



## MEMORANDUM OF UNDERSTANDING between the:

- (1) **Jersey Data Protection Authority**, the independent statutory authority established under the Data Protection Authority (Jersey) law 2018; and
- (2) **Office of the Financial Services Ombudsman**, the independent statutory body established under Financial Services Ombudsman (Jersey) Law 2014, trading as the Channel Islands Financial Ombudsman.

### 1. Definitions

In this memorandum:

- 1.1. 'applicable law' means any law (statutory, common or customary) applicable to Jersey to a matter covered by this MoU;
- 1.2. 'OFSO' means the Office of the Financial Services Ombudsman for Jersey;
- 1.3. 'Controllers' means the same as defined in Article 1 of the Data Protection (Jersey) Law 2018 (the **DPJL**);
- 1.4. 'JDPA' means the Jersey Data Protection Authority;
- 1.5. 'Processor' means the same as defined in Article 1 of the Data Protection (Jersey) Law 2018 (the **DPJL**);
- 1.6. 'MoU' means this memorandum of understanding;
- 1.7. 'Ombudsman Law' means the Financial Services Ombudsman (Jersey) Law 2014;
- 1.8. 'Receiving party' means either party receiving information from the other under this MoU;
- 1.9. 'Sending party' means either party when sending information to the other under this MoU;

### 2. Functions

- 2.1. The JDPA's main function is the protection of natural persons with regard to the processing and free movement of personal data through regulation and oversight of the Data Protection (Jersey) Law 2018 and the Data Protection Authority (Jersey) Law 2018 (**DPAJL**). This includes the investigation of complaints about the activities of controllers and processors, investigating data breaches and providing guidance and education on all aspects of the DPJL and DPAJL.
- 2.2. OFSO's main function is to resolve complaints about financial services independently, in a fair and reasonable manner, effectively, quickly, with minimum formality, and so as to offer a more accessible alternative to court proceedings.

### **3. This MoU**

- 3.1. Under Article 21(3)(b)(iv) of the Financial Services Ombudsman (Jersey) Law 2014, OFSO may disclose confidential information to the JDPA for the purpose of enabling or assisting the JDPA to exercise, in Jersey and in relation to financial service providers, any function conferred on them by or under any enactment;
- 3.2. Under Article 21(3)(c) of the Financial Services Ombudsman (Jersey) Law 2014, OFSO may disclose confidential information to the JDPA with a view to the investigation of a suspected offence, or with a view to the institution of, or for the purposes of, any criminal proceedings (whether the offence or proceedings are under this Law or otherwise).
- 3.3. Article 8 of the Data Protection Authority (Jersey) Law 2018 prevents the JDPA from disclosing, except with lawful authority, information that:
  - 3.3.1. has been obtained by, or furnished to, the Authority under or for the purposes of this Law or the Data Protection Law;
  - 3.3.2. relates to an identified or identifiable individual or business; and
  - 3.3.3. is not at the time of the disclosure, and has not previously been, available to the public from other sources.
- 3.4. A disclosure of information is made with lawful authority if –
  - 3.4.1. the disclosure is made with the consent of the individual or of the person for the time being carrying on the business;
  - 3.4.2. the information was provided for the purpose of its being made available to the public (in whatever manner) under this Law or the Data Protection Law;
  - 3.4.3. the disclosure is made for the purposes of, and is necessary for, the discharge of a function under this Law or the Data Protection Law, or an obligation under an agreement, or other instrument, of the EU;
  - 3.4.4. the disclosure is made for the purposes of any proceedings, whether criminal or civil and whether arising under, or by virtue of, this Law or the Data Protection Law or otherwise; or
  - 3.4.5. having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
- 3.5. Each take such steps as it considers appropriate to:
  - 3.5.1. co-operate with the other in the exercise of their functions;
  - 3.5.2. Prepare and maintain a memorandum describing how they intend to co-operate;
  - 3.5.3. The JDPA and OFSO are independent of each other and have distinct statutory functions, but cooperation and lawful exchange of information will benefit both consumers and providers of financial services by

contributing to the effective functioning of the statutory systems for regulation and dispute-resolution.

**3.6. This MoU:**

- 3.6.1. Does not create any enforceable rights;
- 3.6.2. Does not modify or supersede any applicable law;
- 3.6.3. Applies only so far as it is consistent with the independent roles and statutory obligations of the parties;
- 3.6.4. Takes effect immediately;
- 3.6.5. May be terminated by 30 days' written notice from one party to the other; and,
- 3.6.6. The JDPA and OFSO will publish this MoU on their websites, and both will ensure that an electronic copy is freely available to the public.

**4. General cooperation**

4.1. The JDPA and OFSO will seek to maintain a strong and constructive relationship. In particular they will:

- 4.1.1. Seek to dispel confusions and misunderstandings about their different roles;
- 4.1.2. Seek to achieve a complementary and consistent approach to the extent that it does not constrain the independent carrying out of their respective statutory functions;
- 4.1.3. Seek to assist one another with in-house training on their respective roles;
- 4.1.4. Communicate regularly and meet at least quarterly to discuss matters of mutual interest;
- 4.1.5. Attend such meetings at appropriate levels of seniority, and equivalent levels of seniority (for example, chief executive to chief executive);
- 4.1.6. Share, for comment, at an early stage any draft consultation or other public document that might have significant implications for the other party;
- 4.1.7. Provide each other with a list of contacts to whom information exchanged under this MoU should be directed; and,
- 4.1.8. Keep under review the operation of this MoU, and consult one another as appropriate on improving its operation and resolving any matters that may arise.

4.2. In cases where a persistent, systematic and/or serious pattern of complaints indicates that action by the JDPA and/or CIFO may be required to protect consumers of financial services and the action that could be taken by the JDPA or CIFO may have an impact on action that could be taken by the other, the JDPA and CIFO will liaise with each other to discuss the appropriate way forward.

**5. Information sharing**

5.1. The JDPA and OFSO may only provide information to the other if permitted, or not prevented, under applicable law. Subject to this, they will seek to share

information that will enable or assist them to exercise their respective functions. This may include information relating to complaint trends, application and interpretation of the applicable laws and joint initiatives.

- 5.2. The information sharing will not include details of specific complaints, individuals or businesses, or anything else for which disclosure would be prohibited by the applicable laws.
- 5.3. The JDPA and OFSO will provide each other, at least 2 working days before publication, with a copy of any public report or public statement that would enable or assist the other in fulfilling its statutory functions, including public notice of any CIFO final determination against a registered Controller or Processor on an issue that may fall within the JDPA's responsibility.

## **6. Confidentiality**

- 6.1. All non-public information shared under this MoU will be marked as such by the sending party.
- 6.2. In respect of any non-public information shared under this MoU, the receiving party will:
  - 6.2.1. Comply with any restrictions set by the sending party on use of the information that are agreed when the information is provided;
  - 6.2.2. Seek the sending party's consent in good time before disclosing the information to any third party;
  - 6.2.3. Not disclose the information to any third party without the prior consent of the sending party in writing (which includes email);
  - 6.2.4. Notify the sending party if it anticipates a legally-enforceable demand for disclosure of the information;
  - 6.2.5. Notify the sending party if any legally-enforceable demand for disclosure of the information is received, unless this is not practicable because of urgency;
  - 6.2.6. If requested by the sending party in relation to a legally-enforceable demand for disclosure of the information, assert any legal exemptions or privileges against disclosure on behalf of the sending party; and,
  - 6.2.7. If it is not practicable to notify the sending party of the receipt of a legally-enforceable demand for disclosure of the information, assume the sending party will wish to assert any legal exemptions or privileges against disclosure.
- 6.3. Unless indicated otherwise in a particular instance, information provided to or shared between the JDPA by CIFO pursuant to this MoU shall be treated as strictly confidential and may only be processed for the purposes detailed herein. For the purposes of the Freedom of Information (Jersey) Law 2011, all such information is absolutely exempt by virtue of Article 29 of that Law.

6.4. Paragraphs 14 and 15 of this MoU will continue to apply to non-public information shared between the JDPA and CIFO in the event that this MoU is terminated.

Dated 26.04.2021

Signed for the JDPA

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Jay Fedorak, Information Commissioner

Signed for OFSO

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Douglas Melville, Principal Ombudsman & Chief Executive