

PROJET DE LOI

ENTITLED

The Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 *

[CONSOLIDATED TEXT]

NOTE

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* No. I of 2015; as amended by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Commencement and Amendment) Ordinance, 2015 (No. XVII of 2015); the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Amendment) Ordinance, 2016 (No. XXXV of 2016); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. XXVII of 2018); the Financial Services Ombudsman (Bailiwick of Guernsey) (Amendment) Ordinance, 2018 (No. XLIII of 2018); the Financial Services Ombudsman (Bailiwick of Guernsey) (Amendment) Ordinance, 2019 (No. XX of 2019). See also the Arbitration (Guernsey) Law, 2016 (No. X of 2016).

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The Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014

THE STATES, in pursuance of their Resolution of the 27th November, 2013^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law throughout the Bailiwick of Guernsey.

PART I

ESTABLISHMENT OF OFSO

Establishment of OFSO.

1. (1) There is to be established a body to be called the Office of the Financial Services Ombudsman ("**OFSO**").

(2) OFSO is a body corporate with perpetual succession.

(3) OFSO shall have a board ("**the Board**"), whose members are OFSO's directors, consisting of –

(a) a chairman, and

(b) at least 2, but no more than 4, ordinary members.

^a Article XII of Billet d'État No. XX of 2013.

(4) Schedule 1 which makes further provision in relation to the constitution of OFSO has effect.

(5) Schedule 2 which makes provision in relation to the finances of OFSO has effect.

(6) The States may by Ordinance amend –

(a) subsection (3)(b), to alter the minimum or maximum numbers of ordinary members,

(b) Schedule 1, and

(c) Schedule 2.

NOTE

The following Ordinance has been made under section 1:

*Financial Services Ombudsman (Bailiwick of Guernsey)
(Amendment) (No. 2) Ordinance, 2019;*

*Financial Services Ombudsman (Bailiwick of Guernsey)
(Amendment) Ordinance, 2020.*

Independence of OFSO.

2. (1) OFSO is independent of [the Committee] and of the States, and accordingly –

(a) OFSO is not a department, servant or agent of the States, and

(b) OFSO's board members, employees and agents, including the Ombudsmen, are not employees, servants

or agents of the States,

and, except to the extent provided otherwise in this Law or any other enactment –

(i) OFSO is not subject to any rule of law relating to departments of the States, and

(ii) OFSO does not have any right or privilege vested in departments of the States.

(2) OFSO may consult and co-operate with any department in relation to matters concerning its functions.

(3) Subsection (1) is subject to –

(a) any provision of this Law, including in particular paragraph 12 of Schedule 1, or of any other enactment, and

(b) any obligation to comply with any conditions lawfully attached to any funding accepted by OFSO from the States.

NOTE

In section 2, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

PART II
FUNCTIONS OF OFSO

General functions of OFSO.

3. (1) The primary function of OFSO is to administer the operation of this Law to ensure that complaints in relation to financial services are resolved –

- (a) independently, and in a fair and reasonable manner,
- (b) effectively, quickly, with minimum formality, and so as to offer an alternative to court proceedings that is more accessible for complainants, and
- (c) by the most appropriate means, whether by mediation, referral to another forum, determination by an Ombudsman or in any other manner.

(2) OFSO has in addition any other function conferred on or transferred to it under this Law or any other enactment.

(3) The States may by Ordinance –

- (a) transfer to OFSO any function under any other enactment, to the extent that the function relates to complaints about financial services, and
- (b) amend this Law or any other enactment in order to give effect to any transfer of functions to OFSO under paragraph (a).

(4) The Board must, in carrying out its functions, seek to protect the independence of OFSO, including in particular the independence of the Ombudsmen, from –

- (a) a relevant legislature, and in particular [the Committee] (subject to paragraph 12 of Schedule 1),
- (b) persons providing funding for OFSO,
- (c) financial service providers,
- (d) persons who use the services of financial service providers,
- (e) the Commission, and
- (f) any other influence that might compromise its independence.

(5) Subsection (4) does not require the Board to protect the independence of OFSO from –

- (a) a corresponding body under the Jersey scheme, if there is an arrangement to which section 6(1) applies, or
- (b) [the Committee], to the extent that [the Committee] is exercising its power under paragraph 12 of Schedule 1 or under any other provision of this Law.

NOTE

In section 3, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Appointment of Principal Ombudsman and other officers and servants of OFSO.

4. (1) The Board shall appoint as the Principal Ombudsman, for a period of at least 5 years, a person appearing to the Board to have the appropriate qualifications and experience to perform the functions of the Principal Ombudsman under this Law.

(2) The appointment of the Principal Ombudsman is to be on such terms (including terms as to the early termination of that person's appointment and as to remuneration) as the Board considers –

(a) promote the independence of the Principal Ombudsman, and

(b) are otherwise appropriate.

(3) OFSO may –

(a) appoint such officers and servants, and

(b) appoint and instruct such other persons,

on such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as OFSO thinks necessary for the exercise of OFSO's functions.

(4) OFSO may not enter into or offer to enter into a contract of employment with a person who was a board member immediately before that contract is entered into or offered.

Designation of Ombudsmen.

5. (1) The Board must –

- (a) in accordance with section 4(3), appoint a sufficient number of persons who appear to the Principal Ombudsman to have the appropriate qualifications and experience to perform the functions of an Ombudsman under this Law, and
- (b) designate those persons as Ombudsmen for the purpose of this Law.

(2) The appointment of a person who is designated as an Ombudsman is to be on such terms (including terms as to the duration and termination of that person's designation and as to remuneration) as the Board considers –

- (a) promote the independence of the Ombudsman, and
- (b) are otherwise appropriate.

Arrangements with Jersey and adaptation to European standards.

6. (1) Subsection (2) applies if an arrangement is entered into by [the Committee], after consulting OFSO, with the States of Jersey or any Minister thereof for any or all of the following –

- (a) sharing resources or personnel for the purposes of any function under this Law and of any similar function under a Jersey scheme,
- (b) aligning any aspect of the procedures, policies, eligibility criteria or other elements of the Ombudsman schemes,

- (c) any other form of cooperation between the Ombudsman schemes, and
- (d) combining the Ombudsman schemes into a single scheme similar to the scheme established under this Law,

and, for the purposes of this section –

- (i) a "**Jersey scheme**" means a scheme established in Jersey with functions and powers that are, in the opinion of [the Committee], equivalent to the scheme established under this Law, and
- (ii) "**the Ombudsman schemes**" means the scheme established under this Law and a Jersey scheme.

(2) The States may by Ordinance make such provision as they consider necessary or expedient to give effect to that arrangement, and that provision may, without limitation, include –

- (a) provision for conferring functions on OFSO in relation to the Jersey scheme, or for transferring functions of OFSO to the corresponding body under the Jersey scheme,
- (b) provision for uniting the finances of the Ombudsman schemes, or for allocating between the jurisdictions the expenses of the Ombudsman schemes or the powers to

raise income for the Ombudsman schemes,

- (c) provision for transferring, wholly or partly, the employment of any employee of OFSO (including the Principal Ombudsman) to the corresponding body under the Jersey scheme, or for reducing the hours and pay of such an employee when that employee is to be offered similar work for that body,
- (d) provision for sharing of information between the Ombudsman schemes, and
- (e) amendment of any provision of this Law except this section and Parts V and VI.

(3) In the case of an arrangement referred to in subsection (1)(d), an Ordinance under subsection (2) may, without limitation, include –

- (a) provision for merging OFSO with the corresponding body under the Jersey scheme, and
- (b) provision for transferring all of the functions of OFSO to the corresponding body under the Jersey scheme, and for abolishing OFSO following the transfer.

(4) The States may by Ordinance make such amendment to this Law as they consider expedient to give effect, in relation to this Law, to any provision of –

- (a) Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on

online dispute resolution for consumer disputes^b,

- (b) Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes^c,
- (c) Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters^d,
- (d) Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes^e,
- (e) Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes^f, and
- (f) any other Community instrument, within the meaning of section 1 of the European Communities (Bailiwick of Guernsey) Law, 1973^g, appearing to the States to be

^b OJ L 165/1, 18.6.2013.

^c OJ L 165/63, 18.6.2013.

^d OJ L 136/3, 24.5.2008.

^e OJ L 115/31, 17.4.1998.

^f OJ L 109/56, 19.4.2001.

^g Ordres en Conseil Vol. XXIV, p. 87; as amended by Vol. XXVII, p. 242; Vol. XXIX, p. 127; Vol. XXIX, p. 419; Vol. XXXI, p. 278; Vol. XLII(2), p. 1320; Recueil

relevant to the functions of OFSO.

NOTES

In section 6, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

The following Ordinances have been made under section 6:

Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Commencement and Amendment) Ordinance, 2015;

Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Commencement) (No. 2) Ordinance, 2015;

Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Amendment) Ordinance, 2016;

Financial Services Ombudsman (Bailiwick of Guernsey) (Amendment) Ordinance, 2018;

Financial Services Ombudsman (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2019.

PART III

REFERRAL OF COMPLAINTS TO OFSO

Eligible complaint.

7. A complaint may be referred to OFSO if –
- (a) the person ("**the complainant**") making the complaint, or on whose behalf the complaint is made, is an eligible complainant,
 - (b) the complaint relates to an act by another person, being an act that occurred in the course of a relevant financial services business carried on, in or from within the

d'Ordonnances Tome XXVI, p. 316; Tome XXVIII, pp. 79 and 541; Tome XXIX, pp. 362 and 406; and Tome XXXII, p. 6.

Bailiwick, by that other person, and

- (c) the timing conditions, set out in section 11, are satisfied.

Eligible complainant.

8. (1) In this section –

"relevant act", in relation to a complainant, means the act that is the subject of the complainant's complaint,

"relevant business" means the relevant financial services business in the course of which a relevant act occurred, and

"relevant provider" means the person carrying on the relevant business at the time of the relevant act.

(2) An eligible complainant is a complainant who –

- (a) was, at the time of the relevant act, a person falling within any of the categories described in subsection (3),
- (b) is not, and was not at the time of the relevant act, a financial service provider, and
- (c) at the time of the relevant act, had the relationship required by subsection (6) with the relevant provider in respect of the relevant act.

(3) The categories referred to in subsection (2)(a) are –

- (a) an individual who, in relation to the relevant provider and the relevant act, is acting for purposes other than that individual's trade, business or profession,
- (b) a microenterprise, within the meaning of Commission Recommendation (2003/361/EC) of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises^h, or
- (c) any other category that –
 - (i) relates to charities, trusts, foundations or other bodies,
 - (ii) appears to [the Committee] to be appropriate for this purpose, subject to subsection (5), and
 - (iii) is specified for this purpose by [the Committee] by Order on the recommendation of OFSO.

(4) Notwithstanding subsection (3)(a) or (b), [the Committee] may by Order, on the recommendation of OFSO, exclude any description of individual or microenterprise described in that subsection which appears to [the Committee] to be likely to have resources, expertise or other characteristics rendering it reasonable to expect that description of individual or microenterprise to use means other than OFSO to resolve complaints.

(5) In making an Order under subsection (3)(c)(iii), [the Committee] must take particular account of –

^h OJ L 124/36, 20.5.2003.

- (a) the desirability of ensuring that the services of OFSO are primarily available to persons appearing to [the Committee] to be likely to lack resources, expertise or other characteristics that would render it reasonable to expect those persons to use means other than OFSO to resolve complaints, and
 - (b) if there is an arrangement to which section 6 applies, the desirability of aligning the scheme under this Law with the Jersey scheme.
- (6) The required relationship for the purpose of subsection (2)(c) is
-
- (a) as a client of the relevant provider, being a person with whom the relevant provider –
 - (i) transacts or has transacted relevant financial services business, or
 - (ii) gives or has given advice about such business,
 - (b) as a person attempting to become a client of the relevant provider, or
 - (c) any other relationship, appearing to the designated person examining the complaint under section 12(1)(a) to be sufficiently close to give appropriate standing for the services of OFSO to be available to the complainant, taking account of the guidelines issued

under subsection (7).

(7) The Principal Ombudsman –

- (a) must issue, and
- (b) keep under review,

guidelines for use under subsection (6)(c) by designated persons examining complaints under section 12(1)(a), and OFSO must publish the guidelines in a manner appearing to OFSO to be likely to bring them to the attention of potential complainants and respondents, specifying a date after its publication on which any new or amended guideline is to come into effect.

(8) The guidelines issued under subsection (7) must include as a required relationship a relationship between the relevant provider and complainant that exists where a complainant is –

- (a) a participant, or a person on whose behalf another person is a participant, in a collective investment scheme in respect of which the relevant provider carries on the relevant business,
- (b) a person benefiting under a pension scheme in respect of which the relevant provider carries on the relevant business,
- (c) a person who is a beneficiary under a trust or an estate of which the respondent is a trustee or personal representative,

- (d) a person for whose benefit a contract of insurance was taken out or was intended to be taken out, or who has a right to benefit from a claim under a contract of insurance, being a contract in respect of which the relevant provider carries on the relevant business,
- (e) a person who relies in the course of business on a cheque guarantee card issued by the relevant provider by way of the relevant business,
- (f) the true owner, or person entitled to immediate possession, of a cheque or other instrument to which section 84 of the Bills of Exchange (Guernsey) Law, 1958ⁱ applies, or of the funds it represents, collected by way of the relevant business by the relevant provider for the account of another person,
- (g) a person who receives a banker's reference given by the relevant provider by way of the relevant business,
- (h) a person who gives the relevant provider a guarantee or security in relation to any credit provided by that provider by way of the relevant business falling within section 9(1)(g),
- (i) a person in relation to whose financial standing the relevant provider holds information by way of relevant business falling within section 9(1)(g),

ⁱ Ordres en Conseil Vol. XVII, p. 386.

- (j) a person who attempts to enter a relationship falling within any of paragraphs (a) to (g) of section 9(1),
- (k) a person against whom the relevant provider takes, or attempts to take, steps the taking of which constitute relevant business falling within section 9(1)(g),

and may include any other relationship that the Principal Ombudsman considers appropriate.

(9) The guidelines may include provision that a relationship (whether or not one of the relationships mentioned in subsection (8)) –

- (a) is generally to be treated as sufficiently close to justify eligibility,
- (b) is generally to be treated as not being sufficiently close to justify eligibility, or
- (c) is to be assessed taking into account factors specified in the guidelines.

(10) [The Committee] may by Order, after consulting OFSO and the persons mentioned in subsection (13) –

- (a) amend any paragraph of subsection (8), and
- (b) make such provision as is mentioned in subsection (9) in relation to a relationship mentioned in subsection (8).

(11) Before making a recommendation to [the Committee] under

subsection (3)(c)(iii) or (4), OFSO must consult –

- (a) such persons as [the Committee] may specify by notice to OFSO, and
- (b) any other person appearing to OFSO to be appropriate.

(12) Before issuing any new guideline or any substantial amendment to a guideline, the Principal Ombudsman must consult –

- (a) [the Committee],
- (b) the Commission,
- (c) such persons as [the Committee] may specify by notice to OFSO, and
- (d) any other persons appearing to the Principal Ombudsman to be appropriate.

(13) [The Committee] may specify, for the purposes of subsections (11)(a) and (12)(c) –

- (a) if there is an arrangement to which section 6(1) applies, the person appearing to [the Committee] to be appropriate in relation to the corresponding Jersey scheme,
- (b) any body appearing to [the Committee] to be representative of the interests of all or any of the persons who may be eligible complainants as a result of

the proposed Order or guideline,

- (c) any body appearing to [the Committee] to be representative of the interests of all or any of any persons who are more likely to be respondents as a result of the proposed Order or guideline, and
- (d) any other persons appearing to [the Committee] to be appropriate.

(14) In carrying out a function under –

- (a) subsection (6)(c), the designated person examining a complaint under section 12(1)(a), and
- (b) subsection (7), the Principal Ombudsman,

must take particular account –

- (i) of the principle that the services of OFSO should be available for complaints where the relationship is sufficiently close, or of such a nature, as to mean –
 - (A) that acts of the relevant provider are likely to have effects on the interests of persons having that relationship to the relevant provider, and
 - (B) that it is fair and reasonable to expect the relevant provider to accept responsibility

for the effect of those acts on those interests,

- (ii) if there is an arrangement to which section 6 applies, of the desirability of aligning the scheme under this Law with its equivalent in Jersey.

(15) It is irrelevant for the purposes of this section whether the complainant has any or no connection with the Bailiwick, provided that the relevant business was carried on, as required by section 7(b), in or from within the Bailiwick.

NOTES

In section 8, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

The following Order has been made under section 8:

Financial Services Ombudsman (Eligible Complainants) (Bailiwick of Guernsey) Order, 2015.

Relevant financial services business.

9. (1) Subject to an Order made under subsection (4), relevant financial services business is business –

- (a) the carrying on of which is required to be licensed under –

- (i) the Banking Supervision (Bailiwick of

Guernsey) Law, 1994^j,

(ii) the Protection of Investors (Bailiwick of Guernsey) Law, 1987^k,

(iii) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002^l,

(iv) the Insurance Business (Bailiwick of Guernsey) Law, 2002^m, or

(v) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc

^j Ordres en Conseil Vol. XXXV(1), p. 271; as amended by Vol. XLII(2), pp. 644 and 766; Vol. XLIII(1), p. 462; Order in Council No. XVI of 2008; No. IV of 2009; No. XIII of 2010; No. XXI of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; G.S.I. No. 3 of 2000; No. 1 of 2008; No. 35 of 2010; No. 83 of 2010.

^k Ordres en Conseil Vol. XXX, p. 281; as amended by Vol. XXX, p. 243; Vol. XXXII, p. 324; Vol. XXXV(1), p. 271; Vol. XXXVI, p. 264; Vol. XXXVII, p. 24; Vol. XLII(1), pp. 644; Vol. XLIII(1), p. 440; Vol. XLIII(2), p. 1086; Order in Council No. XVIII of 2008; No. XIII of 2010; No. XX of 2010; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Tome XXVIII, pp. 51 and 87; Tome XXIX, p. 406; Tome XXXIII, p. 136; Tome XXXIII, p. 472; and G.S.I. No. 83 of 2010.

^l Ordres en Conseil Vol. XLII(2), p. 1022; as amended by Order in Council No. XIII of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXIII, p. 77; Ordinance Nos. IX and XXXII of 2010; G.S.I. No. 2 of 2008; and G.S.I. Nos. 16 and 83 of 2010.

^m Ordres en Conseil Vol. XLII(2), p. 766; as amended by Order in Council No. XIII of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXIII, pp. 61 and 297; Ordinance Nos. VIII and XXXI of 2010; No. XXXVI of 2011; G.S.I. No. 33 of 2004; No. 4 of 2008 and Nos. 15 and 83 of 2010.

(Bailiwick of Guernsey) Law, 2000ⁿ,

- (b) which is a collective investment scheme authorised or registered under the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (c) which requires those who conduct it to be registered under Part IIIA of the Criminal Justice (Proceeds of Crime) (Financial Service Businesses) Regulations, 2007^o,
- (d) which would fall within any of paragraphs (a) to (c) but for an exemption or exclusion conferred by or under any of the Laws mentioned in those paragraphs,
- (e) which, not falling within any of paragraphs (a) to (d), is carried on by a financial services business within the meaning of section 1 of the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008^p, in respect of which section 2 of that Law requires it to register with the Commission,

ⁿ Ordres en Conseil Vol. XLI, p. 13; Vol. XLIII(1), p. 430; as amended by Order in Council No. XVI of 2007; Nos. VIII and XXV of 2008; Nos. XIII and XVIII of 2010; No. I of 2013; Recueil d'Ordonnances Tome XXVIII, p. 493; Tome XXIX, p. 406; Tome XXXIII, p. 472; G.S.I. No. 3 of 2008; G.S.I. No. 83 of 2010; and G.S.I. No. 4 of 2013.

^o G.S.I. No. 33 of 2007; as amended by Order in Council No. XV of 2008; No. XI of 2011; G.S.I. No. 48 of 2008; No. 30 of 2009; Nos. 13 and 58 of 2010; Nos. 13 and 20 of 2013.

^p Order in Council No. XV of 2008; as amended by No. XIII of 2010; Recueil d'Ordonnances Tome XXXIII, p. 141; G.S.I. No. 75 of 2008; No. 17 of 2010; No. 83 of 2010; and No. 16 of 2013.

- (f) which is relevant pension business, within the meaning of Schedule 3,
- (g) which is relevant credit business, within the meaning of Schedule 4, or
- (h) which is relevant ancillary business, within the meaning of subsection (2).

(2) Relevant ancillary business is business ancillary to any other business falling within any of subsection (1)(a) to (g) (the "**main business**") if –

- (a) the main business is carried on in relation to the complainant by the same person as the ancillary business, or
- (b) the ancillary business consists of –
 - (i) introducing, directly or by an intermediary, persons who seek services, the provision of which constitutes the main business, to other persons who carry on that business, or
 - (ii) giving advice with a view to making such introductions.

(3) Business that may be ancillary for the purpose of subsection (2) includes, without limitation –

- (a) current account services,

- (b) the provision and operation of automated teller machines,
- (c) financial advice about the main business, and
- (d) designing or establishing financial schemes or arrangements that require the provision of a service by way of the main business.

(4) [The Committee] may by Order exempt classes of business, to the extent that they would otherwise be relevant financial services business, where [the Committee] considers that it is not appropriate for the services of OFSO to be available.

(5) In making an Order under subsection (4), [the Committee] shall take particular account of –

- (a) the matters described in section 8(5), and
- (b) any likely impact on respondents carrying on any class of business that may be carried on without being registered, or holding a permit or certificate, under any of the Laws mentioned in subsection (1)(a).

(6) Before exercising the power under subsection (4), [the Committee] must consult with –

- (a) OFSO,
- (b) the Commission,

- (c) any person appearing to [the Committee] to be responsible for the corresponding scheme in Jersey, where an arrangement under section 6(1) applies,
- (d) any body that [the Committee] believes is representative of the interests of all or any of those who would be affected by the proposed Order, and
- (e) such other persons as appear to [the Committee] to be appropriate.

(7) The States may by Ordinance amend subsection (1) in relation to the definition of financial services business.

NOTES

In section 9, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

The following Order has been made under section 9:

Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order, 2015.

The Protection of Investors (Bailiwick of Guernsey) Law, 1987, the Banking Supervision (Bailiwick of Guernsey) Law, 1994 and the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 have all since been repealed by, respectively, the Protection of Investors (Bailiwick of Guernsey) Law, 2020, section 80(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 81 of the 2020 Law; the Banking Supervision (Bailiwick of Guernsey) Law, 2020, section 67(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 68 of the 2020 Law; and the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, section 62(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 60 of the 2020

Law.

Respondents.

10. (1) In this section, "**relevant provider**" and "**relevant act**" have the meanings given by section 8(1).

(2) A complaint may be entertained by OFSO against any one or more of –

(a) the relevant provider (irrespective of whether that person is still a financial service provider when the complaint is referred to OFSO),

(b) another person who, when the complaint is referred to OFSO –

(i) has any liability in relation to the relevant act, being a liability that was transferred, after the commencement of this Part, to the person from the relevant provider, and

(ii) is carrying on relevant financial services business (whether or not the same business as that to which the complaint relates) in or from within the Bailiwick, and

(c) a person, not falling within paragraph (a) or (b), who is designated under paragraph (3),

and any such person shall be a "**respondent**" for the purposes of this Law.

(3) An Ombudsman may, by notice in writing given to a person, designate a person (the "**successor**") as a respondent, in relation to a complaint referred to OFSO, whether in addition to or in substitution for a person falling within paragraph (2)(a) or (b) if –

- (a) any business, asset or liability (in relation to the relevant act or to any other matter) of the relevant provider was transferred, after the commencement of this Part and before the complaint is referred to OFSO, to the successor from the relevant provider,
- (b) the relevant provider no longer exists when the complaint is referred to OFSO, or in the opinion of the Ombudsman substantial prejudice is likely to be caused to the complainant if the relevant provider is treated as the only respondent,
- (c) when the complaint is referred to OFSO, the successor is carrying on relevant financial services business (irrespective of where it is carried on and whether it is the same business as that to which the complaint relates), and
- (d) in the opinion of the Ombudsman, after inviting and considering objections from the successor, it is fair and reasonable in all the circumstances of the case to treat the successor as answerable for the act of the relevant provider (and whether jointly with any other person or otherwise).

(4) For the purpose of subsections (2)(b)(i) and (3)(a), the transfer

may be –

- (a) direct, or through any other person or persons and through any number of transactions, and
- (b) by agreement of the relevant provider (with the successor or any other person), by operation of law, as part of the winding up of the relevant provider, or in any other manner.

Timing conditions.

11. (1) The timing conditions are that –

- (a) the act to which the complaint relates occurred on or after 2nd July 2013,
- (b) the complaint is not referred to OFSO before the complainant has, in the opinion of an Ombudsman, given the respondent a reasonable opportunity to deal with it, and
- (c) the complaint is referred to OFSO on or before the expiry of the relevant time-limit, as determined in accordance with subsections (4) to (8).

(2) For the purpose of subsection (1)(b), the Ombudsman must consider all the relevant circumstances (including any relevant direction, Code of Practice, guidance, or other rule or standard, issued by or on behalf of the Commission), but must not treat a reasonable opportunity as extending beyond –

- (a) 3 months after the date on which, in the opinion of the

Ombudsman, the respondent first had sufficient information to be able to start to investigate the complaint, or

- (b) if sooner, the date on which the respondent notifies the complainant that the respondent will take no further action on the complaint for any reason.

(3) An Ombudsman may treat the timing condition in paragraph (1)(b) as satisfied if, in the opinion of the Ombudsman, there is some exceptional reason justifying the investigation of the complaint by OFSO without the respondent having a reasonable opportunity to deal with it.

- (4) For the purpose of subsection (1)(c) the relevant time-limit is –

- (a) if the abbreviated time-limit applies, that time-limit, or
- (b) if the abbreviated time-limit does not apply, the general time-limit.

(5) The general time-limit is the period ending whichever is the later of –

- (a) 6 years after the act to which the complaint relates, and
- (b) 2 years after the complainant could reasonably have been expected to become aware that there was a reason to complain in relation to the act complained of.

- (6) The abbreviated time-limit –

- (a) is the period ending 6 months after the first day on which all of the internal procedure conditions are met, and
 - (b) applies if –
 - (i) all of the internal procedure conditions are met, and
 - (ii) the general time-limit has not expired when the abbreviated time-limit expires.
- (7) The internal procedure conditions are that –
- (a) the respondent has established a procedure for handling complaints in relation to the relevant financial services business to which the complaint relates,
 - (b) the procedure conforms to a model procedure published by OFSO, or otherwise requires the respondent to investigate the complaint, to attempt to resolve it and to notify the complainant of the result,
 - (c) the respondent notifies the complainant in writing that the respondent has applied the procedure to the complaint and regards the procedure as exhausted,
 - (d) that notification is given within 3 months after the date on which, in the opinion of the Ombudsman, the respondent first had sufficient information to be able to start to investigate the complaint, and

- (e) the respondent, on notifying the complainant under paragraph (c), informs or reminds the complainant in writing –
 - (i) of the complainant's right to refer the complaint to OFSO, giving current details of a means by which OFSO may be contacted,
 - (ii) of the effect of the abbreviated time-limit, specifying the date on which it expires, and
 - (iii) if the respondent has reason to believe that the general time-limit may expire before the abbreviated time-limit, of the need for the complainant to check the general time-limit.
- (8) An Ombudsman may –
 - (a) treat the general or abbreviated time-limit as suspended during any period throughout which, in the opinion of the Ombudsman, the complainant could not reasonably be expected to pursue the complaint for any reason relating to –
 - (i) the complainant being a minor,
 - (ii) the complainant's lack of mental capacity, or
 - (iii) some other impediment affecting the complainant and justifying the suspension in all

circumstances, and

- (b) treat the timing condition in subsection (1)(c) as satisfied if, in the opinion of the Ombudsman, there is some other exceptional reason justifying the investigation of the complaint by OFSO despite the expiry of the relevant time-limit.

(9) [The Committee] may, on the recommendation of OFSO, by Order –

- (a) amend subsection (6)(a) to alter the period of the abbreviated time-limit, and
- (b) amend the internal procedure conditions in subsection (7).

NOTE

In section 11, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

PART IV

HANDLING OF COMPLAINTS BY OFSO

Initial handling of complaints referred.

12. (1) When a complaint is referred to OFSO, a person designated by OFSO ("**a designated person**") must –

- (a) examine whether the complaint is one which may be so referred under Part III, and

- (b) if it is not, reject it.

(2) If the complaint is one that may be referred to OFSO, a designated person may –

- (a) examine whether there are compelling reasons why it is inappropriate for the complaint to be dealt with by the OFSO, and

- (b) if there are, reject it.

(3) Without prejudice to the generality of subsection (2), the reasons referred to in that paragraph include (subject to whether the reason is compelling in the particular case) that –

- (a) the complaint has no real prospect of success, such as where –

- (i) the complaint is frivolous or vexatious,
- (ii) the complainant has not suffered, and is unlikely to suffer, compensatable loss, within the meaning of section 16(3), and the giving of directions under section 16(1)(b) would not be appropriate, or
- (iii) the complaint is evidently misconceived even on the complainant's version of the facts,

- (b) the subject matter of the complaint has already been

appropriately dealt with, such as where –

- (i) the respondent has already made an offer of compensation, or of a goodwill payment, that is still open for acceptance and is fair and reasonable in relation to the circumstances alleged by the complainant,
 - (ii) the subject matter of the complaint has previously been considered or rejected by a designated person on behalf of OFSO, and the complainant does not present any evidence which –
 - (A) is likely to affect the outcome, and
 - (B) was unavailable to the complainant at the time of the previous consideration or rejection, or
 - (iii) the subject matter of the complaint has been the subject of legal proceedings in which a final decision has been made, or
 - (iv) the subject matter of the complaint has been finally dealt with by an independent complaints scheme or dispute-resolution process that is comparable to OFSO,
- (c) there is a more appropriate forum available than OFSO, such as where –

- (i) the subject matter of the complaint is the subject of current legal proceedings, and those proceedings are not stayed for the purpose of enabling the matter to be referred to OFSO,
 - (ii) the subject matter of the complaint is being dealt with by an independent complaints scheme or dispute-resolution process that is comparable to OFSO,
 - (iii) the complaint cannot be determined without deciding on a significant doubtful point of law, and the need for resolution of that point by a court outweighs the benefits of OFSO procedure, or
 - (iv) it would be more appropriate for the subject matter of the complaint to be dealt with by an arbitration scheme, or another complaints scheme or dispute-resolution process, that is comparable to OFSO and to which the complainant can reasonably be expected to resort,
- (d) the subject matter of the complaint is inappropriate for OFSO, such as where the complaint is about –
- (i) employment matters, where the complainant is an employee or former employee of a respondent,

- (ii) investment performance, as opposed to negligent selection or management of investments,
 - (iii) the legitimate exercise of the respondent's commercial judgment, or
 - (iv) a decision by the respondent exercising a discretion under a will or trust, including any failure to consult the complainant before exercising such a discretion where there is no legal obligation to consult, or
- (e) it would be inappropriate to deal with the complaint in the circumstances, such as in the absence of consent from another potential complainant whose interests would be unreasonably prejudiced by proceeding without his consent.

(4) Rejection under subsection (1)(b) or (2)(b) shall be by notice in writing to the parties, setting out the reasons for the rejection and any provision for review.

(5) Nothing in this section prevents an Ombudsman determining a complaint in the respondent's favour on grounds for which the complaint could have been rejected under this section.

(6) OFSO –

(a) may only designate –

- (i) an Ombudsman, or
 - (ii) another appropriately qualified member of OFSO's staff, and
- (b) may not designate the Board, a board member, a committee of the Board or a member of such a committee,

to perform any of the functions listed under subsections (1) and (2).

- (7) OFSO must publish its policy on –
- (a) the factors that a designated person will consider in deciding whether to reject complaints under this section,
 - (b) the designation of investigatory and decision-making functions under this section, and
 - (c) the arrangements for review of decisions to reject a complaint where the decision is not made by an Ombudsman.

(8) [The Committee] may by Order, on the recommendation of OFSO, amend subsections (2) and (3) to limit the reasons for which a complaint may be rejected, if it appears expedient to do so in order to align those reasons with –

- (a) any equivalent reasons in the law of any other jurisdiction, or

- (b) any European or international standard relevant to Ombudsman schemes.

NOTES

In section 12, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

In accordance with the provisions of the Arbitration (Guernsey) Law, 2016, section 80(1), with effect from 12th December, 2016, the provisions of that Law apply to every arbitration under a Guernsey enactment (a "statutory arbitration"), subject to, first, the exceptions in section 80(2) and, second, the adaptations and exclusions specified in sections 81 to 83 of the 2016 Law.

Complaint to be handled as Ombudsman sees fit.

13. (1) If a complaint is not rejected under section 12, the Principal Ombudsman must ensure that it is allocated to an Ombudsman (which may be the Principal Ombudsman) to supervise the investigation of the complaint with a view to mediation, referral, determination or resolution by any other means.

(2) Subject to subsections (3) and (4), the Ombudsman may handle the complaint as that Ombudsman thinks fit.

(3) Without prejudice to the generality of subsection (2), the Ombudsman –

- (a) may make such enquiries of the complainant and respondent and of any other person as the Ombudsman considers appropriate,
- (b) is not bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before

courts,

- (c) may consider all or any part of the complaint in public or in private and with or without a hearing,
 - (d) may at any stage indicate a provisional view on any issue and invite comment from both parties on that view, and
 - (e) may –
 - (i) invite comment from both parties on a preliminary draft of the determination, or
 - (ii) may issue a determination without such a prior invitation if the Ombudsman is satisfied that it is not necessary in the circumstances.
- (4) The Ombudsman to whom the complaint is allocated must –
- (a) handle the complaint in such manner as that Ombudsman considers most appropriate for the clarification of the issues and generally for the just handling of the complaint, and
 - (b) have regard to the primary function of OFSO under section 3(1), and in particular, so far as it appears to the Ombudsman appropriate to do so, seek to avoid –
 - (i) formality in handling the complaint, and

- (ii) any need for legal representation for either party.

(5) Notwithstanding subsection (2), the Ombudsman must not take account of evidence in determining a complaint unless –

- (a) both parties have had an opportunity to see and comment on the evidence, or

- (b) the evidence has –

- (i) been disclosed by or to the respondent, but

- (ii) not been disclosed to the complainant,

and the Ombudsman is satisfied in the exceptional circumstances of the case –

- (A) that a fair determination cannot be made without taking account of that evidence, and

- (B) that it is necessary not to disclose that evidence to the complainant, in order to preserve the confidentiality of information revealed by that evidence.

(6) The complainant and the respondent must assist the Ombudsman in the discharge of the Ombudsman's duties under subsection (2).

Allocation of functions in relation to handling of complaints.

14. (1) Only an Ombudsman may make a determination of a complaint.

(2) The Ombudsman to whom the complaint is allocated may authorise any other person appointed under section 4(3), not being a person described in section 12(6)(b), to perform any other function in relation to a complaint, including but not limited to –

- (a) investigation of the complaint,
- (b) mediation of the complaint, and
- (c) taking a provisional view of an issue and inviting comment, as described in section 13(4)(d).

(3) A person performing a function described in subsection (1) or (2) in relation to a complaint shall be permitted to do so free from any interference from any other person, except the Ombudsman to whom the complaint is allocated or a person (not being a person described in section 12(6)(b)) who acts at the direction of that Ombudsman.

Determination.

15. (1) An Ombudsman, when determining a complaint, must do so by reference to what is, in the opinion of the Ombudsman, fair and reasonable in all the circumstances of the case.

(2) Without prejudice to the generality of subsection (1), the Ombudsman, must take into particular account –

- (a) any relevant enactment or jurisprudence,

- (b) any relevant direction, Code of Practice, guidance, or other rule or standard, issued by or on behalf of the Commission,
- (c) any similar instrument issued by any other body if the Ombudsman considers it relevant to the complaint, and
- (d) what the Ombudsman considers to have been relevant good industry practice at the time of the act to which the complaint relates.

Awards and directions.

16. (1) If a complaint is determined in favour of the complainant, the determination may include –

- (a) an award against the respondent of payment, in money or money's worth, of such amount ("**a money award**") as the Ombudsman considers –
 - (i) to represent compensation for compensatable loss as described in subsection (3), and
 - (ii) to be fair and reasonable in all the circumstances of the case, and
 - (b) a direction that the respondent take such steps in relation to the complainant as the Ombudsman considers to be fair and reasonable in all the circumstances of the case.
- (2) For the purposes of a money award or a direction under

subsection (1), the Ombudsman –

- (a) may include an amount or step even if a court could not order that amount to be paid or that step to be taken, and
 - (b) may seek –
 - (i) to put the complainant into the position that the complainant would have been in but for the matter complained of,
 - (ii) to put the complainant into the position that the complainant would have been in if the respondent had carried on its business fairly and reasonably in relation to the matter complained of, or
 - (iii) to achieve any other result appearing fair and reasonable to the Ombudsman in all the circumstances of the case.
- (3) Compensatable loss is –
- (a) financial loss,
 - (b) material distress or material inconvenience, or
 - (c) any other loss or damage of a kind specified by [the Committee] by Order,

suffered by the complainant as a result of the act complained of.

(4) The maximum amount that –

- (a) may be included in a money award in respect of compensatable loss under subsection (3)(b) or (c), may be specified by [the Committee] by Order, and
- (b) a total money award may not exceed is £150,000, or such other amount as may be specified by [the Committee] by Order.

(5) The steps that may be included in a direction under subsection (1)(b) do not include –

- (a) the payment of money or money's worth, or
- (b) any step the effect of which is to give the complainant a benefit that has a monetary value to the complainant that, if it had formed part of a money award, would have resulted in a contravention of subsection (4)(b).

(6) If the Ombudsman is satisfied that a respondent has failed to comply with a direction under subsection (1)(b), the Ombudsman may add to the determination a money award in respect of that failure.

(7) If the Ombudsman considers that fair compensation requires payment of an amount exceeding the limit set out in paragraph (4)(b)), the Ombudsman may recommend that the respondent pay the complainant the balance.

(8) A money award –

- (a) may provide for the amount payable under the award to bear interest at a rate and as from a date specified in the award (but not so as to exceed the limit in subsection (4)(b) on or before the time when the determination becomes binding), and
- (b) is recoverable by the complainant as a civil debt due from the respondent.

(9) OFSO may assist the complainant in recovering an award under subsection (8)(b) if –

- (a) the complainant –
 - (i) requests OFSO to do so, or
 - (ii) appears unable to –
 - (A) request OFSO to do so, and
 - (B) enforce the award or direction otherwise,
- and
- (b) it appears to OFSO to be necessary to do so in order to maintain respect among potential respondents for determinations under this Law.

(10) A determination may include provision that any copy thereof made available in any way to any person other than the complainant or the respondent

must be redacted to exclude –

- (a) the identity of the complainant or any information from which that identity can be ascertained, and
- (b) exceptionally, any other information that the Ombudsman considers should be private.

(11) The Ombudsman must –

- (a) before making a determination, inform the complainant of the effect of subsection (10)(a), and
- (b) include in the determination a provision falling within that paragraph if the complainant so requests.

NOTE

In section 16, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Costs.

17. (1) An Ombudsman may, on determining a complaint, award costs

–

- (a) against the respondent in favour of the complainant, or
- (b) against the respondent in favour of OFSO,

and may make more than one award of costs on the same occasion.

(2) Costs must not be awarded unless, in the opinion of the Ombudsman –

- (a) the payer was responsible, through improper or unreasonable conduct or unreasonable delay, for causing additional resources to be deployed or expenses to be incurred by the payee in dealing with the complaint, and
- (b) the costs represent a reasonable contribution to those resources deployed or expenses incurred,

and for the purposes of this subsection –

- (i) **"the payer"** is the person against whom the costs are awarded, and
- (ii) **"the payee"** is the person in whose favour they are awarded.

(3) An Ombudsman making an award of costs may order that the amount payable under the award bears interest at a rate and as from a date specified in the determination.

(4) An amount due under an award of costs is recoverable as a civil debt due from the payer to the payee.

Notification and finality of determinations.

18. (1) Within a reasonable time after determining a complaint, the Ombudsman must give a written statement of the determination to the parties.

- (2) The statement must –
 - (a) give the Ombudsman's reasons for the determination,
 - (b) require the complainant to notify the Ombudsman, on or before a date specified in the statement and by a means so specified, if the complainant accepts the determination, and
 - (c) explain the effect of subsections (3) to (7).
- (3) If the complainant –
 - (a) notifies acceptance in accordance with subsection (2)(b), the determination binds the parties.
 - (b) does not notify acceptance in accordance with that subsection, the determination is not binding.
- (4) After the date specified under subsection (2)(b), a determination that is not binding nevertheless becomes binding if –
 - (a) the complainant has not notified the Ombudsman that the complainant rejects the determination,
 - (b) the complainant notifies the Ombudsman that the complainant wishes to accept the determination and gives details of compelling reasons why the complainant could not reasonably have been expected to notify in time, and

- (c) the Ombudsman, after inviting representations from the respondent, is satisfied that those reasons are compelling and that it would be unjust not to allow the complainant to accept the determination out of time.

(5) No appeal lies against a binding determination.

(6) Neither party may institute or continue legal proceedings in respect of a matter which was the subject of the complaint, after a determination of the complaint becomes binding.

(7) The Ombudsman must notify the parties of each of the following events, as the case may be –

- (a) when a determination becomes binding under subsection (3)(a),
- (b) when a date specified under subsection (2)(b) passes without the determination becoming binding, and
- (c) when a determination becomes binding, or remains not binding, following a decision of the Ombudsman under subsection (4)(c).

(8) A copy of a determination on which appears a certificate signed by an Ombudsman, stating that the determination has become binding, is evidence that the determination has become binding.

(9) Such a certificate purporting to be signed by an Ombudsman is to be taken to have been duly signed unless the contrary is shown.

PART V
INFORMATION

Powers to obtain documents and information.

19. (1) In this section –

"document" includes information stored or recorded in any form (including, without limitation, in electronic form); and, in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of the information in a form –

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form, and

"electronic form", in relation to the storage or recording of documents, includes storage or recording by means of any form of information storage technology.

(2) The Ombudsman may, by notice in writing given to a party, require that party to produce a document that –

- (a) is specified in the notice, or is of a description so specified,
- (b) is in that party's possession or control, and
- (c) appears to the Ombudsman to be likely to be necessary

or useful for the investigation or determination of the complaint.

(3) The party must produce the document before the end of such reasonable period as is specified in the notice.

(4) A party who, without reasonable excuse, contravenes subsection (3) is guilty of an offence and liable to a fine not exceeding level 5 on the uniform scale.

(5) If a party contravenes subsection (3), the Ombudsman may require the party to state, to the best of the party's knowledge and belief, where the document is.

(6) If a document is produced in response to a requirement imposed under subsection (2), the Ombudsman may –

- (a) retain the document or take copies or extracts from it, and
- (b) require the person producing the document to provide an explanation of the document.

(7) If a person claims a lien on a document, its production under this section does not affect the lien.

(8) A person who –

- (a) requires, for the purpose of that person's business, any document retained under this section, and

- (b) requests that document,

must be supplied with a copy as soon as practicable.

(9) The Ombudsman may, by notice in writing given to a party to a complaint, require that party to provide information that –

- (a) is specified in the notice, or is of a description so specified, and
- (b) appears to the Ombudsman to be likely to be necessary or useful for the investigation or determination of the complaint.

(10) The party must provide the information –

- (a) before the end of such reasonable period as may be specified in the notice, and
- (b) in such manner or form, if any, as may be specified in the notice.

(11) A statement made by a person in response to a requirement imposed under subsection (6)(b) or a notice under subsection (9) –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except –

- (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
- (ii) in proceedings for –
 - (A) an offence under subsection (15),
 - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.

(12) The Ombudsman may, relying wholly or partly on an inference drawn from any contravention by a party of any requirement of or under this section –

- (a) determine any issue in the complaint to which the information or document sought appears to be relevant, or
- (b) in the case of a contravention by a complainant, reject the complaint.

(13) Subsection (12) applies irrespective of whether a contravention by a respondent amounts also to an offence under subsection (4).

(14) Nothing in this section requires the disclosure or production by a person to an Ombudsman of information or documents that the person would be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

(15) Where a person knowingly provides to OFSO any information that is false in a material particular, in circumstances in which the person intends that the information will be used by OFSO for the purpose of any function under Part IV, that person is guilty of an offence and is liable to a fine not exceeding level 5 on the uniform scale.

(16) For the purposes of –

(a) subsection (14), information or documents which a person could refuse to disclose or produce on the grounds of legal professional privilege shall have the same meaning as **"items subject to legal professional privilege"** found in section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^q, and

(b) subsection (15), it is irrelevant whether the information –

(i) is contained in a document or not, or

(ii) is provided under this section or not.

Commission to provide information for levy.

^q Ordres en Conseil Vol. XLIII(2), p. 574; as amended by Order in Council No. XVI; No. XV of 2011; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXIII, p. 617; and Ordinance No. XXIX of 2011.

- 20.** (1) OFSO may request the Commission to provide details that –
- (a) are required by OFSO to enable it to calculate or raise –
 - (i) a levy under paragraph 4, or
 - (ii) an establishment levy under paragraph 5,of Schedule 2 in relation to any year, and
 - (b) are held by the Commission.
- (2) The Commission –
- (a) must provide the details requested under subsection (1) in a timely manner, and
 - (b) may provide the details –
 - (i) along with other information, if the resources required to separate the details would unduly prejudice the performance of other functions of the Commission, and
 - (ii) in any format in which the details are held, or in any format requested by OFSO, at the option of the Commission.

Restricted information and permitted disclosure.

- 21.** (1) A person who receives information ("**restricted**

information") relating to the business or other affairs of any person –

- (a) under or for the purposes of Part IV, or for the purpose of calculating or raising a case fee, levy or establishment levy under paragraph 3, 4 or 5 of Schedule 2, or
- (b) directly or indirectly from a person who has so received it,

and discloses the information –

- (i) without the consent of the person to whom it relates, and
- (ii) where paragraph (b) applies, the person from whom it was received,

is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 2 years and a fine not exceeding level 5 on the uniform scale.

(2) This section does not apply to information that –

- (a) is disclosed by a party in the course of a public hearing held by an Ombudsman under section 13,
- (b) is contained in or derived from a determination, unless the determination includes provision prohibiting the disclosure of that information under section 16(11),
- (c) at the time of the disclosure is or has already been made

available to the public from other sources, or

- (d) is disclosed in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) This section does not preclude the disclosure of information –

- (a) for the purpose of enabling or assisting OFSO or any person acting on its behalf to discharge any of its functions, other than its functions under section 22,
- [(aa) without prejudice to the generality of subsection (2)(d), by OFSO or any person acting on its behalf to the public, for the purpose of explaining the incidence of complaints, or of descriptions of complaints, if –
 - (i) that disclosure is in the form of a statistical summary of information about complaints or descriptions of complaints, and
 - (ii) the summary is so framed as not to enable the public to ascertain from it –
 - (A) the substance of any particular complaint, or
 - (B) the identity of any person, other than a person named in (or otherwise identifiable from) the summary as a

person against whom a complaint has
been made,]

- (b) by OFSO or any person acting on its behalf –
 - (i) to the Commission, or to any person acting on behalf of or appointed by or at the request of the Commission, for the purpose of enabling or assisting the Commission or that person to exercise any function of the Commission or any function for which the person was so appointed, or
 - (ii) to any other person for the purpose of enabling or assisting that person to exercise, in the Bailiwick and in relation to financial service providers, any function conferred on that person by or under any enactment,
- (c) for the purposes of the investigation, prevention or detection of crime, or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings in the Bailiwick or elsewhere,
- (d) in connection with any other proceedings arising out of this Law, or with any proceedings conducted by or on behalf of the Commission under any of its functions,
- (e) for the purposes of enabling or assisting Her Majesty's Procureur to discharge his functions, or

- (f) without prejudice to the generality of paragraph (a), by OFSO to a body appearing to OFSO to be equivalent to OFSO in another jurisdiction, if it appears to OFSO that disclosing the information would enable or assist OFSO to discharge its functions.
- (4) The States may by Ordinance amend subsections (2) and (3) by
 - (a) adding further persons or bodies to or by whom disclosure may be made and specifying in each case the purpose for which disclosure of information may be made, and
 - (b) amending the circumstances in which disclosure may be made to or by any person or body specified in those paragraphs, including the purposes for which and conditions in which such disclosure may be made.

NOTES

In section 21, paragraph (aa) of subsection (3) was inserted by the Financial Services Ombudsman (Bailiwick of Guernsey) (Amendment) Ordinance, 2019, section 1, with effect from 1st October, 2019.

The following Ordinance has been made under section 21:

*Financial Services Ombudsman (Bailiwick of Guernsey)
(Amendment) Ordinance, 2019.*

Provision of general information by OFSO.

22. (1) Without prejudice to the generality of the functions of OFSO under this Law, OFSO may in particular provide –

- (a) information and guidance about OFSO and its procedures, intended for actual or potential complainants, respondents or other users of OFSO,
- (b) information and guidance about OFSO's experience of complaints, and what may be learnt from that experience,
- (c) information about determinations made by Ombudsmen,
- (d) information to the Commission on general patterns in complaints indicating contraventions of any requirement imposed or enforced by the Commission, or on other issues relevant to the Commission's functions, and
- (e) information to any department of the States of Guernsey responsible for trading standards, or to any other body with similar responsibility, on general patterns in complaints in relation to financial service providers not regulated by the Commission.

(2) This section does not permit the disclosure of any information if that disclosure constitutes an offence under section 21.

PART VI MISCELLANEOUS

Co-operation between OFSO and Commission.

23. (1) Without prejudice to section 20, OFSO and the Commission must take such steps as each considers appropriate to co-operate with the other in the exercise of its functions.

(2) OFSO and the Commission must prepare and maintain a memorandum describing how they intend to comply with subsection (1).

(3) OFSO may, with the prior agreement of the Commission, publish the memorandum, as in force from time to time, and, where it is so published, will ensure that an electronic copy of the memorandum is freely available to the public.

Criminal liability of directors and similar officers.

24. (1) Where an offence under this Law is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to or to have been facilitated by any neglect on the part of, any director, manager, member of any committee of management or other controlling authority, secretary or other similar officer of the body, or any person purporting to act in any such capacity, he as well as the body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

(a) in the case of a partnership, any partner,

- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Proceedings for an offence alleged to have been committed under this Law by an unincorporated body shall be brought in the name of that body and not in the name of any of its members; and a fine imposed on the body on its conviction of such an offence shall be paid out of its funds.

(5) For the purposes of this section, a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act.

Consequential and related amendments.

25. (1) The States may, by Ordinance, amend any enactment other than this Law for the purpose of making such transitional, consequential, incidental, supplementary or savings provisions as they consider necessary or expedient in respect of any provision made by or under this Law.

(2) Section 2(1) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^r is amended as follows –

^r Ordres en Conseil Vol. XXX, p. 243; as amended by Vol. XXXI, p. 278; Vol.

- (a) in paragraph (e)(ii), delete the word "and", and
- (b) immediately after paragraph (e), insert the following paragraph –

"(ea) to enable –

- (i) the Office of the Financial Service Ombudsman (established by section 1 of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014), or
- (ii) any person to whom it has delegated a function or power,

to carry out its functions or exercise any of its powers, including but not limited to the provision of information which would be confidential for the purposes of section 21, or any other provision, of this Law, or of any other enactment."

Power to carry Law into effect by Ordinance.

26. The States may by Ordinance make such additional provision as they think fit for the purposes of carrying this Law into effect.

XXXII, p. 471; Vol. XXV(1), p. 271; Vol. XXXVII, p. 24; Vol. XLII(2), pp. 644 and 766; Vol. XLIII(1), p. 49; Vol. XLIII(2), p. 574; Order in Council No. XIX of 2008; No. XXIII of 2008; No. XXIV of 2008; No. XIX of 2010; No. III of 2013; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXX, p. 722; Tome XXXIII, p. 617; and G.S.I. No. 29 of 2009.

NOTE

The following Ordinance has been made under section 26:

*Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014
(Commencement) (No. 2) Ordinance, 2015.*

Provisions relating to Ordinances and orders.

27. (1) An Ordinance or Order made under this Law –

- (a) may be amended or repealed by a subsequent Ordinance or Order hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

(2) Any power conferred by this Law to make an Ordinance or order may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Any Order made under this Law shall be laid before a meeting of the States as soon as possible after being made; and if at that meeting or the next meeting the States resolve that the order be annulled, it shall cease to have effect but without prejudice to anything done under it or to the making of a new Order.

Interpretation.

28. (1) In this Law, unless the context otherwise requires –

"Bailiwick" means the Bailiwick of Guernsey,

"bankrupt" means –

- (a) that a declaration of insolvency has been made in respect of him by the Royal Court under the Law intituled *Loi ayant rapport aux Débiteurs et à la Renonciation, 1929*^s,
- (b) that a Commissioner or Committee of Creditors has been appointed by the Royal Court under that Law to supervise or secure his estate,

^s Ordres en Conseil Vol. VIII, p. 310.

- (c) that his affairs have been declared to be in a state of "désastre" at a meeting of his arresting creditors held before a Commissioner of the Royal Court,
- (d) that an interim vesting order has been made against him in respect of any of his real property in the Bailiwick,
- (e) that a composition, compromise or arrangement with creditors has been entered into in respect of him whereby his creditors will receive less than 100 pence in the pound,
- (f) that possession or control has been taken of any of his property or affairs by or on behalf of creditors or, in the case of a company, the holders of debentures issued by it, or
- (g) that an event, measure or procedure has occurred outside Guernsey in relation to him which corresponds as nearly as may be to any event described in the above paragraphs,

"board member" includes –

- (a) the chairman, and
- (b) an ordinary member,

of OFSO,

"chairman" has the meaning given in section 1(3)(a),

"the Commission" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987,

"complainant" has the meaning given by section 7,

"[the Committee]" means the States [Committee for Economic Development],

"department" means any department or committee (however titled) of –

- (a) the States of Guernsey,
- (b) the States of Alderney, and
- (c) the Chief Pleas of Sark,

"designated person" has the meaning given in section 12(1),

"enactment" means –

- (a) any Law, Ordinance or subordinate legislation, and
- (b) any other Community instrument, within the meaning of section 1 of the European Communities (Bailiwick of Guernsey) Law, 1973,

"financial service provider" means a person carrying on relevant financial services business,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"Jersey scheme" has the meaning given in section 6(1)(i),

"a money award" has the meaning given in section 16(1)(a),

"a nominee" shall have the meaning given in paragraph 1(5) of Schedule 1,

"an offence under the customary law" includes an offence under the common law,

"OFSO" means the Office of the Financial Services Ombudsman established by section 1(1),

"Ombudsman" means a person designated as such under section 5(1), and includes the Principal Ombudsman,

"Ombudsman schemes" has the meaning given in section 6(1)(ii),

"ordinary member" has the meaning given in section 1(3)(b),

"party" means the complainant or respondent in a complaint,

"Principal Ombudsman" means the person appointed as such under section 4(1),

"relevant financial services business" has the meaning given by section 9,

"relevant legislature" means –

- (a) the States of Deliberation,
- (b) the States of Alderney, and
- (c) the Chief Pleas of Sark,

"respondent" has the meaning given by section 10(2),

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect, and

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^t.

(2) The Interpretation (Guernsey) Law, 1948^u applies to the interpretation of this Law throughout the Bailiwick.

(3) Unless the contrary intention appears, any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

NOTES

^t Ordres en Conseil Vol. XXXI, p. 278; amended by Recueil d'Ordonnances Tome XXV, p. 344; Tome XXXI, p. 542; and Ordinance XXIX of 2013.

^u Ordres en Conseil Vol. XIII, p. 355.

In section 28, the words, first, "the Committee" and, second, "Committee for Economic Development" in square brackets in the definition of the expression "the Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 2 and section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The European Communities (Bailiwick of Guernsey) Law, 1973 has since been repealed by the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, section 1, with effect from 11 p.m. on 31st December, 2020, subject to the saving in section 2 of the 2018 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Citation and commencement.

29. (1) This Law may be cited as the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014.

(2) This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

NOTES

Part I, Part II, section 9, section 20, section 21, Part VI, Schedule 1, Schedule 2, Schedule 3 and Schedule 4 of the Law were brought into force on 30th January, 2015 by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Commencement and Amendment) Ordinance, 2015, section 1.

Part III (other than section 9), Part IV and Part V (other than section 20 and

section 21) were brought into force on 30th September, 2015 by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Commencement) (No. 2) Ordinance, 2015, section 1.

SCHEDULE 1
CONSTITUTION OF OFSO

Section 1(4)

Appointment of ordinary members.

1. (1) [The Committee] shall, by resolution, appoint 2 ordinary members, and may so appoint further members, from the persons nominated by the chairman.

(2) The appointment of an ordinary member shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done by the Board or by that ordinary member during his appointment.

(3) No person who is –

- (a) a member of a relevant legislature,
- (b) an Ombudsman, or
- (c) an officer, employee or agent of OFSO,

may hold office as an ordinary member.

(4) When making a nomination or an appointment, the chairman or [the Committee], as the case may be, must –

- (a) seek to ensure that persons nominated or appointed are prepared in particular –
 - (i) to maintain the independence of OFSO as set out in section 3(4), and

- (ii) to act in the public interest, rather than as representatives of any particular interest,
 - (b) ensure that the majority of the ordinary members are not financial service providers, persons falling within item (c)(i), or persons whose business involves representing financial service providers, and
 - (c) have regard to the desirability of securing that there is such a balance as the chairman or [the Committee] considers appropriate (subject to item (a)(ii) and item (b)) between persons with experience of –
 - (i) the provision of types of financial service about which complaints may be made,
 - (ii) the use, on their own account or on behalf of others, of such types of financial service,
 - (iii) the provision of services similar to any of those provided by OFSO, and
 - (iv) the financial, legal and other aspects of management of bodies similar to OFSO.
- (5) A person (the "**nominee**") must not be nominated unless he has provided –
- (a) a statement setting out the nominee's interests, direct or indirect, in any relevant financial services business, or

in business carried on outside the Bailiwick that would be relevant financial services business if carried on in the Bailiwick, and

(b) an instrument authorising the provision to [the Committee] of information as to whether the person has been charged with, or convicted of, an offence under –

(i) the customary law or any enactment, or

(ii) any law of a country or territory outside the Bailiwick.

(6) [The Committee] must, in an instrument appointing an ordinary member, specify a period for that appointment of [...] not more than 5 years [and, for the avoidance of doubt, the Committee may re-appoint an ordinary member if it thinks fit to do so].

(7) A person appointed as an ordinary member shall, subject to this Law, hold and vacate office in accordance with the terms of that person's appointment.

(8) The terms of appointment must be such as to secure the independence of ordinary members in the performance of their functions.

Appointment of chairman and deputy chairman.

2. (1) [The Committee] must appoint the chairman of the Board –

(a) in the case of the first such appointment, from the persons appearing to [the Committee] to be suitable for the position (subject to paragraph 1(5)), and

- (b) in the case of each subsequent such appointment, from the ordinary members appearing to [the Committee] to be so suitable.

(2) The appointment of the chairman shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done by the Board or by the chairman during his appointment.

(3) When appointing a chairman, [the Committee] must determine the period of the appointment of [...] not more than 5 years; provided that where the appointment is made pursuant to subparagraph (1)(b), the period must expire before or on the same date as the person's appointment as an ordinary member [and, for the avoidance of doubt, the Committee may re-appoint a chairman if it thinks fit to do so].

(4) A person appointed as a chairman holds and vacates office in accordance with the terms of that person's appointment, subject to this Law.

(5) [The Committee] may re-appoint a serving chairman (and references in this paragraph to appointment include re-appointment).

(6) The chairman must appoint an ordinary member as deputy chairman, and that person is to be treated as the chairman for the purposes of this Law when –

- (a) the chairman is unable to act through incapacity or absence, or
- (b) there is a vacancy in the office of chairman.

Remuneration and expenses of board members.

3. (1) OFSO shall pay to the board members –

- (a) such remuneration as it may determine, subject to any maximum directed by [the Committee], and
- (b) reasonable out of pocket expenses occasioned in the course of carrying out their duties.

(2) Any maximum remuneration directed by [the Committee] after the appointment of a board member does not reduce the remuneration previously determined by OFSO on the appointment of that board member, but does limit any subsequent increase.

Cessation of office as ordinary member.

4. (1) A person ceases to be an ordinary member if –

- (a) that person resigns from office by giving not less than 1 month's notice in writing to [the Committee],
- (b) that person's appointment is terminated under subparagraph (2), or
- (c) that person's appointment expires under subparagraph (3).

(2) The States may, on the recommendation of [the Committee], terminate the appointment of an ordinary member, other than the chairman, after –

- (a) consulting the chairman, and

- (b) satisfying themselves that the ordinary member –
 - (i) has been absent from meetings of the Board for a period longer than 3 consecutive months without the permission of the Board,
 - (ii) has become bankrupt,
 - (iii) is incapacitated by physical or mental illness, or
 - (iv) is otherwise unable or unfit to discharge the functions of an ordinary member.
- (3) A person's appointment as an ordinary member expires if –
 - (a) the period for which that person was appointed expires without re-appointment,
 - (b) the person becomes a member of a relevant legislature,
 - (c) the person becomes an Ombudsman, or any other officer, employee or agent of OFSO,
 - (d) the person's appointment as chairman is terminated under paragraph 5(2), or
 - (e) the person completes 10 years (whether consecutive or in aggregate) of service as an ordinary member.

Cessation of office as Chairman.

5. (1) A person ceases to be the chairman if –

- (a) the person resigns from office as chairman by giving not less than 2 months' notice in writing to [the Committee],
- (b) the person's appointment as chairman is terminated under subparagraph (2), or
- (c) the person's appointment as chairman expires under subparagraph (3).

(2) The States may, on the recommendation of [the Committee], terminate the appointment of the chairman if they are satisfied that the chairman –

- (a) has been absent from meetings of the Board for a period longer than 3 consecutive months without the permission of the Board,
- (b) has become bankrupt,
- (c) is incapacitated by physical or mental illness, or
- (d) is otherwise unable or unfit to discharge the functions of the chairman.

(3) A person's appointment as chairman expires if –

- (a) the period for which that person was appointed expires without re-appointment, or

- (b) where the person was appointed as chairman under paragraph 2(1)(b), the person ceases to be a board member.

Procedure at meetings.

6. (1) Except as otherwise provided in this Law, the Board may determine its own proceedings.

- (2) The quorum for the Board is a majority of the board members.

- (3) At a meeting of the Board –

- (a) the chairman is to preside as chairman of the meeting, but if the chairman is not present the ordinary members present must elect one of their number to preside,

- (b) each board member has one vote on each matter for deliberation, and

- (c) if a vote is tied, it is to be taken to have been lost.

(4) A resolution is a valid resolution of the Board, even though it was not passed at a meeting of the Board, if –

- (a) it is signed or assented to by a majority of board members, and

- (b) proper notice of the proposed resolution was given to all board members.

- (5) The Board must keep proper minutes of its proceedings,

including minutes of any business transacted in accordance with subparagraph (4).

(6) The validity of any proceedings of the Board is unaffected by a vacancy in its members, by any defect in the appointment of any board member and by any lack of qualification of a person to act as a board member.

Disclosure of interest and criminal charges.

7. (1) If a board member has any direct or indirect personal interest in the outcome of the deliberations of the Board in relation to any matter –

- (a) the board member must disclose the nature of the interest at a meeting of the Board in person or by means of a written notice brought to the attention of the Board,
- (b) the disclosure must be recorded in the minutes of the Board, and
- (c) the board member must withdraw from any deliberations of the board in relation to that matter and must not vote upon it.

(2) A board member may disclose the nature of an interest for the purpose of subparagraph (1)(a) by giving a general notice that that board member should be regarded as interested in any matter concerning a particular organisation, partnership or body corporate, the members or directors of which include –

- (a) that board member, or
- (b) a person through whom that board member has an indirect interest.

(3) A board member must notify [the Committee] as soon as practicable after being charged or convicted of an offence under –

- (a) the customary law or any enactment, or
- (b) any law of a country or territory outside the Bailiwick.

Committees and delegation.

8. (1) The Board may authorise the transaction of its business by committees, established by the Board, that consist of board members alone or together with employees or agents of OFSO or other persons appearing to the Board to be appropriate for the committee.

(2) The functions of –

- (a) appointing the Principal Ombudsman under section 4(1), and
- (b) designating an Ombudsman under section 5(1)(b),

may only be exercised by the Board.

(3) OFSO may delegate any of its other functions under this or any other enactment wholly or partly to –

- (a) the chairman,
- (b) one or more ordinary members,
- (c) a committee authorised under subparagraph (1),

- (d) an Ombudsman, or
 - (e) an employee of OFSO, other than an Ombudsman.
- (4) Nothing in this paragraph –
 - (a) applies to a function reserved by this Law to an Ombudsman or to the Principal Ombudsman, or
 - (b) authorises OFSO to delegate this power of delegation.
- (5) The delegation of a function under this paragraph –
 - (a) does not prevent the performance of that function by OFSO itself, and
 - (b) may be amended or revoked by OFSO, but without prejudice to anything done pursuant to the delegation or to a new delegation.
- (6) A function carried out by a person pursuant to a delegation made under this section is for all purposes carried out by OFSO and every decision taken or other thing done by a person pursuant to such a delegation has the same effect as if taken or done by OFSO.

Ancillary functions.

- 9.** (1) OFSO may do anything reasonably necessary or expedient for or incidental to any of its functions, so far as is not prohibited by any enactment.
- (2) Without prejudice to the generality of subparagraph (1), OFSO may in its corporate name –

- (a) sue and be sued,
- (b) enter into contracts, and
- (c) acquire, hold and dispose of property.

Seal.

10. (1) OFSO may have and use a common seal.

(2) The application of the seal is to be authenticated by the signature of a person authorised (generally or specifically) by the Board for the purpose.

(3) If a document purports to be duly executed under the seal, that document is to be –

- (a) received in evidence, and
- (b) taken to be duly executed, unless the contrary is proved.

Exclusion of liability.

11. (1) No liability is incurred by –

- (a) a relevant legislature or any department thereof,
- (b) OFSO, the Board, a board member or an Ombudsman,
- (c) any person to whom a function under this Ordinance or any relevant Ordinance has been delegated, or

- (d) any officer, servant or other agent of OFSO,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions under this Law or any relevant enactment, unless the thing was done or omitted to be done in bad faith.

(2) Subparagraph (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^V.

Directions and guidance from [Committee].

12. (1) [The Committee] may give specific directions to OFSO as to –

- (a) the format and content of its accounts and annual report under paragraph 1 of Schedule 2,
- (b) the setting of case fees under paragraph 3 of Schedule 2,
- (c) any determinations as to a levy under an Order made under paragraph 4 of Schedule 2, and
- (d) any determinations as to an establishment levy under an Order made under paragraph 5 of Schedule 2.

(2) [The Committee] may give general directions to OFSO in respect of its functions under section 22(1)(a) and (b).

^V Ordres en Conseil Vol. XL, p. 396; as amended by Order in Council No. I of 2005; Recueil d'Ordonnances Tome XXVIII, p. 493; Tome XXIX, p. 406; Tome XXXIII, p. 617; and G.S.I. No. 27 of 2006.

(3) [The Committee] may give guidance to OFSO in respect of any matter on which specific or general directions may be given.

(4) Directions and guidance under this paragraph must be given in writing.

(5) [The Committee] may also request OFSO to –

(a) investigate, and

(b) produce a report on,

any matter relating to the activities of OFSO or financial services business falling within section 9(1)(a) within a reasonable period agreed between [the Committee] and OFSO.

(6) OFSO must –

(a) act in accordance with any specific directions given under subparagraph (1) and any general directions given under subparagraph (2),

(b) have regard to any guidance given under subparagraph (3), and

(c) investigate and produce a report in accordance with a request under subparagraph (5).

(7) Any guidance or general direction –

(a) may only be given –

- (i) where [the Committee] has first consulted OFSO and such other persons as appear appropriate to it, and
 - (ii) in the public interest, and not to influence particular cases, and
- (b) must not prejudice the operational independence of OFSO by prescribing the specific manner in which OFSO should carry out its functions.

NOTES

In Schedule 1,

the words "Committee" and "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016;

first, the words omitted in the first pair of square brackets in paragraph 1(6) were repealed, second, the words in the second pair of square brackets therein were inserted, third, words omitted in the first pair of square brackets in paragraph 2(3) were repealed and, fourth, the words in the second pair of square brackets therein were inserted by the Financial Services Ombudsman (Bailiwick of Guernsey) (Amendment) Ordinance, 2020, section 1(2), respectively paragraph (a)(i), paragraph (a)(ii), paragraph (b)(i) and paragraph (b)(ii), with effect from 17th December, 2020.

SCHEDULE 2
FINANCES OF OFSO

Section 1(5)

Accounts, audit and reports.

1. (1) OFSO must –

- (a) keep proper accounts and proper records in relation to the accounts,
- (b) prepare accounts in respect of each financial year and a report on its operations during the year, and
- (c) submit the accounts and report to [the Committee] not later than 4 months after the end of each financial year.

(2) The accounts of OFSO must distinguish clearly between amounts received as –

- (a) case fees,
- (b) levies,
- (c) establishment levies,
- (d) vexatious complainant fees, and
- (e) other income.

[The Committee] shall cause to be submitted to the States for their consideration no later than 2 months after receipt thereof a copy of the accounts and report prepared by OFSO.

(3) OFSO must publish each report in the way it considers appropriate.

(4) The accounts of OFSO must –

(a) be audited by auditors appointed in respect of each financial year by the Board and qualified for appointment as auditors of a company by virtue of section 260 of the Companies (Guernsey) Law, 2008^w, and

(b) be prepared in accordance with generally accepted accounting principles and show a true and fair view –

(i) of the profit or loss of OFSO for the period, and

(ii) of the state of OFSO's affairs at the end of the period.

(5) The auditors shall submit their report to [the Committee].

(6) This section is without prejudice to any additional requirements in relation to accounts that are imposed by any other enactment.

Budget.

2. (1) OFSO must, before the start of each financial year (or as soon

^w Order in Council No. VIII of 2008; as amended by No. XIII of 2010; No. I of 2013; Recueil d'Ordonnances Tome XXXIII, p. 122; Tome XXXIII, p. 327; Tome XXXIII, p. 472; Tome XXXIII, p. 487; Ordinance No. XI of 2010; No. XXXI of 2012 and No. XXXI of 2013; G.S.I. No. 34 of 2009 and No. 37 of 2013.

as practicable after that start, in the case of the first financial year), adopt an annual budget which has been approved by [the Committee].

(2) OFSO may, with the approval of [the Committee], vary the budget for a financial year at any time after its adoption.

(3) The annual budget must include an indication of –

- (a) the distribution of resources deployed in the operation of OFSO, and
- (b) income of OFSO arising or expected to arise from the operation of OFSO.

(4) The Board must ensure –

- (a) that the establishment and operation of OFSO are funded primarily by financial service providers, in a manner that maintains OFSO's independence from those funding it, and
- (b) that the service provided by OFSO is generally free to complainants.

(5) Accordingly, the case fees under paragraph 3 and the levy under paragraph 4 must be set at such a level as is necessary that, in aggregate and taken with any other resources of OFSO, they –

- (a) raise sufficient income to enable OFSO to carry out its functions under this Law, and

- (b) subject to any guidance of [the Committee], provide a reserve of such amount as OFSO considers necessary for carrying out such functions.

(6) Nothing in subparagraph (5) is to be read as requiring OFSO to set any case fee or levy in any particular year if the Board considers that its duty under subparagraph (4)(a) can be met without so doing.

[(7) Subparagraph (8) applies in relation to any financial year if at any time in that year –

- (a) there is in force in or under the Jersey Law a provision equivalent to subparagraph (8)(b) requiring cooperation with OFSO, and
- (b) there is an arrangement described in section 6(1)(a) for the sharing of resources, which provides for the finances of the schemes to be united.]

[(8) In relation to that financial year –

- (a) the references in subparagraphs (1) to (6) to financial service providers, fees, levy, resources, OFSO, income, functions and reserve are to be read as including references to the equivalents of those terms in any enactment in or under the Jersey Law,
- (b) OFSO must cooperate with the body that is equivalent to OFSO under the Jersey Law in adopting and operating a joint budget, including a joint reserve,

- (c) OFSO must publish the arrangement mentioned in subparagraph (7)(b) and ensure that an electronic copy is freely available to the public,
- (d) paragraph 1 is to be read as referring to joint accounts, records and reports for OFSO and the body that is equivalent to OFSO under the Jersey Law, and OFSO must cooperate with that body in carrying out its functions under that paragraph, and
- (e) OFSO must report to the Committee if it becomes aware that the condition in subparagraph (7)(a) is no longer met.

(9) For the purposes of subparagraphs (7) and (8), the "**Jersey Law**" means the Financial Services Ombudsman (Jersey) Law 2014, as amended from time to time.]

[(7) For the purposes of subparagraphs (4)(a) and (5), in relation to the financial years [2015, 2016, 2017, 2018 and 2019], the references to financial service providers, fees, levy, resources, OFSO, income, functions and reserve are to be read as including references to the equivalents of those terms under any Jersey scheme.]

Case fees.

3. (1) [The Committee] may by Order make such provision as it thinks fit in relation to the payment of case fees to be payable to OFSO by respondents in respect of complaints against them, including but not limited to, giving OFSO power to prescribe a scheme of case fees, by publishing that scheme or otherwise.

- (2) Without prejudice to the generality of subparagraph (1) –
 - (a) an Order under that subparagraph may require OFSO, before prescribing or varying a scheme, to consult on it,
 - (b) a scheme under that subparagraph may –
 - (i) set different case fees on any basis, including in respect of different types of financial service provider, such types including in particular those carrying on business falling within section 9(1)(a), and those volunteering to be liable for a levy under paragraph 4(2)(a)(ii) of this Schedule,
 - (ii) require payment of case fees at or in respect of any stage of the handling of a complaint by OFSO, or a later time when a levy is payable by a respondent, or at any other time,
 - (iii) provide for OFSO to waive case fees in circumstances specified in the Order or at its discretion, and
 - (iv) provide for enforcement of payment of case fees, including powers to demand information required in order to calculate fees.

Levies.

- 4. (1) [The Committee] may by Order make such provision as it

thinks fit in relation to levies to be payable to OFSO by financial service providers in respect of expenses of OFSO that are not met by case fees under paragraph 3, including but not limited to, giving OFSO power to prescribe a scheme of levies, by publishing that scheme or otherwise.

- (2) Without prejudice to the generality of subparagraph (1) –
 - (a) a scheme under that subparagraph may –
 - (i) prescribe categories of financial service provider that must pay a levy,
 - (ii) prescribe other categories of financial service provider that may volunteer to pay a levy, in return for lower case fees or for other favourable terms in relation to any fees or levies,
 - (iii) distinguish, for the purposes of sub-items (i) and (ii), between categories of financial service provider in any manner, including by whether such a provider is or is required to be licensed by or registered with the Commission, or otherwise be authorised by the Commission, to carry on any business falling within any of paragraphs (a) to (e) of section 9(1),
 - (iv) provide for the manner in which the total amount required by OFSO in levies is to be determined,
 - (v) prescribe the time and manner in which levies

must be paid, and

- (vi) specify limits to the amounts that may, in any period, be raised in total by way of levies, or charged to any one financial service provider, and
- (b) an Order under that subparagraph may –
- (i) give OFSO the power to demand information from persons who may be liable to pay a levy, being information required in order to calculate the levy,
 - (ii) give the Commission the power to demand such information on OFSO's behalf,
 - (iii) permit [the Committee] to specify limits subject to which subparagraph (a)(vi) shall have effect,
 - (iv) provide for enforcement of payment of levies (including enforcement of provision of information required in order to calculate levies), including orders for payments of costs of enforcement by persons connected with the person liable to pay, and
 - (v) provide for appeals against or reviews of decisions in relation to levies, and for the effects on liability to pay any pending determination of the appeal or review.

Establishment levies.

5. (1) [The Committee] may by Order make such provision as it thinks fit in relation to levies to be payable to it by financial service providers in respect of expenses incurred –

- (a) in the establishment of OFSO, and
- (b) before the commencement of this Law,

including but not limited to, giving OFSO power to prescribe a scheme of establishment levies, by publishing that scheme or otherwise.

(2) Without prejudice to the generality of subparagraph (1), a scheme under that subparagraph may –

- (i) prescribe categories of financial service provider that must pay establishment levies,
- (ii) provide for the manner in which the total amount required by OFSO in establishment levies is to be determined,
- (iii) prescribe the time and manner in which establishment levies must be paid,
- (iv) specify limits to the amounts that may, in any period, be raised in total by way of establishment levies, or charged to any one financial service provider, and

- (v) provide for enforcement of payment of establishment levies, including orders for payments of costs of enforcement by persons connected with the person liable to pay.

Vexatious complainant fees.

6. (1) [The Committee] may, on the recommendation of OFSO, by Order make such provision as it thinks fit in relation to the payment of vexatious complainant fees to be payable to OFSO by complainants who have made complaints to OFSO which have been rejected under section 12(2)(a) on the basis that complaints are vexatious, frivolous or otherwise unreasonable.

(2) Without prejudice to the generality of subparagraph (1), an Order under that subparagraph may –

- (a) specify a limit to the amount that may be payable to OFSO as a vexatious complainant fee,
- (b) prescribe the time and manner in which a vexatious complainant fee must be paid,
- (c) provide for appeals against or reviews of decisions in relation to vexatious complainant fees, and for the effects on liability to pay pending determination of the appeal or review, and
- (d) provide for enforcement of payment of vexatious complainant fees.

Other fees, donations and borrowing.

7. (1) Without prejudice to the other means by which OFSO may

receive funds to enable it to perform its functions, OFSO may –

- (a) contract to charge a fee for providing any service, information or other item in pursuance of any of its functions, if it is not obliged to provide that service or item gratuitously to the person with whom it contracts,
 - (b) accept a grant or donation, whether or not subject to conditions, but only if it considers that it can satisfactorily maintain its independence, integrity and reputation, and
 - (c) subject to subparagraph (2), borrow.
- (2) [The Committee] may prescribe by Order either or both of –
- (a) a maximum amount up to which OFSO may borrow, and
 - (b) a requirement for OFSO to obtain approval before borrowing, in a manner specified and from a person specified in the Order (whether [the Committee] or any other person).

Reserve and investment.

8. OFSO may, in accordance with any guidelines set by the States [Policy & Resources Committee] –

- (a) accumulate a reserve of such amount as it considers necessary, and

- (b) invest that reserve and any other of its funds and resources that are not immediately required for the performance of its functions.

Exemption from income tax.

9. The income of OFSO is not subject to income tax under the Income Tax (Guernsey) Law, 1975^x.

NOTES

In Schedule 2,

the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016;

subparagraph (7) of paragraph 2 was substituted and subparagraphs (8) and (9) thereof inserted by the Financial Services Ombudsman (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2019, respectively section 1 and section 2, with effect from 28th November, 2019;¹

the words in square brackets in paragraph 8 were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 15(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Treasury and Resources Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The following Orders have been made under Schedule 2:

Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of

^x Ordres en Conseil Vol. XXV, p. 124; amended by Vol. XXVIII, p. 278; Vol. XXXIII, p. 91; Vol. XXXIV, p. 440; Vol. XXXV(2), p. 623; Vol. XXXVII, p. 434; Vol. XLII(1), p. 222; Vol. XLV, p. 136; Order in Council No. VI of 2012; Ordinance No. XXIV of 2012. There are other amendments which are not material to this Law.

Guernsey) Order, 2015;

Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) (Amendment) Order, 2016;

Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) (Amendment) Order, 2018;

Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) (Amendment) Order, 2019.

SCHEDULE 3
RELEVANT PENSION BUSINESS

Section 9(1)(f)

Relevant pension business.

1. Relevant pension business is any business so far as it –
 - (a) comprises or relates to the choice, establishment or operation of a pension scheme, and
 - (b) does not fall within any of paragraphs (a) to (e) of section 9(1).

Pension scheme.

2. (1) A pension scheme is a fund, scheme or other arrangement, constituted in one or more instruments or agreements, that falls within either or both of subparagraphs (2) and (3).

(2) A fund, scheme or other arrangement falls within this subparagraph if it is, or is held out as being or as capable of being –

- (a) a fund approved by the [Director of the Revenue Service] in accordance with section 150, 157A or 157E of the Income Tax (Guernsey) Law, 1975,
- (b) a **"registered pension scheme"** or a **"recognised overseas pension scheme"**, as each is defined in section 150 of the Finance Act 2004 , as amended from time to time, or
- (c) recognised under legislation of any country or territory other than –

- (i) the Bailiwick,
- (ii) Guernsey,
- (iii) Alderney, or
- (iv) Sark,

and having an effect equivalent to that of the legislation mentioned in items (a) and (b).

(3) A fund, scheme or other arrangement falls within this subparagraph if it has, or is held out as having or as being capable of having, effect so as to provide benefits to or in respect of persons –

- (a) on retirement from an employment or all employment,
or
- (b) in similar circumstances.

(4) For the purpose of subparagraph (3), it is irrelevant whether the fund, scheme or other arrangement –

- (a) has any effect on any liability to tax, or
- (b) has, or is held out as having or as being capable of having, effect so as to provide benefits to or in respect of other persons or in other circumstances linked to death, age or employment.

NOTE

In Schedule 3, the words in square brackets were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.

SCHEDULE 4
RELEVANT CREDIT BUSINESS

Section 9(1)(g)

Relevant credit business defined.

1. Relevant credit business is any business so far as it comprises –
 - (a) provision of credit under credit agreements,
 - (b) credit reference agency business,
 - (c) debt-adjusting,
 - (d) debt-counselling,
 - (e) debt-collecting, or
 - (f) debt administration,

as those terms are defined by the following paragraphs of this Schedule.

Credit.

2. Credit includes –
 - (a) a cash loan,
 - (b) a loan secured against immoveable property, whether by hypothecation or by mortgage or in any other manner,
 - (c) the financial accommodation provided in the letting of goods under a hire-purchase agreement, or in the selling

of goods under a conditional sale agreement, and

- (d) any other form of financial accommodation.

Credit agreement.

3. A credit agreement is an agreement under which credit is provided to a person ("**the debtor**"), being an agreement between that debtor and the person providing the credit ("**the creditor**").

Credit reference agency business.

4. Credit reference agency business is the furnishing of persons with information relevant to the financial standing of individuals, being information collected for that purpose by the person furnishing the information.

Debt-adjusting.

5. Debt-adjusting is, in relation to debts due under credit agreements –
- (a) negotiating with the creditor, on behalf of the debtor, terms for the discharge of a debt,
 - (b) taking over, in return for payments by the debtor, the debtor's obligation to discharge a debt, or
 - (c) any similar activity concerned with the liquidation of a debt.

Debt-counselling.

6. Debt-counselling is the giving of advice to debtors about the liquidation of debts due under credit agreements.

Debt-collecting.

7. Debt-collecting is the taking of steps to procure payment of debts due under credit agreements.

Debt administration.

8. Debt administration is the taking of steps –
- (a) to perform duties under a credit agreement on behalf of the creditor, or
 - (b) to exercise or to enforce rights under such an agreement on behalf of the creditor, so far as the taking of such steps is not debt-collecting.

¹ Paragraph 2(7) was previously inserted by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Commencement and Amendment) Ordinance, 2015, section 2, with effect from 30th January, 2015; and amended by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Amendment) Ordinance, 2016, section 1, with effect from 2nd November, 2016; the Financial Services Ombudsman (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 1, with effect from 13th December, 2018.