

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE**

**PUBLIC SERVICES OMBUDSPERSON**

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'Public Services Ombudsperson' dated 8<sup>th</sup> November 2023, they are of the opinion:-

1. That in the current financial climate and with the need to find savings across the public service, and given the recent review of the existing system for public service complaints, establishing a Public Services Ombudsperson is not a priority use of resources and should not be pursued further at this time.

The above Proposition has been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE**

**PUBLIC SERVICES OMBUDSPERSON**

The Presiding Officer  
States of Guernsey  
Royal Court House  
St Peter Port

8<sup>th</sup> November, 2023

Dear Sir

**1 Executive Summary**

- 1.1 As directed by the States in November 2022 (Billet D'État XVII<sup>1</sup>), The Policy & Resources Committee has worked in collaboration with the Government of Jersey to investigate the establishment of a Public Services Ombudsperson (PSO) and the findings of the joint work are detailed in this policy letter.
- 1.2 Having identified that Jersey was already at an advanced stage in establishing a PSO of its own, it was considered worth exploring the concept of a pan-island body, as this presented a good opportunity to expedite the work and share resources between the two islands.
- 1.3 Although the existing processes for public service complaints have been improved in recent years, compared against other jurisdictions and international standards they remain overly complex and time consuming, unsatisfactory in redressing perceived injustice, and lacking in independence; and it has been suggested that establishing a PSO would help to address these concerns.
- 1.4 The rationale, envisaged remit and projected costs for a PSO are set out in this policy letter, for both a pan-island and Guernsey only body.
- 1.5 As the resolution to investigate the establishment of a PSO arose from an amendment to a policy letter from the Committee *for* Health & Social Care (CfHSC) and particular consideration has been given to whether the PSO's remit should include Health & Social Care complaints from the outset, the Committee has consulted the CfHSC on its findings and its response is appended hereto.

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<sup>1</sup> [Review of the Children Law and Outcomes, P.2022/74](#)

- 1.6 Furthermore, since the Committee’s investigation into establishing a PSO began, there have been significant discussions around safeguarding and calls for an independent complaints procedure for Health complaints in Guernsey.
- 1.7 This policy letter will also detail what else is being done to address these calls for greater independence, and why a PSO may not be the most effective option.
- 1.8 Having considered all the factors outlined above, the Committee has concluded that, in the current financial climate, it cannot justify recommending the creation of a PSO, either jointly with Jersey or solely for Guernsey at this time, but believes that the idea merits further consideration at a future date.

## **2 Rationale**

- 2.1 In November 2022, the States of Deliberation debated the “Review of the Children Law and Outcomes” (Billet D’État XVII<sup>2</sup>) which made reference to the Marshall Report<sup>3</sup>, the first significant review of the Children Law which was commissioned by the former Scrutiny Committee and carried out by Professor Kathleen Marshall in 2015.
- 2.2 Professor Marshall’s report made the following observations about the complaints procedures for the former Health and Social Services Department (HSSD), the service area now overseen by the CfHSC:

*“Making a formal complaint sounds like a very serious thing to do. It is my experience that service users often want to give careful consideration to the consequences of making a complaint before they do so. In order to do this, they need to have information about what will happen in response to their complaint. At the moment there are two documents, a public-facing, user-friendly one that gives very general information, and a professional-directed complex one that gives the detail of the process. There is no middle way.*

*Rather than a third document, there may be advantages in having an independent person or body who can advise the client on what happens if they make a complaint and/or helps them think through and work through the process of making a formal complaint as well as more informal alternatives. This could involve an independent service such as a clients’ rights officer. But there may also be a case for devising an independent system for Guernsey as a whole, not just for HSSD but for others, including the Safeguarder Service.”*

- 2.3 In light of these observations and the Marshall Report’s recommendations, an

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<sup>2</sup> [Review of the Children Law and Outcomes, P.2022/74](#)

<sup>3</sup> [Guernsey: Children Law Review - Report by Kathleen Marshall](#)

Amendment<sup>4</sup> to the above referenced policy letter submitted by Deputies Soulsby and Burford was carried, which inserted the following propositions:

25. To note that the Marshall Report made 21 recommendations, one of which was consideration of setting up an independent avenue for complaints, such as an ombudsperson.
26. To note that the Government of Jersey is currently progressing the establishment of a Public Services Ombudsperson to act as an independent arbiter to resolve complaints of maladministration or service failure across the public sector.
27. To direct the Policy & Resources Committee, on behalf of the States of Guernsey, to work with the Government of Jersey to investigate the establishment of a Channel Islands Public Services Ombudsperson and to report back to the States, before the end of July 2023, with a summary of the outcome of the joint working.

2.4 The Amendment highlighted the need for a low-cost, simple option for users of all government services to raise concerns about the timeliness or quality of service provided, and suggested that, considering the size of our jurisdiction, a PSO would be more feasible than separate ombudspersons for different service areas. It also noted that Jersey was already in the process of setting up a PSO, which presented a good opportunity to expedite the work.

### **3 Background and Drivers for Change**

#### Background

- 3.1 Currently anyone who wishes to complain about a decision, act or omission in respect of an administrative decision made by or on behalf of a Committee of the States of Guernsey can raise that complaint under the Administrative Decisions (Review) (Guernsey) Law, 1986.
- 3.2 There have been several reviews of the 1986 Law since its inception, as well as previous consideration given to establishing a PSO to replace it.
- 3.3 Both a Requête in October 2005, titled “Review of Administrative Decisions and Creation of Office of Ombudsman” (Billet D’État XV<sup>5</sup>), and a suggestion to establish a PSO as part of the “Review of the New System for Government” (Billet D’État VII<sup>6</sup>) in March 2006, were rejected, and it was noted that the then Treasury and Resources Department believed it was not a priority use of resources. It was

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<sup>4</sup> [Amendment to Proposition No. P.2022/74](#)

<sup>5</sup> [Requête - Review of Administrative Decisions and Creation of Office of Ombudsman, p. 2000](#)

<sup>6</sup> [Review of the New System of Government, p. 475](#)

however acknowledged at that time that proposals to amend or replace the 1986 Law were necessary as it was not Human Rights compliant.

3.4 The necessary amendments to the 1986 Law (Billet D'État VI<sup>7</sup>) were made in response to these concerns in 2019. To address the perceived lack of independence in the process, the roles previously held by the Chief Executive and H.M. Greffier were given to a new independent body known as "the Complaints Panel" (CP). The CP comprises people "who have sufficient experience and knowledge to enable them to decide matters likely to fall for decision by the CP" and three are appointed to each matter. They consider and determine whether or not the circumstances justify a review by a Board. If they are deemed to warrant it, four people then form a Review Board (RB), and these four are drawn from:

- Members of the States of Deliberation for the time being who have held a seat in the States for a period of three years or more.
- Deans for the time being of every Douzaine of the Parishes of the island of Guernsey.
- Independent persons who are not Member of the States of Deliberation or Deans of the Douzaine.

3.5 The process for both the CP and RB stages are outlined in more detail below:

1. Consideration by an independent CP, consisting of three people to decide if the complaint can progress to the RB stage. Section 2 of the Law requires the CP to consider whether the complaint meets the following criteria:
  - a. the matter complained of is not within the jurisdiction of the Board;
  - b. the matter complained of relates to a decision, act or omission of which the complainant has had knowledge for more than twelve months unless there are exceptional circumstances which justify the delay making the complaint or it is otherwise in the interests of justice to refer the complaint;
  - c. the subject matter of the complaint is trivial;
  - d. the complaint is frivolous, vexatious, unreasonable or not made in good faith;
  - e. the complainant has not a sufficient personal interest in the subject matter of the complaint;
  - f. the complainant has not exhausted the internal complaints procedures of the relevant Committee in respect of the matter complained of;

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<sup>7</sup> [Reform of the Administrative Decisions \(Review\) \(Guernsey\) Law, 1986 \(As Amended\), p. 1207](#)

- g. the complainant has in respect of the matter complained of a right of appeal, reference or review or a remedy by way of proceedings in any court of law unless, the CP is satisfied it is not reasonable to expect the complainant to resort to or to have resorted to that right or remedy;
- h. the complaint would require the Board to make a finding of medical negligence or malpractice in order to form an opinion.

If it does meet any one or more of the above criteria, then the CP shall not refer it to the RB and the complaint does not proceed further.

2. If the CP does refer the matter, the RB is then appointed to consider the substantive case.

The RB holds its enquiry into the complaint in public unless it decides otherwise on the grounds that “it would not be in the public interest expedient for such sitting to be held in public for reasons connected with the subject-matter of the complaint or the nature of the evidence to be given.”

During the sitting of the RB it will make enquiries of the parties and under section 7 of the Law, consider whether it is of the opinion that the decision, act or omission that is the subject of the complaint:

- a. was contrary to law, or
- b. was unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or
- c. improperly discriminatory, or
- d. was based wholly or partly on a mistake of law or fact, or
- e. could not have been made by a reasonable body of persons after proper consideration of all the facts, or
- f. was contrary to the generally accepted principles of natural justice.

The decisions the RB can reach are limited. It will report its findings to the parties and will either dismiss the complaint or “on reporting its findings thereon to the Committee or person concerned, shall request that Committee or person to reconsider the matter.”

- 3.6 Whilst improvements were made to provide a greater level of independence, there remains a perception that the process lacks impartiality, is overly complex and can take significant time to work through, and often fails to provide a fully adequate remedy for those who suffer, what are considered to be, injustices. Complaints processes should be readily accessible with elements of independent oversight and effective redress.
- 3.7 Furthermore, the 1986 Law commenced at a time when there were very few

statutory appeals processes in place for States of Guernsey service users and provided a mechanism for complaint where otherwise service users had no option but to accept a decision of a States' department or service area, no matter how or why that decision was reached.

- 3.8 In 2023, most decisions made by Committees have some form of appeal against the decision reached by the Committee or its officers, be it internal or by statutory appeal. Therefore, the scope of complaints that may be considered under the legislation is now much more limited and any complaints tend to be related more to the procedures the Committee has followed when reaching a decision, rather than the decision itself unless it is one of the few decisions without any formal appeals process.
- 3.9 The RB is not a court of law and will only make findings for the purposes of reviewing the aspects of a complaint referred to it. It cannot quash or re-take a decision and has no power to give any other form of remedy, such as awarding compensation. There is no right of appeal against a decision of the RB.
- 3.10 Alternatively, service users can make complaints through the States of Guernsey's internal procedures, either via the general Customer Feedback Form or service-specific procedures such as Health & Social Care's Customer Care Team. However, these too can be long, complex and unsatisfactory processes.
- 3.11 With procedures varying between service areas there is a lack of clarity and accessibility around the complaints process, and, most importantly in this context, these internal avenues have no final appeal stage with an independent decision maker.

#### Drivers for Change

- 3.12 Having considered all of the above and the functions and values of comparable systems in other jurisdictions, a number of drivers for change have been identified which would be addressed by the introduction of a PSO, and these would help to form its core governing principles:
- Perceived or actual absence of independent decision maker for a final appeal in States of Guernsey service user complaints process.
  - International best practice to have access to an independent channel for all public service complaints should internal routes to resolve prove unsuccessful.
  - Need for openness and transparency for service users to feel the complaints procedure is accountable and credible.
  - Need for a more straightforward, accessible procedure that resolves

complaints in a timely and efficient manner.

- Need for a procedure that is fair and effective in redressing those who may have suffered injustices, ensuring they receive proper explanations and feel listened to and supported.

3.13 With regard to effective redress, it should be noted that it is not common practice for a PSO's recommendations to be binding, but across the British Isles, over 99% of recommendations made by PSOs are accepted by their respective governments.

3.14 The Ombudsman Association advises that for a PSO's recommendation not to be accepted, a strong reason should be given, and the PSO should have a power for his/her report to be considered by parliament (in this case the States Assembly) if the local authority or public body in question rejects the recommendation.

#### **4 Jersey Public Service Ombudsperson**

4.1 As referenced in Deputies Soulsby and Burford's Amendment, Jersey already has proposals at an advanced stage for a PSO. A full public consultation took place in 2019 with a report<sup>8</sup> published in 2020. The aim is to bring legislation forward to create the Jersey PSO (JPSO) by the end of 2023. Therefore, if the islands were to agree to share a PSO the timing could potentially work well.

4.2 In summary, Jersey's Legislation Advisory Panel's (LAP) provisional policy position is that the Government of Jersey (GoJ) should proceed with legislative drafting for the JPSO and the JPSO will:

- investigate complaints of maladministration and service failure about a public service where there is no other organisation already established to handle that complaint;
- oversee how public bodies handle complaints, supporting them to learn from complaints and deliver service improvements;
- be free to all complainants, including some categories of businesses;
- exclude decision-making relating to legal proceedings, employment and personnel matters, judicial decision making and the conduct of judges, criminal justice and police functions and international affairs;
- exclude healthcare complaints from the outset, but with a timeframe for inclusion;
- have time restrictions on complaints which will be investigated;
- ordinarily only investigate where there has been a negative impact on a complainant;
- not undertake investigations at the request of the Chief Minister (that

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<sup>8</sup> [Jersey Public Services Ombudsman Consultation Feedback Report](#)

does not preclude the Chief Minister from alerting the JPSO to matters of concern);

- take an inquisitorial rather than adversarial approach but will, in exceptional cases, provide for public and private hearings;
- not make binding findings or recommendations;
- have various options for remedy, depending on the matters under investigation;
- investigate complaints about any entity which receives public money or manages public assets to deliver services to the public, subject to certain exceptions set out in the law;
- be enabled to work jointly and share information with other watchdogs and regulators;
- be established with a non-executive Board, an Ombudsperson who makes decisions about findings and recommendations, and case workers who investigate complaints – the board will advise, support and challenge the Ombudsperson, and maintain and defend the JPSO's independence;
- be provided with funding for staff costs, premises, training and outreach, as shown in the Government Plan 2020-2023.

4.3 The size and scope of the JPSO's remit is still under consideration, but per the initial Law Drafting Instructions, it will include bodies and organisations such as the Parishes, Jersey Post, Jersey Electricity and Jersey Water, amongst others, which would not be the intention for the PSO in Guernsey. The JPSO's remit will exclude Health in the first phase given the anticipated volume and complexity of complaints and need for additional specialist staff, but they will have a timeframe for inclusion and Social Care will be in scope from day one.

4.4 Under the expected size and scope of its remit, Jersey estimates that low hundreds of complaints will be lodged per year, with around 50 being determined by the JPSO and the rest being refused or resolved at an earlier stage. It should be noted that this is a rough approximation that is difficult to project accurately – the JPSO is intended to be a straightforward and accessible complaints procedure and will not be confined to considering whether conduct is lawful, but fair and reasonable, so it is expected to capture a greater number of valid complaints, but the extent of this is unknown at this stage.

4.5 Jersey has estimated the costs it is likely to incur by setting up a PSO to operate solely in Jersey. Although the role is yet to be advertised, the agreed salary range for the JPSO is £100,000 to £125,000 per year, and including on-costs this will amount to circa £150,000 per year. Provision is being made for two officers to support the JPSO, covering both investigative and administrative work.

4.6 The overall budget provision is £400,000 which also covers costs of IT provision, office rental (as an independent body, the PSO would not be housed in a Government building) and consultancy fees. However, factoring in Health

complaints as well, Jersey expects this budget could double.

- 4.7 It should be noted that the consultancy fees relate to the provision of guidance material for commencement of the PSO and would largely be a one-off cost, except for a small annual provision to cover any updates or amendments, and it is felt that in Guernsey such material could be drafted in house.

## **5 Options and Costs**

### Pan-Island Public Service Ombudsperson

- 5.1 Rather than set up a completely new and unique PSO for Guernsey, consideration has been given to setting up a pan-island body, working with Jersey as per the relevant States' Resolution. This body could share resources and expertise to be a more cost-effective way for both islands to provide a credible, professional and independent process for complaints from public sector service users.
- 5.2 A likely model for the pan-island PSO would be the Board for the Channel Islands Financial Ombudsman (CIFO), which contains representatives from both Jersey and Guernsey; although the costs and funding are not comparable given the annual levies charged to financial services providers by the CIFO.
- 5.3 Having discussed the possibility of a pan-island body with Jersey, it has included provisions in its legislative proposals to extend the PSO's duties to Guernsey, should that be the preferred option; a precedent for this exists in the Channel Islands Financial Ombudsperson. However, there is concern that opting for a pan-island PSO could come with pressures to cover the same scope, expand quickly, and lead to compromises if costs are inextricably linked with Jersey.
- 5.4 A narrower remit is envisaged for the PSO in Guernsey that would solely focus on internal public service complaints and could then be expanded over time if desirable. This would mean that the remit would not include external public authorities such as Guernsey Post and Guernsey Electricity.
- 5.5 A key consideration is whether to include Health from the outset within the remit for the PSO in Guernsey. As noted above, Jersey is opting not to, given the anticipated additional cost which it believes could double its initial estimate, but with a timeframe for inclusion.
- 5.6 Whilst it is acknowledged that Health and Social Care could account for a sizeable portion of complaints in Guernsey – other jurisdictions report that 40% of cases are health related but take up 70% of the Ombudsperson's time – it is estimated that their inclusion may not be as financially significant as Jersey are forecasting but more investigation is needed.

- 5.7 If the intention is for the PSO in Guernsey to investigate allegations of maladministration and service failure, focussing on standards of conduct (e.g. concerns about timeliness or quality of service) rather than legality, it is envisaged the inclusion of Health may not require the significant specialist support anticipated by Jersey.
- 5.8 Given the size of the Guernsey public service in comparison to Jersey, estimated costs are lower. If a pan-island body were to be established, then the salary for the PSO would be shared (estimations based on 60:40). Staff to support the PSO would be required in each jurisdiction, but in Guernsey this could potentially be accommodated by the Reviews & Tribunals Service within Sir Charles Frossard House – should that be deemed sufficiently independent – and guidelines are likely to be similar requiring relatively small amendments for Guernsey.
- 5.9 Factoring in on-costs and assuming the PSO would be based in Jersey at commencement, the estimated budget provision for Guernsey is £170,000.
- 5.10 Given the uncertainties around cost, coupled with the potential complexities of introducing a PSO to deal with all matters including complaints relating to Health services, it was suggested that a pragmatic approach might be to proceed with the establishment of a joint PSO with Jersey as a first step to achieving proof of concept, but not to include Health at the outset, on the basis of cost and complexity, and to then carry out a review after the PSO has been in existence for 12 months to consider whether the system is proving effective and value for money, and whether the PSO's remit should be broadened to include Health.

#### Guernsey Public Service Ombudsperson

- 5.11 The alternative option for a PSO is to establish a Guernsey only body. This would not only address the drivers for change, but also the concerns relating to a pan-island body outlined above; as the legislation, scope and timeframes for any expansion would be tailored to Guernsey, and any costs would be determined relative to Guernsey only without the potential compromises of being linked with Jersey. However, there would likely be additional costs and time required to draft bespoke legislation, which would first need to be agreed as a priority.
- 5.12 Should Guernsey decide to appoint its own PSO, the cost would of course increase, most notably due to the PSO remuneration (costs estimated at £130,000 with a £97,000 salary) being borne in full by the States of Guernsey. The estimated salary of £97,000 was based on the Jersey figure and reduced slightly owing to the more limited remit.
- 5.13 Further comparison was drawn with the role of the PSO in Scotland, which was salaried at £90,000 – £95,000 in 2021-22, rising to a total package of £130,000 –

£135,000 when pension benefits are factored in.<sup>9</sup> Considering the size of Scotland and the number of complaints handed by the Ombudsperson, these figures may suggest the proposed salary for a PSO in Guernsey are high, but it was deemed appropriate to correspond more with Jersey's figures.

- 5.14 It was considered that the PSO position would not necessarily need to be salaried if the Guernsey only option was pursued. A recently appointed comparable position of the joint Commissioner for Standards is not a salaried role, receiving £500 per half day, but she will likely deal with a significantly lower volume of complaints than is expected for the PSO.
- 5.15 To provide context and some indication on the number of complaints we can expect the PSO to be dealing with, the Scottish PSO's annual report offers a point of reference. They received 3,665 public service complaints in 2021-22, which with a population of 5,520,000 equates to 1.15%.
- 5.16 Applying this to Guernsey's population, the number of complaints in 12 months would be 55. Whilst this is a loose approximation, the Employment Relations Service regularly applies UK employment tribunal statistics to Guernsey in this way and has found more often than not they are sufficiently accurate to be a useful guide, so this should be a reasonable estimate.
- 5.17 Rental costs would also need to be considered as given the nature of the PSO's work and its independence from the public service, staff would ideally be located in a non-government building. As well as cost, the additional time it would take to appoint a PSO and find the necessary office space should also be considered when weighing up the options.
- 5.18 Factoring in on-costs and rental of office space, a budget provision of £215,000 is estimated for a Guernsey only PSO. As noted above with regards to the cost of producing guidance material, this will largely be a one-off undertaking and it is felt that in Guernsey no outside consultants would be required.

#### Savings

- 5.19 Consideration has also been given to any potential savings that would come from replacing the CP and RB. Neither body is salaried, so costs are incurred only when a complaint reaches each stage, and as neither body is called upon that regularly, current costs are relatively low.
- 5.20 The cost estimates provided are based on straightforward matters with relatively light case material. The appointment of a CP, its sitting fee, pre reading fee and decision writing fee, is estimated at approximately £1,000 per case. These fees

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<sup>9</sup> [Scottish PSO Annual Report and Financial Statements 2021-22](#)

are the same for an RB, but with one additional member and the need for a venue to accommodate a public hearing, the estimate per case is approximately £1,500. More complex cases that require additional reading and decision writing time may incur higher costs.

- 5.21 Whilst the relatively low costs of the current process make it an attractive option, it is acknowledged that the issues identified with regards to its poor accessibility and the lack of understanding and confidence surrounding it may be reasons why neither body is called upon that regularly.
- 5.22 It was also identified from the consultation with the CfHSC that further savings could potentially be made, or at least the cost of establishing a PSO could be offset, by the PSO taking on those cases which under the current system, take up a disproportionate amount of officer time to resolve. Whilst such complaints are limited, this could be significant where a complaint runs for a long period of time or appears not to arrive at a satisfactory conclusion.

## **6 Recent Calls for Greater Independence**

- 6.1 Recent discourse around safeguarding and calls for an independent complaints procedure for Guernsey's health system have arisen during the development of this policy letter, most notably from the recent debate in the Assembly following the publication of the findings of the Privileges Panel (Billet d'État XV<sup>10</sup>).
- 6.2 The CfHSC was consulted on this matter and both Committees were mindful that given the rationale for this policy letter and the recent discourse outlined in paragraph 6.1, there may be some misconceptions that a PSO would investigate complaints that relate to clinical care or the practice of individual clinicians, which would not be the case.
- 6.3 Whilst establishing a PSO would improve the degree of independence for complaints handling in relation to maladministration and service failure, it would not address these calls in relation to independent review or handling of complaints for medical matters. Such matters would not be the remit of the PSO, and such concerns would default to existing regulatory procedures.
- 6.4 The Committee has been advised that in light of these recent calls, consideration is being given to various ways in which greater levels of independence could be achieved with regards to Health & Social Care complaints.
- 6.5 One consideration has been for Guernsey to subscribe to an independent adjudication service of complaints for private healthcare providers, such as the Independent Sector Complaints Adjudication Service (ISCAS).

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<sup>10</sup> [Report of the Findings of the Privileges Panel, P.2023/106](#)

- 6.6 Such bodies would not be limited to focusing on standards of conduct or investigating only allegations of maladministration or service failure, and their adjudication process can seek expert clinical advice if required, allowing them to address more clinical complaints than a PSO.
- 6.7 Consideration has also been given to forming a peer system with Jersey or the Isle of Man, whereby the islands could review each other's practises and output with regards to health and social services. This would invite scrutiny from an independent body, with the added benefit of being neighbouring, comparable jurisdictions which have an understanding of how the other operates.
- 6.8 The Committee has also been advised per the consultation with the CfHSC of the wider, ongoing work by the CfHSC to develop a new regulatory framework for health and care in the Bailiwick, although these discussion are at an early stage.

## **7 Conclusion**

- 7.1 Having considered the rationale, envisaged remit and projected costs for both a pan-island and Guernsey only PSO – although the Committee is keen to see procedures improved – in the current financial climate and with the need to find savings across the public service, it cannot justify recommending the creation of a PSO at this time.
- 7.2 Whilst the CfHSC has stated it would be supportive, in principle, to the introduction of a PSO, it also appreciates the financial pressures facing the States at this time and the importance of prioritising resources.
- 7.3 The Committee considers the current low-cost option to be adequate, and having been reviewed as recently as 2019, replacing the RB is not deemed to be a current priority.
- 7.4 Furthermore, the Committee is reassured with the knowledge that Jersey's legislation has been drafted in such a way that it will be possible for Guernsey to seek to have a shared PSO in the future, should this ever become a priority.
- 7.5 The Committee is further reassured that several ways of bringing greater independence to the complaints process within Health & Social Care are being considered to address recent calls for such independence.

## **8 Compliance with Rule 4**

- 8.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

8.2 In accordance with Rule 4(1):

- a) The work carried out by the Committee in this report and the proposition fulfils the Resolution of the States to investigate the establishment of a PSO.
- b) In preparing the proposition, consultation has been undertaken with the Government of Jersey and the Committee *for* Health & Social Care.
- c) The proposition has been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- d) There are no financial implications to the States of carrying the proposal into effect.

8.3 In accordance with Rule 4(2):

- a) The proposition relates to the Committee's purpose and responsibility to carry out reviews in areas where it appears performance could be improved.
- b) The proposition has the unanimous support of the Committee.

Yours faithfully

P T R Ferbrache  
President

M A J Helyar  
Vice President

J P Le Tocq  
D J Mahoney  
R C Murray



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**Sent by email only**

7th November 2023

Dear Deputy Ferbrache

**Public Services Ombudsperson**

Thank you for your letter dated 14<sup>th</sup> September 2023 regarding the investigation into the introduction of a Public Services Ombudsperson (PSO) for the States of Guernsey.

As was noted in your letter and the appended draft Policy Letter, this matter is of particular relevance to the Committee *for* Health & Social Care (CfHSC), both due to the fact that the resolution arose from an amendment to the 2022 Policy Letter 'Review of the Children Law and Outcomes' and because of the anticipated impact such a body might have on the processing and resolution of complaints relating to health and social care matters. The Committee is therefore grateful for the opportunity to provide feedback on the recommendations the Policy & Resources Committee (P&RC) are intending to put to the States in December.

The Committee appreciates that there is an additional cost attached to the introduction of a PSO in Guernsey, whether it is pan-island in cooperation with the Government of Jersey, or in a model tailored for Guernsey. The Committee also understands the financial pressures facing the States of Guernsey at this current time and the importance of prioritising work to ensure that resources can be used where they are needed most. It has been noted from the draft policy letter provided by the Policy & Resources Committee (P&RC) that complaints relating to health will be excluded from the remit of the PSO initially in Jersey and that further work would be required to better understand the likely

number of complaints, the scope of the PSO and the potential cost, should this be extended to health in the future.

The CfHSC has given this matter careful consideration and would be supportive, in principle, to the introduction of a PSO. The number and complexity of complaints received by Health & Social Care means that, for those relatively small number of complaints that are challenging to resolve through normal channels, an independent route would be welcomed. HSC experiences a small number of cases that require a disproportionate amount of time to resolve, which could be reduced by having recourse to an independent PSO. It therefore believes that opportunity should be taken to implement this option and to take opportunity to work closely with Jersey if possible.

The Committee is also of the view, given its recent and ongoing experience of the Administrative Review Board (ARB) process, that this could be improved and that an independent ombudsperson would offer a better and more robust route of appeal for complainants. It agrees with the conclusions of the effectiveness of the ARB process that the Policy & Resources Committee has set out in the draft policy letter.

Furthermore, while it would be difficult to quantify accurately, it could be expected that the cost of establishing a PSO would, at the very least, be offset by a reduction of officer time spent servicing such complaints. This can be significant where a complaint runs for a long period of time or, for different reasons, appears not to arrive at a satisfactory conclusion. It agrees that there is a perception that the States is not as open and transparent as it can be when dealing with such matters and a PSO would go some way to addressing that concern and help to resolve those complaints that might run for substantial periods.

Given the nature of recent debate in the Assembly following the publication of the findings of the Privileges Panel (Billet d'État XV of 2023), which resulted in calls for an independent complaints process to be established for health, the Committee is wary of further debate on related topics, such as the establishment of an ombudsperson, which would be unhelpful given that the recommendation is not to proceed with a PSO at this time. Given the origins of the amendment in the review of the Children Law policy letter and recent events, there might be some misconceptions that a PSO would investigate complaints that relate to clinical care or the practice of individual clinicians, which would not be the case. Such matters would not be the remit of the ombudsperson and such concerns would default to existing regulatory procedures. While this is the case, there is also a concern that not proceeding with a PSO could be a missed opportunity to bring greater transparency to existing processes.

This is an important distinction to be made and, with regard specifically to health and social care, the role of a PSO would need to be carefully considered alongside other regulatory routes for complaints and the ongoing work being carried out by HSC to develop a new regulatory framework for health and care in the Bailiwick. These

discussions are at an early stage, such that there is no substantive update that can be provided at this time.

The Committee appreciates that the Policy & Resources Committee may decide to continue to present the policy letter as drafted to the States. However, it hopes that its comments in this letter are useful and the CfHSC would be happy to discuss this further if it would be helpful to do so.

Yours sincerely

**Deputy Al Brouard**  
President  
Committee *for* Health & Social Care