Keeping the Complaints Panel or creating the Ombudsperson?

25 November 2024

Jersey Law Commission
Follow-up report

R.186/2024

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The Law Commissioners are:

Professor Claire De Than (**chair**)
Advocate Barbara Corbett
Dr Elina Steinerte
Timothy Hart
Advocate Steven Pallot
Advocate Emma German
Professor Andrew Le Sueur FRSA (**topic Commissioner** and author of this report).

Contacting the Jersey Law Commission

The best way to contact us is by email **staff@jerseylawcommission.org.je.**

You can contact the topic Commissioner directly on **alesueur@essex.ac.uk**.

If you need to send a letter to the Jersey Law Commission, please address it to:

Jersey Law Commission
Care of: Corbett Le Quesne
1a West's Centre
St Helier
Jersey JE2 4ST

For the purposes of the UK Research Excellence Framework, the Jersey Law Commission acknowledges Andrew Le Sueur as the author of this report.

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Contents

Plain English summary

Everybody agrees Jersey needs an independent service to handle complaints about ministers and other public authorities. However, there is a debate on whether this should continue to be the States of Jersey Complaints Panel, a new system called the Jersey Public Services Ombudsperson (JPSO), or a combination of both systems.

In July 2024, we (the Jersey Law Commission) published a report explaining the different ways that an independent complaints service could work. We got feedback from States members, the Ombudsman Association, two individuals, and we spoke to the Children's Commissioner. This report summarises what they told us.

We are pleased that the Government of Jersey Cabinet Office is looking into the future of Jersey's complaints service. But we think three important points risk being missed.

1. The service shouldn't just focus on resolving individual complaints – it should also help public authorities improve.

2. Oversight and transparency of the service are critical.

3. One major problem with the current Complaints Panel system is that ministers often reject its recommendations. The Cabinet Office should review the suggestions we made in July 2024 to help solve this problem.

What this report covers

Background

Where can islanders turn if they're unhappy with how a public authority has handled their complaint, even after using its internal processes? Since the 1980s, people have recognized the need for an alternative to taking these issues to court. For several years, Jersey's independent complaints service[1] has been under review. The options being considered include:

- improving and updating the current States of Jersey Complaints Panel[2]
- creating a new system called the Jersey Public Services Ombudsperson (JPSO)[3]
- a combination of both systems (a hybrid model).[4]

Purpose of this follow-up report

In July 2024, we published a consultation report, *Keeping the Complaints Panel or Creating the Ombudsperson?*[5] This looked at the desirable features for Jersey's independent complaints service, whichever reform option is chosen. This follow-up report has two main purposes.

Sharing feedback: It summarizes the responses we received to our consultation.

Commenting on the Cabinet Office project: In October 2024, the Chief Minister asked Assistant Minister Deputy Moz Scott to lead the next phase of a project to improve Jersey's independent complaints service. The Governance and Community Policy Team in the Cabinet Office is supporting this work.[6] We are pleased this project has been set up. In our consultation report, we called for a clear and open reform process that includes input from different stakeholders and experts. However, we have three concerns about the project's scope.

[1] We use this term throughout the report to refer to all the reform options currently on the table.

[2] States Assembly Privileges and Procedures Committee, *Re-appointment of Complaints Panel* R.131/2024 (**link)**, noting that the chair of the Complaints Panel "has established a working party to review the Panel's existing structure and processes".

[3] Government of Jersey, Law Drafting Instructions: Jersey Public Services Ombudsperson (**link**).

[4] Decision Reference: MD-CM-2024-779. Cabinet Office, Public Services Ombudsman: Terms of Reference (**link**).

[5] See summary at Annex 1 below. The full report can be downloaded from our website (**link**).

[6] Decision Reference: MD-CM-2024-779 (**link**).

- **We are concerned that the project may only focus on resolving individual disputes and not consider how the independent complaints service can help public authorities learn from their mistakes.** If the Council of Ministers has decided that motivating lesson learning is not a function of Jersey's independent complaints service, this is a major change. The proposed JPSO was designed to drive improvements in public services and internal complaint handling.
- **We are also concerned that the project does not include developing plans for clear arrangements for who oversees and is accountable for the independent complaints service.**
- **Lastly, we are concerned that the project does not address the need to create a ethos where findings and recommendations from the independent complaints service are respected and acted on.** Both the Complaints Panel and Jersey Law Commission have pointed out significant problems with acceptance rates in recent years. It is crucial to tackle these problems for the system as a whole to work effectively.

Developments since our July 2024 consultation report

There have been several developments since 1 July 2024.

In August 2024, the **States Assembly Privileges and Procedures Committee (PPC) reported** on *Re-appointment of Complaints Panel* (R.131/2024). This noted that the chair of the Complaints Panel "has established a working party to review the Panel's existing structure and processes". The report reasserted PPC's view that the Complaints Panel provides "a stellar complaints service for Islanders".

In September 2024, the **Public Accounts Committee launched a scrutiny inquiry, led by Deputy Kristina Moore, into handling and learning from customer feedback and complaints**.[7] This includes focus on "Evaluation of current complaints system: access to the current processes and systems used by the Government of Jersey, as well as those of the Complaints Panel …".

As noted above, in October 2024**, the Chief Minister appointed Assistant Minister Deputy Moz Scott "to lead the next phase of the project to deliver a final stage complaints handling mechanism or combination of mechanism"**.[8] The final proposals are due to be presented to the Chief Minister by July 2025. The terms of

[7] States of Jersey website, "Public Accounts Committee launches review into Handling and Learning from Customer Feedback and Complaints" (**link**).

[8] Decision Reference: MD-CM-2024-779. Cabinet Office, Public Services Ombudsman: Terms of Reference (**link**).

reference call for engagement with expert groups, including the Jersey Law Commission. The aims of the Cabinet Office project are to develop proposals for a system that

a) provides recourse for individuals with complaints against a range of public bodies and not only government departments;
b) is accessible and user-friendly;
c) provides a non-adversarial mechanism for complaints resolution and enables resolution of complaints informally where appropriate;
d) promotes transparency while respecting the potential desire for privacy on the part of complainants;
e) considers the use of existing infrastructure and expertise to keep operational costs low; and
f) has a precise jurisdiction that does not impinge on the jurisdiction of the courts or recourse through existing bodies.

The chair and topic commissioner had an introductory meeting with Deputy Scott in August 2024. We look forward to providing further input to the Cabinet Office project over the coming months.

In November 2024, **the Corporate Services Scrutiny Panel lodged a narrative amendment to the Proposed Budget (Government Plan) 2025-2028**.[9] This states

> The Council of Ministers will fully consider the consultation results published by the Jersey Law Commission and the Complaints Panel respectively when considering the appropriate way forward. Detailed proposals will be brought forward in 2025 for States Assembly approval and also detailed in the successive Government Plan.

The **Ombudsman Association (OA) is carrying out a re-validation process for the current Complaints Panel**. In his response to our consultation, Donal Galligan, Chief Executive, states:

> With the pause in taking forward the establishment of the JPSO, and the possibility that the States Assembly may choose to retain the Complaints Panel, the OA has now brought forward the Complaints Panel's re-validation. Alongside the areas identified in the Law Commission's report, and the changes proposed by the Panel itself, that re-validation will identify compliance with the OA's Complaint Handler Member criteria, and the OA's Service Standards Framework, and any areas to improve.

[9] P.51 Amd.(4)/2024 (**link**).

Engagement with our July 2024 consultation

We are grateful to everybody who engaged with our report. During August 2024, the chair and topic commissioner held meetings with several States members to discuss different aspects of the report. These included: Deputy Tom Binet; Deputy Moz Scott; Deputy Sam Mézec; and Connétable David Johnson.

We also had a useful meeting with the Children's Commissioner and colleagues. We received written responses from the Ombudsman Association (see Annex 2). Two individuals also responded: Sir Mark Boleat and Mr David Moon.

Consultation responses highlighted several points, which we explain in detail throughout this report. **In summary:**

- **The complaints service could have two important roles—helping people with individual complaints and improving how public services are run.** The Ombudsman Association stressed the importance of the service improvement function. However, the Cabinet Office project seems to focus only on resolving individual complaints, which leaves out a key goal
- **Making the independent complaints service easy to find and use.** One response criticized how the Complaints Panel communicates with the public. We note that since July 2024, the Complaint Panel's page on the States Assembly has added a telephone number and email address, but there are still problems. Another important issue is ensuring that Jersey's complaints systems consider how to manage complaints by, on behalf, or about children.
- **Clear governance and accountability**. One respondent raised concerns about how the JPSO would be held accountable. We agree that if the JPSO project moves forward, these arrangements should be reviewed.
- **Extending the complaints service's scope**. There seems to be consensus that the complaints service should cover more than just complaints about ministers and departments. But one respondent cautioned against including organisations that are commercial entities (such as the Jersey Development Corporation) and bodies that get public funding. We note the importance of clarifying whether complaints about employment issues and health care will be included, as these have been controversial in the past.
- **Expert or citizen-led resolution**. One response suggested the Complaints Panel should employ professional investigators. While a small number of other countries successfully involve laypeople in ombudsperson systems, the Ombudsman Association stressed this works best when combined with full-time professional staff.

- **Handling complaints publicly or privately:** The Ombudsman Association emphasized that complaints should be handled privately and confidentially to protect everyone involved.
- **Getting cooperation and respect for findings:** One response suggested making the Complaints Panel's reports legally enforceable, but this goes against the typical role of an ombudsperson. A middle-ground approach could involve legally binding findings of fact, while recommendations remain political decisions. As noted above, we are concerned that the Cabinet Office project does not address the need to create a political ethos where findings and recommendations are accepted, which is crucial no matter what system is used.

Responses to consultation expressed different views on whether the Complaints Panel should be retained or replaced by the JPSO.

In his response, **Sir Mark Boleat** concluded that "Politically, a JPSO is unlikely to happen. The likely cost and time taken to establish it exceeds the perceived benefit".

The **Ombudsman Association** stated:

> We welcome the approach taken by the Law Commission of posing fundamental questions around what the problem that needs to be resolved actually is, and what the desirable features should be of Jersey's independent complaints body.
> We strongly believe that the ombudsman model is the most effective model to identify systemic issues and help drive improvements in services and complaint handling. The benefit for citizens is therefore not only in resolving disputes, but also in the increased efficiency and effectiveness in public services as a result of 'getting it right first time'.

The Jersey Law Commission hopes that our ongoing work is helping to clarify the issues that need to be considered by ministers and the States Assembly.

Helping individuals and helping public authorities improve

Our July 2024 consultation report asked, “Should Jersey’s independent complaints body continue to focus on resolving individual complaints **or** have a wider role of championing general improvements in public administration and service delivery?” This is a key consideration.

Responding for the Ombudsman Association, Donal Galligan (CEO) said:

> We strongly believe that the ombudsman model is the most effective model to identify systemic issues and help drive improvements in services and complaint handling. The benefit for citizens is therefore not only in resolving disputes, but also in the increased efficiency and effectiveness in public services as a result of “getting it right first time”. […]
>
> An ombudsman is different to the basic transactional complaint handling which simply picks a “winner” in a dispute. Resolving an individual dispute is of course key to those individuals involved, but the real value in the ombudsman model is in their role in feeding back the lessons from their work in order to help secure address for others in a similar situation, and to improve service delivery and complaints management for the future. For that reason, the ombudsman is often described as being more like a doctor than a police officer, diagnosing what is wrong and making recommendations to improve.

We agree with this analysis that an effective independent complaints service should have functions beyond “transactional” handling of individual grievances, however important that is.

Our consultation report noted that the current Complaints Panel sometimes seeks to make recommendations that identify opportunity for systematic improvement of public administration beyond the individual complaint. This function is not spelt out in the Administrative Decisions (Review)(Jersey) Law 1982 but has become an established practice. We made three suggestions for improvement if the Complaints Panel is retained (p. 30).

1. board reports [on individual complaints] should be more consistent in how they set out system improvement recommendations
2. the States Assembly website should have an organised archive of ministers’ responses to system improvement recommendations
3. Complaint Panel annual reports should have a ‘tracker’ (organised cumulative summary) of what impact board reports achieve in system improvement.

We noted that the JPSO would have stronger powers to achieve lesson learning (p. 32) including: own-initiative investigations, a role as the island’s whistle-blower officer;

powers to work jointly with other bodies; and to publish guidance and deliver training courses.

We are concerned that the Cabinet Office project may only focus on resolving individual disputes and does not consider how the independent complaints service can help public authorities learn from their mistakes. If the Council of Ministers has decided that motivating lesson learning is not a function of Jersey's independent complaints service, this is a major change. The proposed JPSO was designed to drive improvements in public services and internal complaint handling.

Ensuring the complaints service is easy to find and use

Our July 2024 consultation report looked at "How to be an accessible and transparent independent complaints body" (chapter 5). **We welcome the Cabinet Office project's focus on the question of how a new or invigorated independent complaints system can be "accessible and user-friendly".**

Basic information about contacting and using the Complaints Panel

We noted several ways in which the current Complaints Panel did not make it easy for islanders to know about the service it provides. It had no published telephone number or email address. Its webpage (part of the States Assembly's website) is not prominent. No information is provided in minority languages such as Portuguese.

In his response to our consultation, **Sir Mark Boleat agreed there were shortcomings relating to accessibility**. He commented:

> Communication by the Panel is dire – but that is symptomatic of the Jersey Government and Assembly …I know the Law[10] provides for a Panel and a Board but referring to both in public documents is just confusing … Of course there should an email address and a phone number.

In light of Sir Mark's comments, we looked online for information about the Complaints Panel on 19 November 2024. Conclusion: there has been useful recent updating but inconsistencies make it harder for people to find clear and accurate information about the Complaints Panel.

Online information about the Complaints Panel

Google search results: The Government of Jersey webpage for the Complaints Panel appears higher in search results than the States Assembly webpage. This shows that both need to be accurate and coordinated since they're important sources of information.

States Assembly website: Since our July 2024 report, the Complaints Panel webpage was updated as part of a broader redesign of the Assembly's website. It now includes a dedicated email address and phone number. It now states that the service if free. There's a link to a newly updated guide called *How to Complain to the States of Jersey Complaints Board*, but the title should say "Panel." Previous reports on complaints since

[10] See Administrative Decisions (Review)(Jersey) Law 1982. The "panel" is the whole organisation. When a complaint requires formal adjudication, three panel members for a "board".

2016 are now easier to access, but responses from ministers haven't been added. The webpage continues to be somewhat hidden, two clicks deep on a complicated website.

Government of Jersey website: This page is titled States of Jersey Complaints Board (it should be "Panel"). It hasn't been updated with the new email address or phone number, so it still tells people "you'll need to send a letter explaining your complaint". It links to an older version of the *How to Complain* guide instead of the updated version on the States Assembly website.

Citizens Advice Jersey webpage: This page also uses the incorrect title States of Jersey Complaints "Board". It was last updated in October 2021 and links to the Government of Jersey webpage, not the States Assembly page. It hasn't yet been updated to include the Complaints Panel's new phone number or email address.

Child-friendly complaints handling

Another aspect of accessibility that emerged during conversations with members of the office of the Children's Commissioner is making complaints handling child friendly in Jersey.

Concerns or complaints may be made by (1) a child, (2) an adult on behalf of a child, or (3) an adult about an issue affecting a child.

We did not highlight this in our July 2024 consultation report, but we would urge the Cabinet Office project team to consider this.

Recent developments in Scotland provide useful reference points. In July 2024, Scotland "directly" incorporated the United Nations Convention on the Rights of the Child (UNCRC) into Scotland's law. This differs from Jersey's approach of "indirect" incorporation of UNCRC rights but both approaches seek to ensure that children's rights are central to policymaking and decision-taking by public bodies. In July 2024, the Scottish Public Services Ombudsman published principles and guidance on how complaints handling systems can be child friendly.[11]

[11] **https://www.spso.org.uk/child-friendly-complaints**

How the complaints service is overseen

Chapter 5 of our consultation report also looked at issues of transparency, governance, and accountability for the island's independent complaints service. This is the age-old question, "Quis custodiet ipsos custodes?" or "Who will watch the watchman?"

Public confidence is helped by appropriate governance and accountability arrangements. A culture of continuous improvement in the island's independent complaints service could also be driven by appropriate accountability arrangements. **We are therefore concerned that the Cabinet Office project terms of reference make no reference to issues of governance and accountability.**

In his response, Sir Mark Boleat raised concerns about the governance arrangements envisaged for the JPSO in the draft instructions for the JPSO Law (which we reproduced without critical comment on p.38). On reflection, we agree with Sir Mark that **if the JPSO project is restarted, some aspects of accountability duties should be examined afresh**. Sir Mark explained,

> An annual report and a strategic plan are completely different documents produced to different timescales. A strategic plan for one year is a non sequitur. Also, annual reports do not have a budget for the following year. Why not following normal arrangements and require the publication of an annual report, doing what it says on the tin, with a firm deadline and the publication of strategic plans covering a three year period. The annual budget should not be part of either publication.
>
> Similarly "the JPSO will routinely publish but is not limited to the following: Board minutes; comments made by the Chief Minister on the Annual Report and the Strategic Plan". This assumes that the Chief Minister will comment on the annual report and strategic plan; I suspect he has better things to do. And publishing minutes simply means that they no longer serve the purpose of minutes and become a listing of decisions.

If the outcome of the Cabinet Office project is to retain a reformed version of the Complaints Panel, questions of governance and accountability will still need to be considered.

Extending the complaints service beyond ministers

Our July 2024 consultation report examined the scope of the independent complaint service's jurisdiction over public authorities and other bodies in Jersey. **We welcome the fact that the Cabinet Office project terms of reference include focus on reform to "provide recourse for individuals with complaints against a range of public bodies and not only government departments".**

There is consensus that Jersey's system should reach beyond ministers and departments.

Our 2018 report *Designing a Public Services Ombudsman for Jersey* (chapter 6) tried to develop a principled approach to defining which bodies should be within and which outside the reach of the independent complaints service. This influenced the thinking underpinning the drafting instructions prepared for the JPSO Law.[12] We suggested a method of drawing up the list of bodies subject to the JPSO by asking six questions (p.71):

Are all or some of the officeholder's or organisation's activities covered by the Human Rights (Jersey) Law 2000? If so, that creates a presumption in favour of the JPSO having jurisdiction.

Are the officeholder's or organisation's finances regulated by the Public Finances (Jersey) Law 2005? If so, that creates a presumption in favour of the JPSO having jurisdiction.

Are the officeholder's or organisation's appointments overseen by the Jersey Appointments Commission? If so, that creates a presumption in favour of the JPSO having jurisdiction.

Is the officeholder or organisation a 'scheduled public authority' under the Freedom of Information (Jersey) Law 2011? If so, that creates a presumption in favour of the JPSO having jurisdiction.

Are there clear public policy advantages in having the officeholder or organisation within the JPSO's jurisdiction?

Are there any compelling reasons for excluding the officeholder or organisation from the JPSO's remit?

[12] **https://www.gov.je/md/MDAttachments/Chief%20Minister/Decisions%20in%202022/MD-CM-2022-639.pdf**

These questions attempted to achieve alignment across different legal regulatory regimes applicable to public bodies.

Our July 2024 consultation report used the JPSO Law drafting instructions to set out a list of the bodies that could be within the jurisdiction of the independent complaints service: see pages 42-44.

Sir Mark Boleat urged caution, in his response to our July 2024 consultation report.

> Including in the list of bodies to be covered those which receive Government funding is inappropriate. Charities in particular should not be within scope of an ombudsman scheme. Similarly including commercial bodies such as the Jersey Development Company serves no purpose other than to benefit its competitors.

The Cabinet Office project team will need to consider carefully which bodies should be on the list. There may, as Sir Mark suggests, be a need for fine-tuning. In removing public bodies from the list, it will be important to ask the question: if a person with a complaint against the body cannot use the independent complaints service, to whom can they take their grievance?

Two categories of grievance have particular importance. The first is disputes related to employment. As we noted in our July 2024 consultation report, disagreements have arisen over the jurisdiction of the current Complaints Panel to hear cases about public sector employment (see pp 79-81). The Cabinet Office project team will need to reach a view on whether these are within jurisdiction (because they are decisions taken by public bodies) or beyond the jurisdiction (because employment issues are private law matters rather than administrative functions).

The second category is health-related disputes, which we dealt with at p.44. A reason given by the Chief Minister for wanting to pause progress with the JPSO project, and look at other options, was concern about the costs of the JPSO having jurisdiction over health matters.

Citizen boards or professional investigators

Our July 2024 consultation looked at who is involved in Jersey's independent complaints service. Currently, the Complaints Panel is made up of unpaid volunteers from different backgrounds, who contribute their services on a part-time basis. In contrast, the proposed JPSO would have a professional Ombudsperson, supported by a small team of staff.

The Cabinet Office project team is tasked with considering "the use of existing infrastructure and expertise to keep operational costs low".

David Moon told us

> The Complainants Panel could also benefit from having the power to employ professional advisers to carry out investigations. I do not favour States employees or former employees being members of the Panel or persons from outside the Island being appointed to the Ombudsman when there are many competent and professional people with wide experience of affairs both within and without the Island who could fill the role. The problems with various authorities in the Island arise from their members being ex UK executives who naturally treated all matters as they were UK.

The **Ombudsman Association (OA)** reiterated that the best practice norm "in the British family of nations and territories both the British Isles and the Commonwealth is the professional ombudsman model". The OA added

> the value in funding a professional ombudsman office, both in terms of cost savings for central government of driving 'right first time' and strengthening democracy through independent accountability, is seen in territories considerably smaller than Jersey, including Gibraltar, Bermuda, and the Falkland Islands.

The OA said, "Where ombudsman schemes do utilise volunteers it is *in addition* to professional full-time staff, not instead of". Two examples are given. One is the "Friends of the Ombudsman" system in Indonesia. Closer to home, in the private sector, the UK Pensions Ombudsman has

> a volunteer network of c.170 pension professionals, working alongside the Pensions Ombudsman's c.160 full-time staff. Those volunteer advisers support vulnerable customers, help people navigate a pension scheme's internal complaints process, and, where possible, help resolve complaints informally before they complete a pension schemes' internal processes. As well as utilising the experience of those pension professionals, part of the rationale for this approach is that the advisers will take back the best practice knowledge gained from the ombudsman to both share it with their colleagues and to apply it in their daily work.

These examples could provide reference points for the Cabinet Office project team about how to “improve upon the best elements of the Complaints Panel and the concept of a Public Services Ombudsperson”.

Public or confidential

Our July 2024 consultation report examined differences in working methods between the current Complaints Panel and an ombudsperson.

Complaints Panel	Ombudsperson
When possible, seek to resolve complaint informally	When possible, seek to resolve complaint informally
Where formal resolution required, there is a **public hearing**	Where formal resolution is required, **confidential investigation** takes place
Methods: **adversarial, adjudication**	Methods: **inquisitorial, investigation**
Report published, usually with **names and personal details**	Report published, **anonymised** and with personal details removed to ensure confidentiality

The Cabinet Office project team is examining how to develop Jersey's independent complaints service to provide "a non-adversarial mechanism for complaints resolution and enables resolution of complaints informally where appropriate" and "transparency while respecting the potential desire for privacy on the part of complainants".

In its response to our consultation, the **Ombudsman Association highlighted the importance of privacy and confidentiality:**

> … a key feature of the ombudsman model is that it is an inquisitorial process, carrying out investigations in private, as opposed to adversarial adjudication in public. In that sense it is quite deliberately an alternative to the Courts and so consciously does not replicate the approach taken there.
>
> The value and appeal of that has been well set out in the Law Commission's report and elsewhere, so I will not repeat it in detail here. As quoted in the report, the Tynwald Commissioner notes that cases "under investigation are not in the public domain and to publish a summary of such ongoing investigations would be both premature and an inappropriate invasion of the confidentiality of both the complainant and the listed authority."
>
> The popularity of ombudsman schemes across different sectors demonstrates that people value the confidential nature of the 'investigation in private' model. Across the British Isles, ombudsman schemes have seen significant increases in casework: 33% for the Scottish Public Services Ombudsman; 54% for the Communications Ombudsman; and 70% for the UK Financial Ombudsman Service.

Helping ministers accept recommendations

One of the problems with the current Complaints Panel system is that over several years ministers have accepted findings and recommendations less often than is typically found in ombudsperson systems. Chapter 11 of our July 2024 consultation report provided detailed analysis of why this happens and outlined some practical steps that could be taken to improve cooperation and acceptance.

In his response, **David Moon argued that the Complaint Panel's decisions should be legally enforceable:**

> I would submit that an Ombudsman would not be required if the powers of the Jersey Complaints Panel were legally enforceable. The cases relating to the foreshore at Grouville and Mr Barette illustrate that the process is pointless if it does not produce a legally binding outcome. If the Minister considers it unacceptable there could be a right of appeal to the Royal Court or some other appeal tribunal.

Making the decisions of the Complaints Panel or JPSO legally binding would contradict conventional wisdom. Globally, ombudsperson schemes rarely have the power to enforce their reports. Many see this as a key feature that distinguishes them from courts, tribunals, and regulators. In Jersey, there is a commonly held view that that it would be undemocratic for the Complaints Panel or JPSO to have legal power to override ministers' decisions.

But the gist of Mr Moon's point is important.

On pp 83-84 of our July 2024 consultation report we explain that in England the Local Government and Social Care Ombudsman's findings of fact and assessment of whether there has been maladministration are binding. A local authority or care provider who disagrees with these elements of a report would need to start judicial review proceedings in the High Court (the equivalent of the Royal Court) to argue that the LGSCO has acted unlawfully. The LGSCO's recommendations on what should be done to remedy the maladministration are not legally binding. When the Law Commission of England & Wales looked at ombudsperson schemes in 2011, it recommended that "Public services ombudsmen should continue to be part of the political process" but also "findings of the public services ombudsmen should be binding unless successfully challenge by way of judicial review".[13] **A similar approach of binding findings and non-binding recommendations could work in Jersey**.

[13] Law Commission of England & Wales, *Public Services Ombudsmen* (2011).

In our 2018 report *Designing a Public Services Ombudsman for Jersey*, p.121, we highlighted the arrangements in Northern Ireland, where people may apply to the county court for a remedy if a public body refuses to implement recommendations of the Public Services Ombudsman (NIPSO). We do not advocate this approach for Jersey, but it illustrates that non-bindingness is not as absolute as often presented.

In our view, the solution to Jersey's problem of relatively high incidence of non-acceptance of the Complaint Panel's (or future JPSO) rests in the political sphere. On pp 86-92 we set out some practical changes that could help shift the culture:

- Ministers could adopt a policy that reports will be accepted unless there is an overwhelming reason of public policy not to do so.
- A decision not to accept a report could be taken collectively by the Council of Ministers rather than being left to the individual minister whose department has been challenged.
- There could be requirements for enhanced publicity when a minster declines to accept a report, for example newspaper adverts.
- There could be a scrutiny hearing if a minister rejects findings or recommendations.
- There could be more dialogue to build trust and understanding.
- The States Assembly could adopt a more joined-up approach to scrutiny of complaints handling.

We are concerned that the Cabinet Office project's terms of reference make no specific reference to the need to build a strong political culture of acceptance of findings and recommendations. This has been a significant problem, highlighted by the Complaints Panel as well as the Jersey Law Commission. It is important for these issues to be addressed.

Annex 1: July 2024 consultation report summary

Current States of Jersey Complaints Panel. A person with a complaint about a Jersey government department should use the internal feedback process. If this fails, they can write to the Greffier of the States to request an independent review by the Panel. This consists of 13 volunteer members of the public. The Panel tries to reach an informal settlement. If this doesn't succeed, 3 members of the Panel form a 'board' and hold a public hearing (usually in the States Building). At the hearing, the complainant presents their case. Then, officials and sometimes the Minister speak. The board publishes a report on the States Assembly website. It has findings and recommendations. The Minister decides whether to accept the board's view. He then publishes a response on the States Assembly website.

Proposed Jersey Public Services Ombudsperson (JPSO). A person with a complaint about a public body in Jersey should use its feedback process. If this fails, they can apply to the JPSO. It will have a full-time investigator and two assistants. They will have legal guarantees of their independence. The JPSO will try to reach an informal settlement. If that fails, they will investigate. This will be a confidential process designed to protect the complainant's privacy. The JPSO will write a report with findings and recommendations. The JPSO website will publish it, ensuring the complainant's anonymity. The public body will decide whether to accept the report. Also, the JPSO can investigate a public body without a complaint. They can, if needed, investigate jointly with another body, like the Children's Commissioner. They will also hear from 'whistleblowers' (staff inside public bodies who have concerns). The JPSO will help public bodies improve their complaints processes.

Chapter 1 Aims of the report

The report covers Jersey's independent complaint services' structure and function. This is currently the States of Jersey Complaints Panel. For years, people have proposed replacing the Panel with a JPSO. The report aims to improve public understanding of the issues. It clarifies the problems and explores designs for a better complaints system.

The Jersey Law Commission believes that establishing the JPSO is necessary. But if Ministers and the States Assembly decide to keep the Panel, it should be reformed.

Chapter 2 Understanding the Ombudsperson vs Panel debate

In 2024, there seems to be three main choices for the States Assembly: 1. Keep the Panel's structure and processes. 2. Overhaul it entirely. 3. Establish the JPSO.

The chapter provides information about complaint systems in other jurisdictions. Guernsey has a Complaints Panel. It has debated setting up an Ombudsperson, possibly with Jersey. The Isle of Man created an ombudsperson in 2011, called the Tynwald Commissioner for Administration. In 2022, the island set up the Health and Social Care Ombudsman Body. Gibraltar established the Gibraltar Public Services Ombudsman in 1999.

The chapter recounts the debate in Jersey. It began in 2000. The Clothier panel on government reform recommended an ombudsperson.

Chapter 3 Nature and scale of the problem

States Members must be clear about the problem Jersey's complaints body addresses.

If they think Jersey's public services are good and that there's a good complaints system, then no major reform is needed. The current Panel serves islanders well.

Alternatively, they may believe Jersey's public services have deep flaws, that the low number of cases received by the Panel is concerning, and Ministers' rejection of the Panel's recommendations makes the system ineffective. If so, we need radical reform by setting up the JPSO.

Chapter 4 Individual justice or systematic improvement?

The Panel and proposed JPSO aim to resolve complaints about public bodies. They seek a just outcome for individuals.

The JPSO would have additional powers. It could launch its own investigations to improve services, without waiting for a complaint. It could work with other bodies, like the Children’s Commissioner, to improve the system. It would have a 'whistleblower' function to receive concerns from public body staff. And, it would partner with public bodies to improve their internal complaints handling.

Chapter 5 How to be an accessible and transparent independent complaints body

There is strong agreement that all public bodies should be accessible and transparent. This applies to the Panel and proposed JPSO.

The States Assembly should improve the accessibility of the Panel if they decide to keep it. It should publish a phone number and email address. Its webpage is part of the States Assembly site. Make it stand out and easy to use. Improving its transparency requires a better archive of past recommendations.

The JPSO will have its own website. It will do outreach to raise public awareness of its role. The JPSO Law will set out a range of requirements to ensure that it is transparent.

Chapter 6 Focus on Ministers or extend the reach to many more public bodies?

The Panel's jurisdiction is over ‘any Minister or Department of the States or ... any person acting on behalf of such Minister or Department’. Amending the Administrative Decisions (Review)(Jersey) Law 1982 would be needed to extend the Panel's jurisdiction.

The proposed JPSO would cover almost all public bodies. It includes the Government of Jersey, parishes, and schools' head teachers and governing bodies. It also includes a long list of other specified bodies, such as Andium Homes and Ports of Jersey.

Chapter 7 Citizen board or professional investigator?

A key design choice for Jersey's complaints body is who should decide complaints and recommend improvements to public administration.

The current Panel has 13 unpaid islanders. They serve for a maximum of 9 years. The current Panel members select them, and the States Assembly appoints them. Their work is supported by the States Greffe.

The proposed JPSO would have a principal Ombudsperson. They would be appointed for a fixed term, at a salary of about £150,000, including on-costs. The States Assembly would appoint them. This would be on the joint nomination of the chair of the Scrutiny Liaison Committee and the Chief Minister. Two other officers would support the JPSO. A non-executive board of up to 8 unpaid islanders would advise, support, and challenge the JPSO. It would also defend its independence.

The chapter discusses the pros and cons of unpaid islanders and a paid Ombudsperson and staff.

Chapter 8 From very public and highly confidential?

For formal resolution of complaints, the Panel holds a public hearing. It is usually in the States Building. Panel reports published on the States Assembly make complainants' details public. This can include their finances, work, and family.

The JPSO would conduct its work through processes that ensure privacy and confidentiality. The Standing Orders of the States Assembly would prevent naming complainants in the Assembly or its records. Complaints would always be anonymised.

The chapter discusses the pros and cons of a public process and reforms to ensure complainants' privacy and anonymity.

Chapter 9 From adjudication to investigation?

The Panel and proposed JPSO both try to resolve complaints informally. Where this is not possible, however, they use different techniques.

The Panel requires a complainant to gather supporting information. They must then present it at a public hearing. The Panel will decide the case after that.

The JPSO, like other ombudspersons, would work inquisitorially. It would investigate what happened by gathering information via email and interviews. Only in rare cases would there be a public hearing.

Chapter 10 Using ‘maladministration’ as the ground of review?

The grounds for going to the Panel are that the decision is: contrary to law; unjust, oppressive, or discriminatory; based on a mistake of law or fact; unreasonable; or against natural justice.

The JPSO’s grounds would be ‘maladministration’ and ‘service failure’.

The chapter discusses the pros and cons of defining the grounds in these different ways.

Chapter 11 How can cooperation and acceptance be improved?

The Panel has, on several occasions, criticized Ministers and officials for not cooperating. The chapter discusses two ways to incentivise cooperation with the Panel.

The JPSO will have legal powers to obtain information from public bodies and it will be a criminal offence to hinder the JPSO.

Both the Panel and JPSO lack coercive powers to enforce their reports. This is a key difference from courts and tribunals, whose judgments are legally binding. Independent complaints bodies 'recommend' but do not 'order'. So, public bodies must be inclined to accept their outputs.

The chapter discusses Jersey's problem with Ministers not accepting Panel reports. Non-acceptance has occurred because Ministers have

- questioned the Panel’s jurisdiction to adjudicate on some kinds of complaints
- not accepted findings of fact in Panel reports
- disagreed with the Panel’s evaluation that a ground of review has been breached
- been concerned about the Panel’s recommended remedy.

The chapter discusses reforms to boost acceptance of Panel findings. They may also apply if the JPSO is established.

- Reduce disputes over facts by circulating a draft statement of facts for review and comment before reports are finalised
- Make findings of fact and whether a ground has been breached binding, while leaving discretion for Ministers to decide whether to accept recommendations on remedies
- Ministers could adopt a policy that reports will be accepted unless there is an overwhelming reason of public policy not to do so
- The Council of Ministers, not individual Ministers, could make the decision in any case where it is proposed not to accept a report
- Ministers could be required to publicise their decision not to accept a report
- Ministers not accepting a decision could be subject to a scrutiny-style hearing
- A regular conference on complaint-handling issues could foster a culture of understanding and compliance.

It also looks at how the States Assembly could improve its oversight of handling complaints.

The chapter ends with three case studies. They are on: 1. Planning enforcement in St Mary (R.111/2018). 2. Referral of a health professional to a regulator (R.148/2018). 3. Handling foreshore encroachment claims (R.71/2018).

Chapter 12 Jersey Law Commission position statement

Our position remains as it was in October 2017. Establishing the JPSO is necessary given the scale and nature of the problems facing Jersey's public administration and services and the shortcomings (as we see them) in the current Panel system.

If, however, the States Assembly opts to keep the Panel, it needs to be reformed in significant ways to ensure that it is fit for purpose, enjoys the confidence of the community, Ministers and officials, and that its recommendations are accepted. This report has highlighted several key choices that would have to be made in modernising the Panel.

Annex 2: Ombudsman Association response

The response to our consultation from the OA starts on the next page.

About the OA

The Ombudsman Association (OA) is a membership body for ombudsman schemes and other complaint handling bodies. Our criteria and standards are recognised as industry best practice. The OA was established in 1993 and includes as members all public and private sector Ombudsman schemes and major complaint handling bodies in the United Kingdom, Ireland, the British Crown Dependencies, and the British Overseas Territories. We're a not-for-profit company, limited by guarantee.

PO Box 418, Carshalton, Surrey,
SM5 9EY, United Kingdom
www.ombudsmanassociation.org

Company Registration number: 11976831

Chair: Margaret Kelly
Chief Executive: Donal Galligan

Professor Andrew Le Sueur
Jersey Law Commission
c/o Corbett Le Quesne
1a West's Centre
St Helier
Jersey, JE2 4ST

17 October 2024

Dear Andrew,

Keeping the Complaints Panel or creating the Ombudsperson?

Thank you for the opportunity to respond to the Jersey Law Commission's report. We have focused our comments on where we think we have something additional to add to the points raised in the report.

Summary

1. We welcome the approach taken by the Law Commission of posing fundamental questions around what the problem that needs to be resolved actually is, and what the desirable features should be of Jersey's independent complaints body.

2. We strongly believe that the ombudsman model is the most effective model to identify systemic issues and help drive improvements in services and complaint handling. The benefit for citizens is therefore not only in resolving disputes, but also in the increased efficiency and effectiveness in public services as a result of 'getting it right first time'.

Background

3. The Ombudsman Association (OA) is the professional association for ombudsman schemes and complaint handling bodies in the UK, Ireland, the British Crown Dependencies, and the British Overseas Territories.

4. The OA's membership criteria[1] are recognised both in the UK and internationally as representing best practice. This is reflected in the UK Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes,*[2] which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'.[3]

5. The Vision of the OA is that throughout the public and private sectors:
   - It is straightforward and simple for people to complain.
   - People making a complaint are listened to and treated fairly.

[1] www.ombudsmanassociation.org/about-us/join-ombudsman-association
[2] www.gov.uk/government/publications/new-ombudsman-schemes-guidance
[3] www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

- A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
- People have access to an ombudsman in all areas of consumer and public services.
- The learning from a complaint is used to improve services.

Nature and Scale of the Problem

6. In terms of the assessment of the 'nature and scale of problems in Jersey's public service', we note that the original case put forward for the need to establish a Jersey Public Services Ombudsperson (JPSO) came from several different quarters, including via the Jersey Care Inquiry, from the then Comptroller and Auditor General, and of course from the Law Commission. We also note that the transformational goal set out in the law drafting instructions for the JPSO was clear: *'The overall objective in establishing the JPSO is to drive a higher standard of administration by public services'.*

7. Whilst the OA is not in a position to comment on improvements made in public service complaint handling in Jersey since then, we are not aware of any studies or reports that have concluded that an ombudsman would not provide the same value in Jersey that they do across the different nations and territories of the British Isles, the British Overseas Territories, and across the Commonwealth.

Individual justice or systemic improvement?

8. As the Lady Chief Justice for England and Wales recently set out,[4] the civil justice system plays three key roles in society: (1) it prevents disputes by guiding behaviour; (2) it resolves disputes without the need to resort to the courts; and (3) in the last resort, the courts determine disputes by adjudication. The same is true of the administrative justice system.

9. Whereas much complaint handling focuses solely on part (2) of that model, an ombudsman aims to deliver both (1) and (2), providing an independent redress model, free at the point of use, that can drive systemic change, tackle injustice, and help organisations to perform more efficiently and effectively.

10. An ombudsman is different to the basic transactional complaint handling which simply picks a 'winner' in a dispute. Resolving an individual dispute is of course key to those individuals involved, but the real value in the ombudsman model is their role in feeding back the lessons from their work in order to help secure redress for others in a similar situation, and to improve service delivery and complaints management for the future. For that reason, an ombudsman is often described as being more like a doctor than a police officer, diagnosing what is wrong and making recommendations to improve.

11. As research in Australia has shown,[5] every dollar spent on complaint handling can reap a 'return on investment' of up to 5 dollars, and more so when you consider social return on investment; an ombudsman helps drive increased efficiency and effectiveness in public services as a result of 'getting it right first time'. And it is in that guise, as an 'agent of change', that an ombudsman plays a role in rebuilding trust and confidence in public services.

[4] Speech by the Lady Chief Justice: Civil Justice Council's 12th National Forum - Courts and Tribunals Judiciary

[5] ROI of Complaints for Public Organisations (socap.org.au)

Professional investigator / volunteers

12. It's worth reiterating that the best practice 'norm' in the British family of nations and territories across both the British Isles and the Commonwealth is the professional ombudsman model. As touched on above, the value in funding a professional ombudsman office, both in terms of cost savings for central government of driving 'right first time' and strengthening democracy through independent accountability, is seen in territories considerably smaller than Jersey, including Gibraltar, Bermuda, and the Falkland Islands.

13. In terms of the potential uniqueness of the British Crown Dependencies, the ombudsman model has, as the report notes, already been adopted in the Isle of Man for complaints about public services (albeit that the Tynwald Commissioner has made clear that their current funding is inadequate). And of course, the ombudsman model already exists and operates effectively in Jersey in relation to complaints about financial services.[6]

14. That model of 'professional investigators' is also the norm in different sectors and in different nations. Where ombudsman schemes do utilise volunteers it is *in addition* to professional full time staff, not instead of.

15. One example is in Indonesia. The Indonesian Ombudsman, a classical public sector ombudsman, utilises volunteers to deal with the issues they face related to having limited resources to service a complex and diverse country, with a population of 279 million, spread across 17,000 islands, with thousands of distinct native ethnic groups, and over 800 different languages.

16. The 'Sahabat Ombudsman' system, or 'Friends of the Ombudsman', they have developed attempts to encourage engaged and active citizens to help provide oversight of public service delivery. Building on a system of public service supervision training and / or internships for 5,000 individuals, participants are then encouraged to form peer groups in their own communities – typically high school students, university students, journalists, and women's community groups - to raise further awareness of the National Ombudsman within the wider community, and often armed with smartphones, to highlight issues with day-to-day services immediately with local authorities.

17. The UK Pensions Ombudsman also have a volunteer network of c.170 pension professionals, working alongside the Pensions Ombudsman's c.160 full-time staff. Those volunteer advisers support vulnerable customers, help people navigate a pension scheme's internal complaints process, and, where possible, help resolve complaints informally before they complete a pension schemes' internal processes.[7] As well as utilising the experience of those pension professionals, part of the rationale for this approach is that the advisers will take back the best practice knowledge gained from the ombudsman to both share it with their colleagues and to apply it in their daily work.

Public adjudication / investigation in private

18. As noted, a key feature of the ombudsman model is that it is an inquisitorial process, carrying out investigations in private, as opposed to adversarial adjudication in public. In that sense it is quite deliberately an *alternative* to the Courts and so consciously does not replicate the approach taken there.

[6] Channel Islands Financial Ombudsman (ci-fo.org)

[7] Jobs and volunteering | The Pensions Ombudsman (pensions-ombudsman.org.uk)

19. The value and appeal of that has been well set out in the Law Commission's report and elsewhere, so I will not repeat it in detail here. As quoted in the report, the Tynwald Commissioner notes that cases *"under investigation are not in the public domain and to publish a summary of such ongoing investigations would be both premature and an inappropriate invasion of the confidentiality of both the complainant and the listed authority."* [8]

20. The popularity of ombudsman schemes across different sectors demonstrates that people value the confidential nature of the 'investigation in private' model. Across the British Isles, ombudsman schemes have seen significant increases in casework: 33% for the Scottish Public Services Ombudsman;[9] 54% for the Communications Ombudsman;[10] and 70% for the UK Financial Ombudsman Service.[11]

21. As the report highlights, the implication of the Jersey Government's estimation that a JPSO would deal with 'low hundreds of complaints' is that "*there are currently 100-plus islanders who are not using the current Complaints Panel".* The figures in the UK suggest that could be higher.

Potential changes to the Complaints Panel

22. The States of Jersey Complaints Panel is a 'Complaint Handler Member' of the OA. That criteria is different to that of an 'Ombudsman Member'. The way in which the OA ensures that both Ombudsman Members and Complaint Handler Members comply with best practice is through a programme of re-validation. The Complaints Panel's re-validation had been put on hold on the assumption that it would be replaced by the proposed JPSO.

23. With the pause in taking forward the establishment of the JPSO, and the possibility that the States Assembly may choose to retain the Complaints Panel, the OA has now brought forward the Complaints Panel's re-validation. Alongside the areas identified in the Law Commission's report, and the changes proposed by the Panel itself, that re-validation will identify compliance with the OA's Complaint Handler Member criteria, and the OA's Service Standards Framework,[12] and any areas to improve.

We are happy to provide any further information if that would be helpful.

Yours sincerely

Donal Galligan
Chief Executive

[8] Tynwald Commissioner 7th Annual Report (tynwald.org.im)
[9] Public service complaints statistics 2023-24 published | SPSO
[10] Communications Ombudsman releases updated… | Communications Ombudsman (commsombudsman.org)
[11] New data reveals 70% jump in financial complaints – Financial Ombudsman service (financial-ombudsman.org.uk)
[12] OA Service Standard Framework | Ombudsman Association