

JERSEY INTRODUCES FINANCIAL SERVICES OMBUDSMAN

by Kevin McQuillan

As far back as 1999 in the 'Edwards Report' commissioned by the then Home Secretary, Jack Straw, the necessity of a financial ombudsman in Jersey has been intensely debated. Fast forward 15 years to 25 July 2014, the Financial Services Ombudsman (Jersey) Law 2014 (the **Law**) comes into force. The raison d'être of the Office of the Financial Services Ombudsman is to provide an independent dispute resolution service to settle complaints between clients and businesses providing financial services in Jersey. The introduction of the Ombudsman will bring Jersey into line with the Isle of Man where there has been a financial Ombudsman since 2002. A parallel scheme will be rolled out in Guernsey later this year.

WHO CAN THE OMBUDSMAN INVESTIGATE?

The Ombudsman will have jurisdiction to investigate complaints about financial services businesses providing services from within Jersey as defined under Article 9 of the Law. Such a mandate may appear very wide reaching such is the omnipresence of the financial services industry in Jersey. The actions of banks, credit businesses, insurance services, investment businesses, pension brokers and money services will fall under the Law.

During the public consultation on the Law, representations were made by stakeholders of trust company businesses not to be included under the Law. Whilst trust companies are not expressly included under Article 9 of the Law, it remains unclear how a trust company, for example, when managing pension funds would not

equate to the provision of a financial service. Further legislative guidance regarding this is expected under the anticipated Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014.

WHO CAN MAKE COMPLAINTS TO THE OMBUDSMAN?

Under Article 8(3) of the Law the following individuals/entities can make complaints to the Ombudsman:

- i) Individual consumers and micro enterprises whether or not resident in the Channel Islands; and
- ii) Channel Island charities with annual income under £1million (subject to enactment of the exemptions legislation).

A complainant must refer the complaint to the Ombudsman no later than six years from the act/omission or two years after the complainant should have known he/she had reason to complain. Perhaps more controversial is the retrospective jurisdiction of the Ombudsman, which will permit the Ombudsman to review complaints in relation to acts/omissions dating back to 1 January 2010. The analogous provision under the Guernsey scheme permits retrospective jurisdiction as far back as 2 July 2013.

WHAT POWERS WILL THE OMBUDSMAN HAVE?

The Ombudsman will primarily review cases where the complainant remains dissatisfied with the response received after having made a complaint to the relevant business, or if the business does not respond in a reasonable time. In most cases the involvement of the Ombudsman will be limited to assisting the complainant in understanding the issues, helping to guide the parties towards a solution. In other disputes the Ombudsman will perform a tripartite role as investigator, mediator and adjudicator, and will have powers under Article 19 of the Law to require the provision of information by financial service providers. Decisions will be based on what is fair and reasonable in the circumstances and so codes of practice, best practice and industry standards will be taken into account.

The Ombudsman will be able to grant awards against the financial service business in money or money's worth. Any award of compensation must not exceed £150,000.

FUNDING AND RESOURCES

It is intended that the Ombudsman will be funded through a combination of case fees and levies on the financial services industry. Projected set up costs are in excess of £183,000 and annual running costs are likely to be over £500,000. The Ombudsman in Jersey (which will share resources with the Guernsey scheme) will have less than 10 staff when it becomes operational, whereas the Financial Ombudsman Service in the UK has 3500 permanent staff.

The introduction of the Ombudsman in Jersey can only be seen as a step forward for the jurisdiction. Removing the necessity, time and cost of litigating in disputes goes some way to removing the 'David and Goliath' dynamic between individual clients and well resourced financial service businesses. Like any new alternative dispute resolution or regulatory scheme, it will require time to evolve and for the industry to utilise its full potential.

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