Committee to progress the matter of a Financial Services Ombudsman. As that Committee also has general responsibility for consumer affairs it might be expected that members of the Committee will be sympathetic to the idea.

I hope you are successful in rekindling the debate on the subject of an Ombudsman service.

Kind regards,

Yours sincerely,

Colin Powell
Chairman

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JERSEY FINANCIAL SERVICES COMMISSION

24 APR 2003

From the office of the Director General

Telephone: + 44 (0) 1534 822011
E-mail: r.pratt@jerseyfsc.org

Deputy Alan Breckon
Flat 2
Bristol Villas
Aubin Lane
St Saviour
JE2 7PP

Our Ref.: AF/RCP/ P7-001

23 April 2003

Dear Alan

Ombudsman Services

Thank you for your letter of the 19th April enclosing some material relating to Ombudsman schemes.

As your letter notes, the Financial Services Commission has been working actively on the preparation of an Ombudsman scheme for financial services in Jersey. A proposal is currently with the Finance and Economics Committee awaiting their decisions on a number of key points.

The scheme we are proposing will be aimed at the private sector rather than the public sector. There are already mechanisms for seeking judicial review of decisions of the Financial Services Commission on regulatory matters.

Thank you once again for affording me these papers.

Yours sincerely

Richard Pratt
Director General

L:\Divisions\Policy & Legal\POLICY & LEGAL DIVISION FILING\P07 - Financial Services Ombudsman Law\P07-001 General Correspondence\ltr - Deputy Breckon re Ombudsman Services - 23-4-03.doc

APPENDIX C

STATES OF JERSEY

STATES BUSINESS PLAN 2006 – 2010 (P.151/2005): AMENDMENT (P.151/2005 AMD.) – COMMENTS

Presented to the States on 6th September 2005
by the Economic Development Committee

STATES GREFFE

2005 Price code: A P.151 Amd.Com.

COMMENTS

While the Committee does not object to the principal of establishing a Financial Services Ombudsman, and indeed sought law drafting time for such a scheme in 2005, the reality is that the Committee's resources are limited. An ombudsman scheme will require a significant commitment, initially in terms of the demands placed upon officers of the Economic Development Department in consulting upon, implementing and designing a scheme, and subsequently in terms of potentially significant, year on year funding for such a scheme. Given that Guernsey has ruled out introducing an ombudsman scheme and that the Isle of Man scheme is government funded, it is unreasonable to expect that the costs of such a scheme could be imposed upon the finance industry.

The Isle of Man Scheme is comprised of 2.5 full-time senior administrators and a panel of 5 ombudsmen. It is likely that any Jersey scheme would be at least double the size of the Isle of Man scheme, to reflect Jersey's much larger financial services sector. Five full-time employees, a panel of 10 off-Island ombudsmen and the costs of premises, accommodation and travel all indicate that the scheme would cost at least £500,000 a year to operate.

Such a scheme cannot be designed or funded from the Committee's existing budget. Such a scheme will not contribute to the ambitious economic growth targets that the Economic Development Committee has been tasked with achieving and therefore can only be implemented and operated through additional initial and subsequent year on year funding. There is no purpose in seeking law drafting time for an Ombudsman scheme unless the States is willing and able to provide the resources to fund such a scheme.

In addition, the Committee is not convinced that establishing an Ombudsman would be an effective use of the States' restricted resources. The information provided in the Amendment in relation to the Isle of Man indicates that the costs of a scheme are likely to be significant and difficult to contain. The Isle of Man figures also show that only 6% of complaints to the Ombudsman were made by Isle of Man residents. It is therefore clear that implementing an Ombudsman scheme is a very inefficient use of resources if the aim of the scheme if to benefit Jersey residents.

The Committee believes that existing alternative dispute remedies should be explored, such as encouraging the use of mediation for low-value claims against financial institutions, before any consideration is given to entering into what would be a long-term commitment to fund an Ombudsman scheme.

In addition, the Committee believes that, were the States to provide law drafting time in 2006 for an Ombudsman scheme, it will be impossible to consult upon the details of the scheme – including the question of how it is to be funded – and to finalise law drafting instructions within that timescale. The introduction of such a scheme will need detailed comment at all key stages from a large number of stakeholders, including consumer bodies, representatives of the finance industry, the Jersey Financial Services Commission, a number of States Committees, the Law Officers' Department and the Attorney General. Law drafting instructions will simply not be finalised during 2006.

Finally, the Amendment does not include any argument as to why the amendment to the Limited Partnerships (Jersey) Law should be removed from the law drafting programme. The Limited Partnerships Law is one of the laws most commonly used by the finance industry (not to be confused with the Limited Liability Partnership Law) and amendment is essential to ensure that Jersey does not continue to lose work to jurisdictions, including Guernsey, that offer greater flexibility to limited partnerships. This law is widely used and is a key law in our funds sector, one of the high value areas upon which resources must be focussed if the economic growth targets are to be met, and the Economic Development Committee strongly believes that amending this Law should remain an objective for 2006.

STATES OF JERSEY

STATES BUSINESS PLAN 2006 – 2010 (P.151/2005): AMENDMENT (P.151/2005 AMD.) – COMMENTS

Presented to the States on 6th September 2005
by the Policy and Resources Committee

STATES GREFFE

2005 Price code: A P.151 Amd.Com.(2)

COMMENTS

Whilst the Policy and Resources Committee opposes the amendment as drafted, it has sympathy for the intent to ensure that individual consumer should have an easy cost effective remedy to dispute resolution with financial situations.

The Committee believes that it would be inappropriate to commit scarce law drafting time until the States has considered and approved the most effective means of supporting consumers. It therefore suggests that the Economic Development Minister should be asked to bring a report to the States in early 2006 to allow the States to determine how they would wish to proceed. Once the States has decided the way forward, law drafting priorities could be reviewed or depending on the scale of the change, time could be made available as a priority in 2007.

The Committee believes that the Limited Partnership Law should be included in the 2006 legislation programme, as this will provide additional flexibility to the finance industry in an important area of business, and will thereby help to maintain the Island's competitiveness.

STATES OF JERSEY

FINANCIAL SERVICES OMBUDSMAN SCHEME: REPORT

Presented to the States on 6th June 2006
by the Minister for Economic Development

STATES GREFFE

2006 Price code: B R.51

FINANCIAL SERVICES OMBUDSMAN SCHEME – REPORT

1. Introduction

1.1 For some time, consideration has been given to the introduction of a Financial Services Ombudsman Scheme in Jersey. This was one of the recommendations made in 1999 in the 1999 Edwards Review, and was a matter consulted upon by the Jersey Financial Services Commission (the **Commission**) in March 2000.

1.2 Since then, progress on the introduction of an Ombudsman Scheme has been sporadic. In October 2002, the Commission drew up proposals for an Ombudsman Scheme and in 2004, the Economic Development Committee made a bid for law drafting time for the introduction of an Ombudsman Scheme within the 2005 Law Drafting Programme. This bid was unsuccessful. In September 2005 Deputy Alan Breckon lodged an Amendment to the States Business Plan 2006-2010 in which he sought to make time available in the 2006 Law Drafting Programme for legislation introducing an Ombudsman Scheme. At the time that matter was placed before the States, the President of the Economic Development Committee undertook to consider the matter further and report back to the States.

1.3 The purpose of this Report is to describe in broad terms the likely nature of an Ombudsman Scheme and the options that are available should the States wish to implement an Ombudsman Scheme. The Report then makes some tentative recommendations in relation to how this issue should be progressed. If the States is of the view that it would wish to explore the option of an Ombudsman Scheme further, a public consultation should then be carried out to better determine the appetite for, and preferred scope of such a scheme, before a final decision is made whether to progress the scheme and if so, in what manner.

1.4 There are perhaps two matters that should be emphasised by way of introduction. Firstly, should the States decide to introduce an Ombudsman Scheme, complete freedom exists to design that scheme in a manner appropriate to Jersey. Although a number of other jurisdictions have similar schemes, the Island would begin with a blank sheet of paper when designing its own Ombudsman Scheme. There has perhaps been an assumption that such a scheme would be limited to matters broadly in the sphere of financial services. There is, however, no *prima facie* reason why a scheme needs to be limited in such a manner, though this report will largely confine itself to considering the introduction of a scheme limited to complaints arising in relation to financial services.

1.5 Secondly, an Ombudsman Scheme will require ongoing funding. Potential sources and estimated levels of funding will be discussed in this report. However, every decision made in relation to the structure of an Ombudsman Scheme will have a funding implication.

2. The Purpose of an Ombudsman Scheme

2.1 The purpose of an Ombudsman Scheme is to provide an alternative form of dispute resolution to those offered by the courts. It is often argued that an Ombudsman Scheme offers three advantages over legal redress sought through existing litigation procedures: it should be cheaper, quicker and more accessible.

2.2 The UK Financial Ombudsman Service is established by statute, which describes it as "a scheme under which certain disputes may be resolved quickly and with minimum formality". A more cynical observer might suggest that another key aim of such schemes is to restrict the scope for one party to a dispute – usually the wealthier party that is the subject of the complaint – to obstruct the speedy resolution of the complaint through the use of "tactical" litigation.

2.3 The scheme operates by allowing disputes that meet certain criteria to be adjudicated by an Ombudsman, an individual appointed for his or her knowledge and experience within the field in which the dispute arises. One of the chief advantages of an Ombudsman Scheme is the experience of the Ombudsman in his or her chosen field and in relation to similar disputes. Before a matter is referred to the Ombudsman, however, it is usual for such schemes to include processes designed to find a negotiated settlement between complainants. The experience of other Ombudsman Schemes suggests that the majority of disputes are resolved without formal adjudication.

2.4 It should also be noted at the outset that an Ombudsman Scheme has limitations. There are a number of disputes that it would not be appropriate to refer to an Ombudsman. High value disputes and disputes that raise novel or difficult questions of law should more properly be considered by courts. There is, however, no doubt that for claims in relation to moderate or relatively low sums of money, particularly where the claims arise in areas of a technical nature, Ombudsman Schemes have, in other jurisdictions, proved popular with complainants who otherwise might feel that redress would be impractical or unaffordable.

2.5 An Ombudsman Scheme would complement, but in no way duplicate, the work carried out by the Commission. The Commission is a regulator, and its function is to regulate those providing certain defined financial services from within the Island. It will license and supervise financial services businesses and may investigate claims made against such businesses. In investigating such complaints the Commission's focus will be on the governance of the financial services business, and whether the complaint reflected a failure in the management or processes of the business that should be addressed in order to protect the Island's reputation. The Commission's function is not to act as an adjudicator or mediator between a complainant and a financial services business, and the Commission has no powers to order a financial services business to offer redress to a customer in respect of a specific complaint.

2.6 It has been argued that an Ombudsman Scheme has the effect of increasing confidence in the provision of financial services generally, and thus indirectly leads to growth of the financial services sector. It is hard to find any evidence

to either support or disprove this proposition, suggesting that any impact is unlikely to material.

2.7 The degree to which any particular Ombudsman Scheme succeeds in providing a form of dispute resolution that is quicker, cheaper and more accessible than other remedies depends upon the design and efficiency of that scheme. The advantages offered are also dependent upon the cost, speed and accessibility of existing litigation and court procedures. In short, the value of an Ombudsman Scheme is equivalent to the degree to which it offers a form of dispute resolution that is more attractive to complainants than that currently offered by the established legal system (comprising the legal profession and the courts). This is a matter discussed in further detail towards the end of this report.

3. The Scope of an Ombudsman Scheme

3.1 The scope of an Ombudsman Scheme can be defined as the criteria which a claim must satisfy in order to be eligible for referral to the Ombudsman. By widening the scope of an Ombudsman Scheme, the number of claims referred to the scheme is likely to increase, as is the likely cost of funding the scheme. This raises an inherent friction that exists in any scheme of this nature: the success of the scheme (judged by the number of complaints it receives and resolves) and the costs of the scheme will tend to rise and fall together. Assuming that it is necessary to restrict the costs of the scheme, it is necessary to ensure that the scheme is restricted to resolving those disputes that are most in need of a form of alternative resolution.

3.2 There are at least three obvious ways in which the scope of an Ombudsman Scheme can be regulated:

- by reference to the subject matter of the complaint;
- by reference to the amount that the ombudsman can award in compensation; and
- by reference to the degree to which the complaint is connected with Jersey.

3.3 As mentioned in the introduction to this report, most comment in relation to the establishment of an Ombudsman Scheme in Jersey has focussed on the creation of a financial services ombudsman. Careful consideration is needed as to whether this is appropriate. In general, an Ombudsman Scheme will be attractive in circumstances where there is a significant disparity in the financial resources available to each side of a complaint. This is certainly the case in disputes between a private individual and a financial institution. It could equally be argued that the same disparity exists in disputes between private individuals and utility companies or States departments, and there may be any number of other areas where an Ombudsman Scheme may be attractive.

3.4 “Financial Services” encompasses a wide range of commercial activity, and consideration must be given to which areas of financial services should be capable of providing the basis of a claim to the Ombudsman. In practice, limiting the maximum amount the ombudsman can award in compensation is

likely to lead to few claims being made in relation to certain areas of financial services activity – such as disputes relating to securitisation or commercial lending.

3.5 As well as determining the type of subject matter that can be the subject of a complaint, careful consideration should be given to whether a specific Ombudsman Scheme should be created for a defined class of subject matter, or whether the legislation should facilitate the creation of Ombudsman Schemes generally, so that additional schemes could be subsequently created if it was felt desirable to extend the subject matter of complaints that could be made to an Ombudsman.

3.6 A further way of regulating the level of complaints is to exclude claims above a certain amount from access to the Ombudsman Scheme. There are several reasons for this approach: the larger a dispute, the less likely it is that legal costs will prove a barrier to litigation, the more likely it is that the complainant will be able to fund such litigation and the more important it is that each side to the dispute feels able to have the matter resolved by the formality of a court hearing.

3.7 In the UK, the Financial Services Ombudsman Scheme is only able to make compensation awards up to £100,000 in value. The same restriction applies in the Isle of Man. This restriction appears to operate without comment, and it is suggested that there is no reason why a similar approach should not apply in Jersey. Clearly, such a restriction means that disputes in relation to a sum exceeding this value are not referred to the ombudsman.

3.8 Limiting access to the scheme by reference to degree to which the complaint is connected with Jersey is the final obvious way of limiting the scope of the scheme. It is clear that the Ombudsman should only adjudicate complaints that have some form of connection with Jersey. The precise degree of connection that is sufficient to bring a matter within the Ombudsman's ambit is not so clear.

3.9 The connection with Jersey is strongest in circumstances where a complaint arises between two Jersey residents in relation to a matter governed by Jersey Law. The nexus is weaker when only one of the parties to the complaint is Jersey resident. When neither party to the complaint is resident but the complaint is governed by Jersey law, the connection is still weaker. Finally, it is clear that disputes between two non-residents in relation to a matter that is not governed by Jersey Law would be expected to fall outside of the scope of the scheme.

3.10 There are other ways in which the scope of the scheme could be limited, such as subjecting complainants to a form of means-testing so as to ensure that they are unable to fund litigation themselves. Such approaches could be explored further in any subsequent consultation paper.

4. Models in other jurisdictions

4.1 There are two clear models for establishing an Ombudsman Scheme: those provided in the Isle of Man and in the UK. Guernsey has formally confirmed

that it does not intend to introduce an Ombudsman Scheme in the foreseeable future.

4.2 The UK model is of limited assistance when considering a potential Jersey scheme. The reason for this is simply that the financial services industry in the UK is vastly bigger than that in Jersey and is broadly aimed at servicing the domestic market. The scheme receives over 100,000 complaints a year, has over 950 staff, around 30 ombudsmen, and is funded by a combination of levies upon financial services products (for example, around 0.3p per bank account), and by fees levied upon firms that are the subject of complaints. The sheer size of the UK scheme, the economies of scale that exist and the degree to which its financial services industry primarily serves a large resident population, makes it difficult to draw conclusions from the UK model that could assist in the creation of a Jersey scheme.

4.3 The experience of the Isle of Man Financial Services Ombudsman Scheme is more relevant. Like Jersey, the Isle of Man is an island with a financial services industry that caters primarily (in financial terms) for an international market. Nevertheless, the financial services industry in both Jersey and the Isle of Man also provide services to residents, and the importance of this aspect of the industry should not be overlooked. Although it is difficult to give precise comparisons due to the different areas of financial services in which Jersey and the Isle of Man are each particularly strong, the industry in Jersey is generally regarded as being about three times the size of that in the Isle of Man, suggesting that if the Isle of Man approach was followed, a comparable Ombudsman Scheme would be about treble the size.

4.4 One difficulty with drawing lessons from the Isle of Man Ombudsman is that the last annual report published by the scheme was for the year 2003/4. Since then, the Ombudsman has published information as part of the Isle of Man Office of Fair Trading. Unfortunately, this information is nowhere near as complete as that published in the 2003/4 report, so this has been the main source of information used in respect of the Isle of Man scheme.

4.5 The Isle of Man scheme is open to individuals, partners of partnerships and sole traders (but not companies) with a complaint against financial services supplied by a firm operating in or from the Isle of Man. According to the 2003/4 report, of the complaints made to the Ombudsman, 6% were made by Isle of Man residents and 94% by international clients of the Island's financial services industry. The number of initial contacts received by the ombudsman increased by 32% between 2002 and 2003, and the number of formal complaints by 41%. In a press release issued on 14th April 2003, the following summary of the schemes first year is included:

> *"In 2002 the Ombudsman Scheme received 400 initial contacts which resulted in 273 potential complaints…*
>
> *Of the complaints received, 54 were outside the jurisdiction of the Scheme and a total of 57 complaints were completed in the year. The majority of the complaints were resolved at the first stage of mediation and conciliation by the Office of Fair Trading Staff and 22 received full determination by an Adjudicator (or 'ombudsman').*

While most of the 22 were upheld either in full or part, most of the sums awarded were usually modest (£600 or less), and in nearly every case included an element in respect of distress and inconvenience suffered…"

4.6 In the Isle of Man Office of Fair Trading Annual Report 2004 the following comment is made in relation to the failure of the Ombudsman to reach its target of completing mediation within 6 months in 90% of all cases referred to it:

"During the year the office received 521 enquiries of which 316 became formal complaints…the Office concluded 350 complaints during this year compared with 117 in the previous year but, as a consequence of the carry-over from the previous year and the increased number received this year, only 60% of complaints resolved were completed within the six month target. The target has not been met and with increasing numbers of complaints it will have to be reviewed as it is considered unattainable with current staffing numbers."

4.7 There is a clear disparity between the number of claims concluded in 2004 (350) and the number that received full determination by the ombudsman in 2002 (22). Part of the difference is explained by an increase in the number of complaints received between those years. The greater part of the difference results from the large proportion of complaints that are resolved or withdrawn during the mediation stage prior to a matter being referred to the ombudsman for final determination.

4.8 It is clear from the above that the Isle of Man Ombudsman, which at that time comprised a panel of five adjudicators and around two full time case officers, was struggling to keep pace with the level of cases referred to it. It is difficult to ascertain the precise costs of the Isle of Man scheme, as it is accounted for as part of the OFT's general budget, and the costs of staff and premises in the Isle of Man are unlikely to be directly comparable with those in Jersey. It is important to emphasise that the Isle of Man scheme is centrally funded by the Isle of Man Government.

4.9 Nevertheless, the following important facts emerge from consideration of the Isle of Man Scheme:

- 94% of complaints were received from non-residents;
- the average compensation award was small (in 2003, around £600 on average)
- the number of complaints received by the scheme was increasing
- the costs of running the scheme were increasing.

5. Alternatives to an Ombudsman Scheme

5.1 The purpose of an Ombudsman Scheme is to provide an alternative to existing methods of resolving disputes. Whether there is a need for an Ombudsman

Scheme therefore depends upon whether existing methods of resolving disputes are unsatisfactory.

5.2 The Isle of Man scheme shows that the average compensation resulting from a decision made by the ombudsman in comparatively small. The legal costs of any dispute that goes to litigation are likely to significantly exceed the amount of the dispute. The obvious conclusion is that litigation is likely to be an inefficient approach to solving the "problem" of disputes of a size that are typically referred to the Ombudsman. Indeed, the costs of litigation are likely to prevent complainants seeking to pursue their claims in this way.

5.3 These concerns are not new. In March 2002 the Bailiff initiated a pilot project into the Petty Debts Court introducing into the court process a system of mediation, whereby that court may adjourn matters for mediation on such terms as it thinks fit. Mediation encourages people to represent themselves in a relatively informal environment where proceedings could be managed by an accredited mediator. The pilot project was successful, and mediation was subsequently established as a part of the procedure for small claims disputes before the Jersey Courts.

5.4 Mediation is not necessarily a direct replacement for an Ombudsman Scheme. In particular, it should be noted that whereas the Isle of Man and UK Ombudsman may make awards of up to £10,000 in value, the jurisdiction of the Petty Debts Court is limited to disputes of up to £10,000 in value. Nevertheless, even with this limit, mediation is likely to provide a quick and cost-effective alternative to litigation for the majority (by number) of cases that could be referred to an Ombudsman.

5.5 One key advantage of mediation compared to an Ombudsman Scheme is that mediation is established as part of the existing court processes. Indeed, the Master of the Royal Court commented in a presentation made in September 2004 to the Commonwealth Magistrates and Judges Association:

> *"In my view, it is quite clear that a key reason for the success of mediation has been the invaluable support provided by the Court administrative staff to litigants."*

5.6 Further, the strength of the finance industry in Jersey means that the Island is not short of professionals with the technical expertise that an Ombudsman Scheme would offer. Provided sufficient persons of experience can be persuaded to act as accredited mediators, there is no reason why this aspect of an Ombudsman Scheme could not be replicated in the mediation process.

5.7 There may be weaknesses in the current systems of court access and mediation. However, it is clear that mediation replicates many of the features one would expect to find in an Ombudsman Scheme. In utilising the court infrastructure, mediation is likely to provide a more cost-effective way of addressing many of the needs that an Ombudsman Scheme would seek to address. It is therefore recommended that, prior to making any binding decision to introduce an Ombudsman Scheme, consideration should be given to whether the existing system of mediation could be changed in such a way

as to address all of the needs that an Ombudsman Scheme would be expected to meet.

6. Likely costs of an Ombudsman Scheme

6.1 Estimating the likely costs of an Ombudsman Scheme at this stage are very difficult: the final figure will largely depend upon the design of the scheme and the demand for the scheme once it is in place.

6.2 If the scheme and experience of the Isle of Man were to be mirrored in Jersey, on the assumption that the finance industry in Jersey is around three times the size of that in the Isle of Man, it is likely that the scheme would require between 6 and 8 full time case officers and be able to draw upon a panel of between 10 and 15 adjudicators. The cost of the adjudicators could potentially be relatively small, if it was possible to use the same community-minded persons that one would need to act as accredited mediators under a mediation scheme. It is likely, however, that a principal ombudsman would be required to represent and provide general oversight of the scheme. Together with the costs of premises, it is reasonable to suggest that an initial annual budget of between £500,000 – £750,000 would be required.

6.3 Funding could be provided from two sources: from a levy imposed on the financial services industry (as in the UK) or directly from government (as in the Isle of Man).

6.4 If the costs were to be recouped directly from the finance industry, this would clearly place a direct financial burden upon the industry which does not exist in Guernsey or the Isle of Man. Imposing a direct levy in the UK is practical on the basis that the UK itself represents a large and lucrative market, and institutions will be willing to pay that levy in order to access that domestic market. The same principle does not apply to jurisdictions such as the Crown Dependencies from which the financial services industry primarily serves the international market.

6.5 It should be noted that Jersey is an expensive place from which to carry out financial services businesses. Already, such businesses pay a large proportion of the direct taxes received by the States, as well as paying for the cost of the Jersey Financial Services Commission and making significant additional contributions to tax revenues through company registration fees. The finance industry also indirectly funds a large proportion of the Island's legal aid scheme through providing the majority of work to the Island's law firms, and has recently shouldered the burden of ensuring that the Island meets up to a number of its international commitments.

6.6 Clearly, any additional cost imposed upon the financial services industry, especially a commitment to provide year on year funding at a level that – if the Isle of Man experience was to be repeated – is likely to increase beyond the rate of inflation, will act as a disincentive to financial services businesses considering whether to set up in Jersey or to expand existing operations in the Island. It is always possible to overplay the argument that an additional cost would be "the straw that broke the camel's back". However, a proposal that the costs of an Ombudsman Scheme should be borne by the financial services

industry is likely to give rise to significant unrest and opposition within the industry.

7. Recommendations

7.1 The chief weakness with the Isle of Man Ombudsman Scheme is that it overwhelmingly benefits international customers of that island's financial services industry. It could be argued that such persons are not necessarily those in most need of assistance, and that the scheme therefore represents an inefficient use of resources. Such persons may prefer a cost-free alternative to litigation, but are likely to be able to afford to instruct a lawyer in respect of any complaint of substance. It would also be interesting to compare the total value of awards made by the scheme with the costs of running the scheme: it seems likely that the scheme costs as much to administer than it delivers to complainants by way of compensation. Again, it is not clear that this represents an efficient use of resources.

7.2 A better use of resources would be to ensure that any Ombudsman Scheme is focussed upon those who most need it. Experience has shown that there are meaningful numbers of Jersey residents who have complaints in relation to the financial services they have received in the Island. Many members will no doubt have personal experience of constituents that feel they have been ill-advised in relation to mortgages, pensions, personal finance and related matters. There is a compelling argument that such persons need a scheme that offers an accessible, cost-effective and timely resolution to their disputes.

7.3 An Ombudsman Scheme could achieve this fairly simply by limiting access to the scheme to complainants who are Jersey residents. If the experience of the Isle of Man were to be mirrored, this would reduce the volume of complaints by some 94%. It would also lead to the costs of an Ombudsman Scheme falling significantly, and those costs being focussed upon those most in need of assistance.

7.4 However, if an Ombudsman Scheme is to be established with the expectation of dealing with perhaps 50 cases a year (around one a week) made by Jersey residents against Jersey financial institutions, the infrastructure that the scheme is likely to require will almost certainly be under utilised.

7.5 Consideration of these factors leads to the recommendation that establishing an Ombudsman Scheme is unlikely to be an efficient use of resources. It would be more effective to ensure that the existing, apparently successful system of mediation, is supported and if necessary improved in order to ensure that the community has access to an effective and accessible system of dispute resolution for claims that it would not be appropriate to be the subject of full litigation. If it becomes apparent that such an improvement is not possible, then the possibility of introducing an Ombudsman Scheme should of course be reconsidered.

APPENDIX E

EXTRACTS FROM OFFICIAL REPORT ('HANSARD')

14th September 2006

The Deputy Bailiff:
Is that seconded? **[Seconded]** Does any Member wish to speak on the legislation programme?

1.6.1 Deputy A. Breckon:
I notice this is the legislation programme but the Chief Minister actually referred to it as the law drafting programme, which is what it used to be known as. I say that because in 2004 and in 2005 I brought amendments to the law drafting programme to seek to include the Financial Services Ombudsman. In 2004 a vote was taken and it was lost by about 4 or 5 votes - I cannot remember the exact number - and in 2005 I withdrew it. Now I believe that was a mistake because I was given certain assurances at the time by Senator Walker and by Deputy Voisin, who was then President of the Economic Development Committee, that: "Something would be done." I do have the C.D. of that, but I went to the old version and got a tape. I have that and I can provide those quotes to the Chief Minister. The reason I say that is it is not included in 2007 law drafting. I did consider an amendment again. I had an exchange of emails with Senator Ozouf. I was backwards and forwards and time was a bit tight, but Senator Ozouf was prepared to give me an assurance that the department were working on it so, in that respect, I did not propose an amendment today. Having said that, a report has been produced on this and I would say that the report is dubious and not very positive. To add to that, I did look back at the record and in 2004 Senator Ozouf voted against it, so I am looking forward to some positive action there. I do not want to go on about this but it is something that has been in the system for a long time indeed. R.C.43 of 1999, which was a task force was set up following the Edwards review, at paragraph 3.14 - this is from December 1999 - says: "Financial Services Ombudsman accepted." This is the accepted recommendation of Edwards: "Implementation in progress. The task force recommends the introduction of a statutory Ombudsman Scheme which will apply to all regulated financial service business. The scheme will provide an efficient and cost-effective mechanism for the resolution of disputes between financial services businesses and their customers." I should add, Sir, I have a suitcase full of background information to this. There has been some scaremongering about possible costs and what it will do, but in my mind it is a flag we could fly for the international finance business we have got and say it is a feather in our cap. At the moment the Isle of Man boast that they are the only offshore finance centre that offers an ombudsman scheme. I thought we were in competition with them and I would like to think we would get proactive on doing something about this. It is frustrating. The Chief Minister mentioned the people who were consulted about the law drafting as it went along. He mentioned a number of people but it did not include individual Members having an input. I mistakenly thought this would be on the agenda and unfortunately it has not been. It does go back. The Financial Services Commission set up a working group - people from the industry - between 2000 and 2002. They were supportive; they produced a brief. I understand it went to F and E (Finance and Economics Committee) years and years ago and nothing happened. This is stuck in the system. Now we are talking in general terms about engaging the population in politics and what we do, and those people - I spoke to one of them just the other day - feel very frustrated when they put in time and effort and nothing happens. So if we are

going to do that, then perhaps we need to get proactive on some of these issues. Having said all that, I am heartened by something the Chief Minister said: that there is a buffer in the law drafting programme. Perhaps this is something that can be considered because unfortunately it appears that nobody has got the bit between their teeth and is addressing the issue. I think that is frustrating. It is frustrating for many small investors who cannot get remedy when they are taking on institutions with legal departments and deep pockets. They cannot get remedy and there are people out there, believe you me, who are frustrated because of this, and this is due, I believe, to our failure. Just another item I would like to mention, Sir, on law drafting, something again that has slipped down the back of the sofa. In 1992 and 1993 on the law drafting programme was a Fair Trading Law. This appears again to have fallen out. It was included then and that is a long, long time ago and again nothing positive has happened and people again are frustrated by this. I would ask the Economic Development Minister if perhaps he could apply his mind to this and do something about it. Although this is about legislation, Sir, and law drafting, it is a frustration for the individual Member. I would just conclude by saying what actually happens is if you want to put something in, you have to propose taking something out. Now, when you do that then the Minister or the department will feel frustrated and the world will stop turning if that particular item comes out. If you are looking for 20 or 30 days, I think this system needs to be looked at and we need to open it up to all Members. Because, as the Chief Minister mentioned, it is a vital part because if we are going to do things the law drafting makes it happen. It is no good agreeing to do things in principle which we have perhaps done in the past and not translating that into positive action which affects the people out there and addresses some of their needs. I feel frustrated again by this, Sir, and I hope those involved, the Economic Development Minister and the Chief Minister, will take note of that and perhaps find a way of getting round this because I think it is an error that it has been left out.

(…)

1.6.3 Deputy J.J. Huet of St. Helier:
I am going to be extremely short, I will not be holding anybody's time up. I would like to support Deputy Breckon because I have 2 cases on my hands at the moment and the actual companies or firms or whatever you want to call them are just laughing. They just said: "What are you going to do about it? There is nothing you can do." These people are little people, they have a good claim, but there is nothing they can do and it is most unfair. We are not protecting the people that need to be protected.

1.6.4 Senator P.F.C. Ozouf (The Minister for Economic Development):
Yesterday, Sir, I wrongly and unwisely said that I did not like being lectured by Members. I was wrong and I should not have said that. Remarks do not always come out in the manner in which one means. What I meant to say is that sometimes when I sit in this Assembly and listen to Back-Benchers' remarks, it is sometimes frustrating. It is sometimes frustrating to hear what they are saying because I know from the work that others are doing - or what the departments that I am responsible for are doing - that there is work going on and it is easy for Back-Benchers sometimes to simply stand up in this Assembly and scold Ministers or previous Committees for not doing things. I am disappointed to hear the comments of Deputy Breckon. It is easy to have cheap shots. It is easy to go back through the voting record and say: "Senator Ozouf voted against an ombudsman 4 years ago." We do not know what that proposition was, whether or not there were particular reasons for that. I did not agree in the manner in which it had been put at that time, in the way in which it had been put, et

cetera. What Deputy Breckon knows, Sir, is that this Minister for Economic Development has given a categorical assurance that he is going to work hard to try and find a solution to this ombudsman. I look to the Deputy of St. Martin and I hear him again scold the previous Finance and Economic Committee for dealing with the issue of share transfer issues. I am well aware of the issue of share transfers. It is with enormous frustration that I see the quarterly statistics of house sales and I see probably 20 per cent of our property sales going through share transfer. As a former Member of F and E and as a Minister, I would love to see the revenue gained from share transfers attracting stamp duty. I ask the Deputy to examine his conscience when he scolds us. Does he really think that we are just sitting there and just not wanting to deal with this issue when we know that there could be upwards of £1 million collected? The reality is that the share transfer issue is an extremely difficult, extremely complicated issue which is commanding the attention of both the previous Committee, Ministers, experts and outside advisors. I am not involved in the Treasury work these days to any great extent, but I have no doubt that officials are working very hard on trying to find solutions to this, solutions that work. Laws brought to this Assembly that do not work, that will not catch all the property or have the unintended consequences of dramatically affecting Jersey's property market, are not desirable. We have to do it well and we have to do it properly, but we have to do it as soon as possible and we recognise that. I would just ask the Deputy, perhaps, to refrain from scolding us in this Assembly and perhaps work with us. If he has got a solution, if he knows how to solve the issue of share transfer, then come and tell us because I am not aware that anybody has done it and we are not the only jurisdiction to have these difficulties. Remember that stamp duty attracts payments on share transfers across not only property sales in the U.K. and it is a different issue. I would love to see the revenue and I hope it is going to be solved. Certainly, Ministers will be giving all the possible support they can to find that because if we get the money we can, of course, spend it on things like the prison, et cetera. In relation to the Financial Ombudsman Scheme, the previous Committee was against it. There is a report from officials which has been published which sets out the challenging issue about dealing with the Ombudsman Scheme. Deputy Breckon cannot get away also in saying that this is a simple issue. He cannot also get away with saying that there is not a cost implication of this. He says that the Isle of Man has a scheme. Yes, the Isle of Man does have a scheme but it costs, from memory, between £400,000 and £600,000. It is also a scheme which is effectively serving non-Island investors. That is not something, frankly, that I want to put our taxation revenue into. Sophisticated international investors have resources through the channels of legal redress and judicial review and the courts of resolving their financial problems. I do not want to put our taxpayers' money in. These are often just civil, contractual disagreements; rows that develop. We have a very, very good court system and an excellent Commission that will deal with legal representatives. I want to deal with the local market issues. I am at one with Deputy Huet in understanding and recognising the need for putting in place an ombudsman for the local financial services industry, and I am working with the Commission and I am working with other people to try and find a solution to do that. Deputy Breckon knows that. The Chief Minister did say that there is a gap, there is always a buffer in the law drafting programme. Members will see that Economic Development commands a number of days of law drafting time in this scheme and, if necessary, if we can find a solution and if we need to bring a Law, then we will do so and we will attempt to use the existing programme. The Deputy and this Assembly have my assurance that an Ombudsman Scheme is being looked at. We are working out how to do it and we are going to try and find a solution. I would appreciate it if Deputy Breckon would recognise the support that he has had from Economic Development. I do not think I

need to remind him of the fact that he has had increased budget for his Price Watch campaign. He has had increased money for the administrative arrangements for his Consumer Council in addition to support for setting up a Consumers' Ferry Group. I do not think I need to be told that we do not support Deputy Breckon. We do, and I support an ombudsman.

(…)

1.6.8 Deputy P.V.F. Le Claire:
I appreciate that my speeches are not always the easiest to follow, nor is my train of thought, so I am going to help the Chief Minister in response to my comments by making him know through the Chair, Sir, that I have 4 things to comment upon in respect to the legislation programme. I wondered if the Chief Minister would be so kind to respond to these 4 things that I mention. Sometimes, as I say, it is not always easy to follow my train of thought. The first one is the Financial Services Ombudsman. I concur with the issues that Deputy Breckon has pointed out and I understand that the issues of the Financial Services Ombudsman may be difficult but, having spoken to the ex-Chief Executive Officer, Mr. Carse, on the issue, he was very much in favour of the States Assembly providing this ombudsman to assist the Jersey Financial Services Commission in operating within this jurisdiction. Now, if there is an annual cost of £600,000 a year for this ombudsman, surely the monies that are accumulated on an annual basis by the Jersey Financial Services Commission from the financial services companies that are operating in Jersey - I think we had something like £10 million surplus in their account or something in excess of £4 million anyway - certainly we could look, perhaps, at asking them whether or not those amounts of money that they have collected from the financial services in Jersey could not be put towards paying for the Finance Ombudsman. Nothing is ever as easy as it seems and, as Senator Ozouf has pointed out, there was a whole briefing paper on the background to the issue and perhaps we need to look at that.

(…)

1.6.10 Connétable D.J. Murphy of Grouville:
May I add my voice to those who are asking for a Financial Services Ombudsman to be appointed? I had a case of a parishioner who came to me with an obvious case of mis-selling of insurance products, and when we approached the Financial Services Commission we were told they had no jurisdiction whatsoever. They could not do anything at all. He had ticked the box marked "No risk" and been sold something which was at least high risk anyway. They could not do anything; however, the major financial institution involved did recant and they put him back into the position he would have been in if the product had been sold to him properly in the first place. The problem is, of course, that unless these institutions volunteer to repay or to repatriate the client, then they have no recourse in law whatsoever, and I find that quite concerning. I would suggest also that in a case like this where you could have levied a fine, we could build up a kitty which would, indeed, pay for the services of an ombudsman.

(…)

The Greffier of the States (in the Chair):
I call on the Chief Minister to reply.

1.6.16 Senator F.H. Walker:
I will try and be as brief as possible, particularly because I am grateful to a number of my Ministers for answering a number of the points that were raised by Members. I hope, certainly, that Deputy Breckon will agree that Senator Ozouf gave him a satisfactory response and, indeed, those others who raised the question of the Financial Services Ombudsman. I do endorse what has been said. There are 2 very complex pieces of legislation causing Members concern today. One is the Ombudsman, the other is the share transfer scenario, but they are very complex and I think Members will have to accept that that is the case: that some laws can be drafted very quickly. Some have taken up, and necessarily have to take-up, a great deal of time, but I can assure Members that both the Ombudsman and the Share Transfer Law are high on the priority list. I do say that both should be possible to come through in 2007, but we are in the hands of our Law Officers and the Law Draftsmen here. There is no political barrier to bringing them forward. In fact, there is a great deal of political support but, as Senator Ozouf said, we have got to get these complex laws right or else we risk unintended consequences which this House would not wish to, I think, face up to.

APPENDIX F

3rd July 2007

Written Question

Would the Minister advise when he will be presenting a consultation paper ('Green Paper') outlining the various options in respect of establishing an office of Financial Services Ombudsman, has he considered how such an Ombudsman would be funded and if so, would a levy on the industry be an option?

Answer

As the Deputy is aware this is a subject of much recent debate including his own question and my answer only a fortnight ago.

The Chairman of the Consumer Council also, last week, wrote to me on the subject.

It might be helpful to restate some of the background to this:

- Since it was first raised by the Edwards report in 1998, a Financial Services Ombudsman Scheme has been considered in 1999, 2000, 2002, 2004, 2005 and again when the last report was presented on June 6th last year.
- On each and every occasion this matter has been looked at, the conclusion has been the same:

Whilst everyone accepts having an Ombudsman would be attractive it is uneconomic to set one up in the form typically found in large developed economies. This was the conclusion of my 2006 report.

So where do we go from here?

It is important that Members understand the economics of a levy on industry. I urge Members to revisit the 2006 report (R.51/2006 refers). As I have already mentioned, whilst everyone agrees that having an Ombudsman would on the face of it be attractive, we have to weigh carefully the costs and benefits for the consumer, the finance industry and the Island. In a small economy an industry levy, especially one that is weighted by complaint levels has the possibility of placing a disproportionate burden on operators critical to the local market.

We need to be clear that once an Ombudsman is created it might be very difficult to contain the running costs if complaints were to soar.

In the light of the Deputy's question and having taken soundings with Members, I propose that we set up a roundtable steering group to commission an independent review of this matter, ruling nothing in and ruling nothing out, and seeing the process through to conclusion. I am happy to agree the constitution of this committee with other stakeholders and would aim to have it established along with terms of reference agreed and ready to start work in January 2008.

If we are to look again at this matter we need to allocate the necessary resources to ensure we do it properly and I will be including the required resources in my budget for 2008.