

Memorandum of Understanding
Between
The Committee for Economic Development (Guernsey)
and
The Minister for Economic Development, Tourism, Sport and Culture
(Jersey)

1. This Memorandum of Understanding (the “Memorandum”) is made on 28th November 2019 and replaces the previous version (signed on 9th November 2018) between the Committee *for* Economic Development and the Minister *for* Economic Development, Tourism, Sport and Culture (together, the “Parties” and each a “Party”).

2. The Financial Services Ombudsman (Jersey) Law 2014 (the “Jersey Law”) established the Office of the Financial Services Ombudsman in Jersey (the “Jersey OFSO”) and the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (the “Guernsey Law”, and together with the “Jersey Law”, the “Laws”) established the Office of the Financial Services Ombudsman in Guernsey (the “Guernsey OFSO”, and together with the Jersey OFSO, the “OFSOs”). The OFSOs operate jointly as the Channel Islands Financial Ombudsman (“CIFO”). This Memorandum sets out the arrangement between the Parties under Article 6(1) of the Jersey Law and section 6(1) of the Guernsey Law (the “Arrangement”).

3. The purpose of the Arrangement is to allow the OFSOs to share resources in order to promote cost-efficiencies and consistency in approach for complainants and financial services providers under the Laws.

4. The Parties agree, subject to such consultation with the OFSOs as required under the Laws or any other third party as may be necessary, that the OFSOs will, in carrying out their operations, utilise the same Chairman and board members and, in the manner the boards may see fit, share staff, technological and service infrastructure, resources and office location(s).
5. To facilitate the Arrangement, the OFSOs will put in place and maintain the necessary systems to record and monitor the number of complaints and enquiries originating from each jurisdiction.
6. This Memorandum further explains how the Parties agree to proceed in relation to their respective duties under the Laws.
7. Appointment of board members and Chairman: the Parties agree to use joint recruitment processes in the appointment of Chairmen and board members, subject to the appointment process specified in the Laws. The Parties agree to select and appoint the same persons as Chairman and board members of the OFSOs on concurrent contracts from each jurisdiction. In particular, the contract for each person (whether Chairman or board member) should -
 - a. be on the same terms and conditions and shall be expressed to expire on the same date; and
 - b. require that if the holder resigns from one OFSO they must also resign at the same time from the other OFSO.

8. Each Party further agrees to consult the other if considering any termination of appointment of a Chairman or board member.

9. As far as possible and subject to consultation with other parties as required by either Law or as otherwise considered necessary by both Parties, the Parties agree to consult fully with each other and use their best endeavours to maintain the scope of the OFSOs in each jurisdiction to be as similar as possible, including (but not limited to) the categories of eligible complaint, the maximum award and the issuance of directions and guidance.

10. As far as possible and subject to consultation with other parties as required by either Law or as otherwise considered necessary by both Parties, the Parties agree to use their best endeavours to support the effective and efficient operation of the OFSOs, including by implementing legislation, supporting the establishment of Memoranda of Understanding with other agencies, and sharing of information relevant to the OFSOs' statutory mandate. The Parties agree to use their best endeavours to provide such support to the OFSOs in a manner that is as similar as possible.

11. The Parties agree to accept annual financial and operational reporting on a joint basis on condition that such joint reports contain:
 - a. separate information on complaint volumes for each jurisdiction;

- b. separate information on income raised in each jurisdiction and are in accordance with any applicable requirements relating to reporting as specified in the Laws.

12. The financial year for the OFSOs shall end on 31st December.

13. The Parties agree that the OFSOs will combine their finances from 1 January 2020. The Parties agree that the reserves of each, such as they are at 31 December 2019, will be combined without adjustment, even if not equal. For the avoidance of doubt, this paragraph (in conjunction with paragraphs 14 and 15) constitutes an arrangement which makes provision for uniting the finances of the Guernsey and Jersey schemes for the purposes of section 6(1)(a) of the Guernsey Law and article 6(1)(a) of the Jersey Law ("the financial arrangement").

14. The Parties agree, subject to the necessary consultation with other parties and legislative approval, that after the end of the 2019 financial year the total amount required by the OFSOs to be raised in levies should be raised in accordance with a scheme adopted by the OFSOs following consultation with other parties.

15. For the 2020 financial year and thereafter the OFSOs shall agree an annual combined operating budget as is considered appropriate based on supporting evidence.

16. The Parties may, subject to giving the other Party six months' notice or earlier with mutual agreement, terminate the financial arrangement to take effect:

- a. at the end of a financial year (defined in accordance with paragraph 12), or
- b. such other date as may be mutually agreed by the Parties.

17. In the event of the termination of the financial arrangement, the joint finances will be wound up and any reserves, whether in surplus or deficit, will:

- a. firstly be used in respect of any costs relating to the termination of the financial agreement;
- b. secondly, be shared equally by both OFSOs, unless, after consulting with the OFSO, the Parties determine otherwise in their discretion.

18. The Parties agree to use their best endeavours only to make directions under paragraph 12(1) and (2) of Schedule 1 to the Laws which have the same legal effect in both jurisdictions, unless one party agrees in writing that the other party may unilaterally make directions on specified issues.

19. Consultation: Where it is relevant, possible and practical to do so, the Parties agree to discuss with and include the other -

- a. in consideration of any recommendation from an OFSO or when consulting an OFSO on any matter;
- b. in the issuance of any public statement concerning the OFSOs.

20. Where it is relevant, possible and practical to do so, the Parties agree to:

- a. give each other at least 24 hours' notice of any public statement concerning or relating to the OFSOs (and to provide a copy to the OFSO);
- b. meet regularly to discuss matters of mutual interest relating to the OFSOs or the complaints experience of the OFSOs.

21. This Memorandum is to be reviewed upon request by either Party. The Parties may add to or otherwise amend any of the provisions of this Memorandum as may be agreed by the Parties.

22. The Memorandum is not intended to be legally binding but is the basis upon which the Parties shall commit time and resources to the ongoing operation of the OFSOs as a joint enterprise and achieve the objectives of this Memorandum. This Memorandum will not affect the statutory duties, responsibilities or other legal rights and obligations of either Party.

23. Each Party agrees that it shall act in good faith in pursuit of the purposes and objectives expressed in this Memorandum.

24. The Parties may, subject to giving the other Party six months' notice or earlier with mutual agreement, terminate this Memorandum to take effect at the end of a financial year (defined in accordance with paragraph 12) or such other date as may be mutually agreed by the Parties.

25. Confidentiality: Any information disclosed by either Party which is declared as confidential must be treated as confidential. Any information disclosed which the recipient Party should reasonably be expected to know is confidential must also be treated as confidential. All confidential material (and particularly any personal data) must be handled in compliance with respective data protection legislation. The Parties will take all reasonable steps to ensure compliance with the above confidentiality provisions by their employees, agents and sub-contractors.

Signed

Deputy Charles Parkinson
President of the Committee *for* Economic Development

Signed

Senator Lyndon Farnham
Minister for Economic Development, Tourism, Sport and Culture

