

# CHANNEL ISLANDS FINANCIAL OMBUDSMAN

## OFFICE OF THE FINANCIAL SERVICES OMBUDSMAN (JERSEY)

### First Report, for the year ended 31 Dec 2014

#### **Background**

A financial ombudsman helps to underpin confidence in financial services by resolving consumer complaints against financial firms independently, fairly, effectively, promptly, with minimum formality and so as to offer a more accessible alternative to court proceedings.

#### **Initial steps and consultation**

In 2009 the States Assembly approved the drafting of a financial services ombudsman law.

In 2011 the Economic Development Department [the 'ED Department'] consulted on the financial services ombudsman scheme and law drafting began.

In 2012 the ED Department and industry working groups considered the funding of the ombudsman scheme and estimates of complaints volumes.

In 2014 the ED Department consulted on the secondary legislation.

#### **Primary legislation**

The Financial Services Ombudsman (Jersey) Law 2014 [the 'Jersey ombudsman law'] established an Office of the Financial Services Ombudsman for Jersey ['Jersey OFSO'].

Subsequently, the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 established an Office of the Financial Services Ombudsman for Guernsey ['Guernsey OFSO'].

#### **Joint operation with Guernsey**

A Memorandum of Understanding between the Minister for Economic Development [the 'Minister'] in Jersey and the Commerce & Employment Department in Guernsey [the 'CE Department'] agreed that Jersey OFSO and Guernsey OFSO should share resources in order to promote cost-efficiencies and consistency in approach for complainants and financial services providers.

So the Channel Islands Financial Ombudsman [the 'Financial Ombudsman'] is to be a joint operation of Jersey OFSO and Guernsey OFSO – operating from a shared office in Jersey, with the same board, ombudsman and staff.

The Memorandum of Understanding provides for the costs of the Financial Ombudsman to be borne equally by the Jersey financial industry and the Guernsey financial industry for 2 years, until the distribution of business becomes clear.

#### **Report and accounts**

Paragraph 1 of schedule 2 to the Jersey ombudsman law requires:

- Jersey OFSO to submit to the Minister, not later than 4 months after the end of each financial year, accounts for that financial year and a report on its operations during that year; and
- the Minister to lay a copy before the States not later than 2 months after receiving them.

This document contains the report and accounts for the year ended 31 Dec 2014.

The office is expected to open for business during 2015 – once staff have been recruited and systems and premises have been acquired – so there are no actual case-handling operations to report for the year ended 31 Dec 2014.

## **Governance**

Under the Jersey ombudsman law, the Minister appoints the chairman and board members. The board is part-time and non-executive. It is independent of the States. The board is not involved in deciding cases, nor in the day-to-day management of the Financial Ombudsman. Its key roles are to:

- appoint the Principal Ombudsman and help safeguard his/her independence;
- help ensure that the Financial Ombudsman has adequate resources to handle its work;
- oversee the efficiency and effectiveness of the Financial Ombudsman; and
- advise on the strategic direction of the Financial Ombudsman.

## **Appointment of the board**

Following a recruitment exercise conducted jointly by the ED Department and the CE Department (and overseen by the Jersey Appointments Commission) the Minister appointed David Thomas<sup>1</sup> as chairman of Jersey OFSO with effect from 15 Aug 2014. He was also appointed, on a shadow basis, as chairman of Guernsey OFSO by the CE Department.

Following a further recruitment exercise conducted jointly by the ED Department, the CE Department and the chairman (and overseen by the Jersey Appointments Commission) the Minister appointed John Mills<sup>2</sup>, Deborah Guillou<sup>3</sup> and John Curran<sup>4</sup> as board members of Jersey OFSO with effect from 1 Nov 2014. They were also appointed, on a shadow basis, as board members of Guernsey OFSO by the CE Department.

The board's first formal meeting was held on 17 Nov 2014.

## **Financial firms covered**

On 19 Sep 2014, under article 9 of the Jersey ombudsman law, the Minister made the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014, which sets out which financial firms will (and which will not) be within the jurisdiction of the Financial Ombudsman.

Broadly, the Financial Ombudsman will cover complaints about the following types of financial services: deposit-taking; credit; money services; insurance; investments (excluding managers and other functionaries of funds that are not recognized funds); and pensions.

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<sup>1</sup> David Thomas is also a member of the Regulatory Board of the worldwide Association of Chartered Certified Accountants. He was previously: a lawyer in private practice and a member of the Council of the Law Society (England and Wales); Banking Ombudsman (UK); principal ombudsman with the Financial Ombudsman Service (UK); and director of the Legal Ombudsman (England and Wales). He has advised on financial consumer protection in more than 20 countries.

<sup>2</sup> John Mills was formerly: a commissioner at the Jersey Financial Services Commission; director of rural policy in the Department for the Environment, Food and Rural Affairs (England); chief executive (policy and resources) of the States of Jersey; chief executive of Cornwall County Council; director of consumer affairs in the Office of Fair Trading (UK); and a member of the UK Prime Minister's Policy Unit.

<sup>3</sup> Deborah Guillou is a qualified accountant and chief executive of the Medical Specialist Group in Guernsey. She was formerly: head of Generali International; chief financial officer of Generali Worldwide Insurance; a senior finance manager at Investec Asset Management; finance director at Guernsey Electricity; and an accountant with Fairbairn International.

<sup>4</sup> John Curran is chairman of Guernsey Mind (the mental health charity). He was formerly: the chief executive of the Channel Islands Competition & Regulatory Authorities; director general of the Office of Utility Regulation (Guernsey); and manager of the Operations Division of the Commission for Communications Regulation (Ireland).

## **Funding**

The Jersey and Guernsey ombudsman laws both provide for the cost of the Financial Ombudsman to be paid by financial firms, through a combination of levies and case fees. A consultation on the details of the funding by the ED Department<sup>5</sup> and the CE Department closed on 14 Nov 2014.

The consultation by the ED and CE Departments proposed that all financial firms that are within the scope of the Financial Ombudsman and are regulated or registered by the relevant Financial Services Commission (and so whose identities are already known) will pay a yearly levy – to cover the yearly running costs and, in the first year, the set-up costs. But financial firms that do not provide relevant financial services or do not deal with the public can claim an exemption.

The consultation by the ED and CE Departments also proposed that any financial firms about which a case is referred to the Financial Ombudsman will pay a case fee – a lower case fee (possibly £200) for those financial firms that have paid a levy and a higher case fee (possibly £600) for those financial firms that have not paid a levy.

## **Interim funding**

Jersey and Guernsey are each lending money to cover the start-up and initial operating costs of the Financial Ombudsman. The Financial Ombudsman will repay the loans, with interest, from the levy that it collects in due course from the financial industry.

On 11 Dec 2014 Jersey OFSO entered into an agreement with the Minister for Treasury and Resources under which the States agreed to provide a loan facility of £200,000. The first amount drawn under the loan facility was to be in Jan 2015.

## **Appointment of the Principal Ombudsman**

Under the Jersey ombudsman law, the board appoints the Principal Ombudsman (and any other ombudsmen, if needed). In Dec 2014 Jersey OFSO published (in Jersey, Guernsey and the UK) an advert for the post of Principal Ombudsman and Chief Executive, with a closing date in Jan 2015.

## **Significant events after 31 Dec 2014**

On 21 Jan 2015 the States made the Financial Services Ombudsman (Case-fee and Levy) (Jersey) Regulations 2015. Under these, and in the light of the 2014 consultation, the Financial Ombudsman will in due course publish details of the levies and case fees, and how financial firms that do not deal with relevant business or retail customers can claim exemption from the levy.

In Mar 2015, following a recruitment exercise overseen by the Jersey Appointments Commission, the board appointed Douglas Melville as Principal Ombudsman and Chief Executive.<sup>6</sup> He will arrive in Jersey to take up the post from 1 Jun 2015. Some key decisions (including the opening date, detailed process and casework IT) cannot be made until after then.

## **How the Financial Ombudsman will operate**

The Financial Ombudsman will handle enquiries from complainants and financial firms, to help them understand the issues, and (where appropriate) indicate the general approach the Financial

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<sup>5</sup> <http://gov.je/Government/Consultations/Pages/OFSOFunding.aspx>

<sup>6</sup> Douglas Melville is, until May 2015, the Ombudsman and Chief Executive at the Canadian Ombudsman for Banking Services and Investments. He is also chairman of the worldwide International Network of Financial Ombudsmen, and has advised internationally on financial consumer protection for the World Bank and others. He qualified as a lawyer in Ontario and became an ombudsman in 2006. Before that, he held senior roles in the banking, investment and insurance industries. He has also been a board member of various not-for-profit organisations covering healthcare, the environment, anti-poverty policy, financial literacy, international development and performing arts.

Ombudsman would take. This can help parties to resolve issues between themselves, and head off cases based on misunderstandings.

If the complainant has not already complained to the financial firm, the Financial Ombudsman will first pass the complaint to the financial firm. If the matter is something that is outside the Financial Ombudsman's jurisdiction, it will signpost the complainant to any agency that can help. Based on experience elsewhere, there may be four to eight times as many enquiries as cases.

If the complainant remains dissatisfied with the financial firm's final response to a complaint (or with the lack of a timely response) the Financial Ombudsman will look at the case. Many cases may be resolved by mediation. As an independent third party, with relevant sector knowledge, the Financial Ombudsman can help the parties 'see sense' and come to a mutually-agreed and fair solution.

If a case cannot be resolved by mediation, and following any necessary investigation, a provisional decision will tell the parties what the Financial Ombudsman is minded to decide. The parties can accept or reject this. Experience elsewhere suggests that 65% to 90% will be accepted by both parties.

If either party rejects the provisional decision, the ombudsman will consider any further representations from the parties and then issue a final decision. Under the Jersey ombudsman law, an ombudsman's decision:

- can award compensation (up to £150,000 per case) and/or require the financial firm to take specified steps in relation to that complainant; and
- if accepted by the complainant, binds both parties – so that neither can later bring court proceedings on the same issue.

Dated 30<sup>th</sup> April 2015

Chairman  
Office of the Financial Services Ombudsman (Jersey)